

# NEW JERSEY REGISTER



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## THE JOURNAL OF STATE AGENCY RULEMAKING

**VOLUME 21 NUMBER 19**  
**October 2, 1989 Indexed 21 N.J.R. 3043-3204**  
(Includes adopted rules filed through September 11, 1989)

**MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: JULY 17, 1989**  
**See the Register Index for Subsequent Rulemaking Activity.**  
**NEXT UPDATE: SUPPLEMENT AUGUST 21, 1989**

### RULEMAKING IN THIS ISSUE

#### RULE PROPOSALS

<b>Interested persons comment deadline</b> .....	<b>3044</b>
<b>ADMINISTRATIVE LAW</b>	
Special education hearings: public hearings .....	3045(a)
<b>AGRICULTURE</b>	
Registration and transportation of bees .....	3045(b)
<b>COMMUNITY AFFAIRS</b>	
Local authorities .....	3046(a)
Urban aid program; State aid for planning local effectiveness program .....	3046(b)
<b>HUMAN SERVICES</b>	
Pharmaceutical Assistance to Aged and Disabled: income standards .....	3047(a)
Adoption of children .....	3048(b)
<b>CORRECTIONS</b>	
Reduced custody consideration .....	3050(a)
<b>INSURANCE</b>	
Credit life and credit accident and health insurance premium rates .....	3052(a)
Insurer tie-ins .....	3053(a)
Insurers' annual audited financial reports .....	3054(a)
Commercial lines policy forms .....	3057(a)
<b>LAW AND PUBLIC SAFETY</b>	
Parenteral conscious sedation in dental practice .....	3060(a)
Use of general anesthesia in dental practice .....	3062(a)
<b>TRANSPORTATION</b>	
Highway access driveways and intersections: permit and application fees .....	3063(a)
<b>TREASURY-GENERAL</b>	
Consultant selection procedures for State project assignments .....	3074(a)
<b>TREASURY-TAXATION</b>	
Corporation Business Tax: effect of deficiency notice .....	3079(a)

<b>CASINO CONTROL COMMISSION</b>	
Gaming supervision .....	3080(a)

#### RULE ADOPTIONS

<b>BANKING</b>	
DOB fees for services .....	3082(a)
Consumer Loan Act rules .....	3083(a)
License fees .....	3083(b)
<b>COMMUNITY AFFAIRS</b>	
Uniform Fire Code and Fire Code Enforcement: administrative corrections .....	3085(a)
Uniform Fire Code and Fire Code Enforcement: life hazard use fees; fee collection remittance .....	3084(a)
Uniform Construction Code: municipal and departmental fees; planned real estate development registration and exemption fees .....	3086(a)
Housing and Mortgage Finance Agency: sale of project by nonprofit sponsor to for-profit sponsor; use of DCE/CDE accounts .....	3090(a)
Uniform deed restrictions and liens: controls on affordability .....	3091(a)
<b>ENVIRONMENTAL PROTECTION</b>	
Safe Drinking Water Act .....	3098(a)
Statewide water quality management planning .....	3099(a)
<b>HEALTH</b>	
Alcoholism treatment facilities: administrative correction to N.J.A.C. 8:42A-13.3 .....	3172(a)
<b>HIGHER EDUCATION</b>	
Guaranteed Student Loan Program: institution compliance .....	3173(a)
<b>INSURANCE</b>	
Adjustment of losses: administrative correction to N.J.A.C. 11:3-10.4 .....	3173(b)

(Continued on Next Page)

# INTERESTED PERSONS

**Interested persons** may submit, in writing, information or arguments concerning any of the rule proposals in this issue until **November 1, 1989**. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal or group of proposals.

On occasion, a proposing agency may extend the 30-day comment period to accommodate public hearings or to elicit greater public response to a proposed new rule or amendment. An extended comment deadline will be noted in the heading of a proposal or appear in a subsequent notice in the Register.

At the close of the period for comments, the proposing agency may thereafter adopt a proposal, without change, or with changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-4.3. The adoption becomes effective upon publication in the Register of a notice of adoption, unless otherwise indicated in the adoption notice. Promulgation in the New Jersey Register establishes a new or amended rule as an official part of the New Jersey Administrative Code.

## RULEMAKING IN THIS ISSUE—Continued

Health service corporations: notice of increased rates .....	3173(c)
Life insurers: excess interest reserve adjustment .....	3175(a)
<b>LAW AND PUBLIC SAFETY</b>	
Division of Motor Vehicles: enforcement officer rules .....	3176(a)
<b>TREASURY-GENERAL</b>	
Public Employees' Retirement System: lump-sum service purchases .....	3176(b)
Police and Firemen's Retirement System: lump-sum service purchases .....	3176(c)
<b>TREASURY-TAXATION</b>	
Corporation Business Tax: refund procedures .....	3177(a)
<b>ELECTION LAW ENFORCEMENT COMMISSION</b>	
Public financing of general election for Governor: administrative correction to N.J.A.C. 19:25-15.28 .....	3179(a)
<b>EXECUTIVE COMMISSION ON ETHICAL STANDARDS</b>	
Subpoena for witnesses .....	3179(b)
Rulemaking petitions .....	3179(c)

<b>HUMAN SERVICES</b>	
Charity Racing Days for Developmentally Disabled: availability of grants .....	3185(b)
State Plan for Title IV-E of Social Security Act: technical revisions .....	3186(a)
<b>LAW AND PUBLIC SAFETY</b>	
Quarterly Report of Legislative Agents: availability of 2nd Quarter, 1989 .....	3186(b)
Common carrier applicant .....	3187(a)
<b>TREASURY-GENERAL</b>	
State Employees' Charitable Fund-Raising Campaign for 1990-91: charitable agency applications .....	3187(b)
Architect-engineer selection for major projects .....	3187(c)

<b>EXECUTIVE ORDER NO. 66(1978)</b>	
<b>EXPIRATION DATES</b> .....	<b>3189</b>

<b>INDEX OF RULE PROPOSALS AND ADOPTIONS</b> .....	
	<b>3194</b>

### PUBLIC NOTICES

<b>BANKING</b>	
Interstate bank holding company acquisitions: supplemental determination of reciprocal states .....	3181(a)
<b>ENVIRONMENTAL PROTECTION</b>	
Open Lands Management Program: grant funding .....	3182(a)
Cheesequake Natural Area management plan .....	3183(a)
Areawide Water Quality Management Plans and associated permits: petition for rulemaking .....	3183(b)
Ocean County water quality management .....	3183(c)
Statewide Water Quality Management Program Plan amendment .....	3184(a)
Cape May water quality management: Lower Township ...	3185(a)

### Filing Deadlines

<b>November 6 issue:</b>	
Proposals .....	<b>October 6</b>
Adoptions .....	<b>October 16</b>
<b>November 20 issue:</b>	
Proposals .....	<b>October 19</b>
Adoptions .....	<b>October 26</b>
<b>December 4 issue:</b>	
Proposals .....	<b>October 31</b>
Adoptions .....	<b>November 8</b>
<b>December 18 issue:</b>	
Proposals .....	<b>November 16</b>
Adoptions .....	<b>November 27</b>

## NEW JERSEY REGISTER

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# RULE PROPOSALS

## ADMINISTRATIVE LAW

(a)

### OFFICE OF ADMINISTRATIVE LAW

#### Notice of Public Hearing

#### Special Education Program

#### Representation by Non-lawyers

#### Proposed Repeal and New Rules: N.J.A.C. 1:6A

#### Proposed Amendment: N.J.A.C. 1:1-5.4

Take notice that the Office of Administrative Law will conduct public hearings on the proposed repeal and new rules N.J.A.C. 1:6A and the proposed amendment to N.J.A.C. 1:1-5.4 (PRN 1989-443) regarding special education hearings. The proposal notice appeared in the New Jersey Register on September 5, 1989 at 21 N.J.R. 2693(a).

Two public hearings will be held, as follows:

Wednesday, October 18, 1989 at 7:00 P.M.

Office of Administrative Law

Quakerbridge Plaza

Building 9

Trenton, New Jersey

Friday, October 20, 1989 at 1:00 P.M.

Office of Administrative Law

185 Washington St.

Newark, New Jersey

A representative of the OAL will be present at the public hearings to explain the basis for the proposal and will answer questions.

Interested persons are invited to attend the public hearings and may present oral comments. For more information, call (609) 588-6500.

## AGRICULTURE

(b)

### DIVISION OF PLANT INDUSTRY

#### Diseases of Bees

#### Registration and Transportation of Bees

#### Proposed Re-adoption with Amendments: N.J.A.C.

2:24

Authorized By: State Board of Agriculture and Arthur R. Brown, Jr., Secretary, Department of Agriculture.

Authority: N.J.S.A. 4:6-1 et seq., specifically 4:6-20.

Proposal Number: PRN 1989-510.

Submit comments by November 1, 1989 to:

William W. Metterhouse, Director

Division of Plant Industry

New Jersey Department of Agriculture

CN 330

Trenton, New Jersey 08625

Telephone: (609) 292-5441

The agency proposal follows:

#### Summary

Pursuant to Executive Order No. 66, N.J.A.C. 2:24 expires on February 11, 1990. After considerable review, the Department has determined the rules are reasonable, necessary and proper for the purposes for which the rules were promulgated. The rules have been prepared from information supplied by the United States Department of Agriculture and from a file maintained by the New Jersey Department of Agriculture, Division of Plant Industry, concerning the European Honeybee (*Apis Mellifera*). The European Honeybee, in addition to providing marketable agricultural products of honey and wax, is of great value in pollinating New Jersey agricultural products and multiplying yields for the growers. At present, the culture of the European Honeybee is threatened by invasion of the Africanized Honeybee (*Apis Mellifera Scutellata*), Tracheal and Varroa mites. These mites, already in a number of states, are trans-

mitted and debilitating and kill honeybee colonies. Chemical treatments are now approved which can control the Varroa and Tracheal mites. However, registration of bee yards which would identify the specific location of such yards would facilitate the eradication and/or control of bee diseases, mites and Africanized honeybees.

In order to continue the culture of the European Honeybee, and to eradicate or control the spread of the Africanized Honeybee, it is essential that practices be established for the good management practices of the European Honeybee.

The State Department of Agriculture's rule for farm apiaries has been adopted subsequently by the State Agricultural Development Committee as an acceptable agricultural management practice. This practice is available from the Division of Plant Industry and the State Agricultural Development Committee.

However, over the past year it has become clear one set of criteria for non-farm apiaries has become unwieldy and the Department feels the definition should be deleted.

#### Social Impact

The State Board of Agriculture adopted N.J.A.C. 2:22-3.1, which declares the Africanized Honeybee an injurious insect and prohibits its keeping or transport into the State of New Jersey. To implement this rule, it has become necessary to regulate shipment of bees into New Jersey to prevent spread of these problems.

The proposed amendments to N.J.A.C. 2:24-2 provide for apiary registration and good management practices which will enable the New Jersey Department of Agriculture to locate all bee yards and control the spread of the Africanized Honeybee, mites and diseases, as well as protect the public from the Africanized Honeybee.

It is also expected that a greater public awareness of bees will develop with the real or expected presence of the Africanized Honeybee in New Jersey, a densely populated state; this makes adoption of the rules to eradicate and/or control this injurious insect important to all of New Jersey agriculture. Local or Statewide attempts to eliminate apiculture as a means to assuage such fears are a distinct possibility, with adverse impacts to all agriculturalists in New Jersey.

#### Economic Impact

Pollination is necessary to fertilize the fruit of plants. Honeybees facilitate the fertilization process. Bees increase pollination, facilitating improved yields, therefore, producing an adequate yield of crops and seasonal vegetables. There are approximately 60,000 colonies of honeybees used for pollination in New Jersey for apples, raspberries, strawberries, blueberries, cranberries, watermelons, cantalopes, pumpkins, cucumbers and other crops. While other insects pollinate crops, they are not as efficient, nor do they produce usable products in themselves.

Loss of European Honeybees, as a result of Africanized Honeybees destroying and supplanting their colonies, as well as by Tracheal and Varroa mite infestation and disease, will seriously disrupt pollination of New Jersey agricultural products and result in lower yields to the growers.

#### Regulatory Flexibility Analysis

All beekeepers in New Jersey qualify as small businesses and most, if not all, migratory beekeepers entering into New Jersey do also. Most farmers who use pollinating services are also small businesses. However, the rules do not impose any reporting or recordkeeping requirements on small businesses. They do, however, impose compliance requirements and levels of performance which will impact upon small businesses. The rules are, for the most part, recognized as such by most beekeepers and beekeeping associations.

All beekeepers, both commercial and hobbyists, in New Jersey are subject to the right of inspection and must inform the N.J. Department of Agriculture of the numbers and locations of their bees, by law, and are visited periodically by inspectors. Registration will provide for an accurate accounting of all bee yards and enable the N.J. Department of Agriculture to do its work in a more efficient manner and to minimize the costs of compliance by time spent in tracking down bee colonies and owners. This should also relieve new beekeepers and established beekeepers from spending time accounting for hives. No fees are imposed for registration and it is felt that the costs of mailing will more than be offset by minimizing the time and effort spent by the beekeeper and the Department in tracking bees.

**Full text** of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 2:24.

**Full text** of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

## SUBCHAPTER 2. REGISTRATION OF APIARIES

### 2:24-2.1 Registration requirements

(a) All bee yards in New Jersey where bees are over-wintered must be registered annually with the New Jersey Department of Agriculture.

(b) [(Reserved)] **All registered bee yards shall comply with applicable orders, laws and rules.**

(c) The Department of Agriculture shall supply the registrant with any and all appropriate orders, laws and rules.

### 2:24-2.2 [Apiary criteria] (Reserved)

[(a) Apiaries not on commercial farms shall be permitted if they meet the following criteria:

1. All colonies shall be kept in movable frame hives in accordance with N.J.S.A. 4:6-10.

2. There is adequate fresh water available of at least one gallon per hive per day during brood rearing at apiary site.

3. No colony shall be placed closer than ten feet from an adjoining property line, unless it is placed behind a six-foot high solid fence or hedge parallel to the adjoining property line extending ten feet beyond any colony; and

4. No colony shall be located within 25 feet of a public sidewalk, alley, street or road.

(b) Apiaries on commercial farms, as defined in N.J.S.A. 4:1C-1 et seq., are permitted under an accepted management practice of the State Agriculture Development Committee, as follows:

1. All permanent registered yards shall be at least 75 feet from a public road;

2. All permanent registered yards shall be one-half mile from any housing development;

3. There shall be a source of water within one-half mile of a permanent yard; and

4. All bee equipment shall be maintained in good condition; and

5. Acceptable bee management as defined by the New Jersey Beekeepers Association and/or the Eastern Apiculture Society of America shall be employed.]

## COMMUNITY AFFAIRS

### (a)

### LOCAL FINANCE BOARD

#### Local Authorities

#### Proposed Readoption: N.J.A.C. 5:31

Authorized By: Local Finance Board, Harry L. Mansmann, Executive Secretary.

Authority: N.J.S.A. 40A:5A-26.

Proposal Number: PRN 1989-507.

Submit comments by November 1, 1989 to:

Harry L. Mansmann, Executive Secretary  
Local Finance Board  
Department of Community Affairs  
CN 803  
Trenton, NJ 08625-0803

The agency proposal follows:

#### Summary

Pursuant to Executive Order No. 66(1978), the Local Authority rules, N.J.A.C. 5:31, are scheduled to expire on December 1, 1989. The Local Finance Board has reviewed these rules and finds that they continue to be necessary for the regulation of local authority budgets, accounting and financial reporting procedures and practices.

Under the rules, the Director, Division of Local Government Services, reviews and approves all local authority budgets. The rules also regulate

budget preparation, capital budget and capital programs, introduction, adoption, later approval and adoption and amendment by local authorities, as well as providing for a temporary budget.

Additionally, the rules encompass legal depositories, payments from authority monies, required check signatures, surety bonds, accounting principles and policies, annual audit, audit by Director, audit standards, auditors confidential report, the audit report and the annual financial report.

This system, which has been in place since 1985, has provided continued oversight of authority financial practices and enhanced the fiscal integrity of these independent agencies. N.J.S.A. 40A:5A-10 and 15 authorize the Local Finance Board to adopt and maintain rules. Readoption is necessary to insure the continued financial oversight of these agencies in the public interest.

#### Social Impact

Failure to readopt these rules would have an adverse social impact since it would eliminate the system of regulating authority budgets, the system of budgetary and accounting controls that enforces and protects the fiscal integrity of the local authorities and the local units who create, join or contract with them, and the budgetary and fiscal practice controls that safeguard public funds.

#### Economic Impact

Continuing the existing rules will add no additional costs to local authorities, as complying with the existing rules is an administrative cost element at present. As fiscal integrity and credibility is important to the investment community, failure to continue the rules could negatively affect local authority credit worthiness and add to local authority financing costs.

#### Regulatory Flexibility Statement

These rules affect government agencies. They do not affect small businesses. Therefore, a regulatory flexibility analysis is not required.

**Full text** of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 5:31.

### (b)

## DIVISION OF LOCAL GOVERNMENT SERVICES

### Urbanaid Program

### State Aid for Planning Local Effectiveness Program

### Proposed Repeals: N.J.A.C. 5:33 and 5:35

Authorized By: Anthony M. Villane, Jr., D.D.S., Commissioner, Department of Community Affairs.

Authority: N.J.S.A. 52:27D-3 and 52:27D-56.

Proposal Number: PRN 1989-498.

Submit comments by November 1, 1989 to:

Barry Skokowski, Sr., Director  
Division of Local Government Services  
Department of Community Affairs  
CN 803  
Trenton, NJ 08625

The agency proposal follows:

#### Summary

N.J.A.C. 5:33, the rules for the Urbanaid Program, and N.J.A.C. 5:35, the rules for the State Aid for Planning Local Effectiveness Program, are proposed for repeal. Neither program is any longer in existence. The rules therefore serve no current purpose and, in the Department's judgment, are most appropriately repealed.

The Urbanaid Program, the rules for which are proposed to be repealed, was established pursuant to P.L. 1969, c.75. It is not to be confused with the State Aid to Municipalities Program established by P.L. 1978, c.14. The latter program is still in existence.

#### Social Impact

The repeal of these chapters of rules will have no social impact since the programs for which they were adopted no longer exist.

#### Economic Impact

The repeal of these chapters will have no economic impact for the same reason that they will have no social impact.

**Regulatory Flexibility Statement**

The repeal of these chapters will have no effect on small businesses due to the programs' non-existence.

Full text of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 5:33 and 5:35.

**HUMAN SERVICES****(a)****DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES****Pharmaceutical Assistance to the Aged and Disabled Manual****Income Standards; Capital Gain****Proposed Amendments: N.J.A.C. 10:69A-1.2 and 6.2**

Authorized By: Margaret E.L. Howard, Acting Commissioner,  
Department of Human Services.

Authority: N.J.S.A. 30:4D-20, 21, 24; P.L.1989, c.16, effective  
February 1, 1989.

Proposal Number: PRN 1989-496.

Submit comments by November 1, 1989 to:

Henry W. Hardy, Esq.  
Administrative Practice Officer  
Division of Medical Assistance and Health Services  
CN-712  
Trenton, NJ 08625

The agency proposal follows:

**Summary**

The following proposed amendments are based upon a recent amendment to the legislation establishing the Pharmaceutical Assistance to the Aged and Disabled (PAAD) Program, N.J.S.A. 30:4D-21 (P.L. 1989, c. 16, effective February 1, 1989).

The law excludes the income from the sale of a principal residence to the extent that it is excluded from the New Jersey Gross Income Tax pursuant to N.J.S.A. 54A:6-9. This amendment will enable PAAD applicants and/or beneficiaries to exclude a capital gain up to \$125,000 from the sale of a principal residence from their income when they apply for/or receive PAAD.

The purpose of the amendment is to exclude from annual income the one-time capital gain from the sale of a home to enable senior citizens and disabled persons to receive PAAD benefits continuously.

The purpose of these proposed amendments is to incorporate the statutory requirement in regulatory format.

However, if the PAAD applicant/beneficiary places the proceeds from the sale of his or her principal residence in an interest bearing account, such as a savings account, then any income derived from this account shall be considered as income in determining eligibility in accordance with the usual procedures.

**Social Impact**

The proposed amendments impact generally on all PAAD applicants and/or beneficiaries. They will impact specifically on those persons who sell their principal residence, because their eligibility will be determined in accordance with the new standard.

The amendments will have virtually no impact on pharmaceutical providers, who will continue to fill prescriptions for PAAD eligible individuals.

**Economic Impact**

The estimated budgetary impact of this legislation is approximately \$564,260 annually. The PAAD program is completely State-funded.

The Division will utilize existing administrative staff to administer this new eligibility provision.

PAAD beneficiaries are required by law to pay a \$2.00 co-payment.

**Regulatory Flexibility Statement**

A regulatory flexibility analysis is not required. The persons affected by these amendments are not small businesses, as defined in the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-16 et seq. The persons affected are individual applicants and/or beneficiaries of PAAD.

The program is administered by the Division of Medical Assistance and Health Services, which is a governmental agency.

Full text of the proposal follows (additions indicated in boldface thus; deletions indicated by bracket [thus]):

**10:69A-1.2 Legal authority**

(a) The New Jersey Program of Pharmaceutical Assistance to the Aged and Disabled (PAAD) was established by Chapter 194, Laws of 1975, as amended by:

1. Chapter 194, Laws of 1975, effective August 21, 1975. Amended by Chapter 312, Laws of 1975, effective February 19, 1976;
2. Chapter 268, Laws of 1977, effective January 1, 1978; [and]
3. Chapter 171, Laws of 1978, effective December 22, 1978; [and]
4. Chapter 27, Laws of 1979, effective March 1, 1979; [and]
5. Chapter 499, Laws of 1981, effective March 1, 1982; [and]
6. Chapter 209, Laws of 1985, effective August 1, 1985; [and]
7. Chapter 221, Laws of 1987, effective July 29, 1987 and retroactive to December 31, 1986 [.] and
8. Chapter 16, Laws of 1989, effective February 1, 1989.

(b) (No change.)

**10:69A-6.2 Income standards**

(a)-(b) (No change.)

(c) All income, from whatever source derived, is considered in determining eligibility for the purposes of PAAD. Jointly owned income sources will be allocated according to degree of ownership.

1. (No change.)
2. Sources of income which are excluded in considering eligibility for PAAD are as follows:
  - i. Benefit amounts received under the New Jersey State Lifeline Credit Program/Tenants Lifeline Assistance Program;
  - ii. Benefits received under the New Jersey State Homestead Rebates;
  - iii. Proceeds from spouse's life insurance[.]; and
  - iv. **The one-time capital gain up to \$125,000 from the sale of a principal residence for individuals age fifty-five or older which is excluded from the State gross income tax pursuant to N.J.S.A. 54A:6-9.**
- (d)-(i) (No change.)

**(b)****DIVISION OF YOUTH AND FAMILY SERVICES****Adoptions****Proposed New Rules: N.J.A.C. 10:121**

Authorized By: Drew Altman, Commissioner, Department of  
Human Services.

Authority: N.J.S.A. 30:4C-45 through 49, 30:4C-31 and P.L.  
96-272.

Proposal Number: PRN 1989-387.

Submit comments by November 1, 1989 to:

Kathryn A. Clark, Esq.  
Administrative Practice Officer  
Division of Youth and Family Services  
CN 717  
1 South Montgomery Street  
Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

N.J.A.C. 10:121 expired by action of Executive Order No. 66(1978) on March 13, 1989. First adopted prior to September 1, 1969, these rules have been amended over the years, most significantly in 1986, when the Division of Youth and Family Services (Division) updated N.J.A.C. 10:121-2 to implement amendments to the New Jersey Subsidized Adoption Law (N.J.S.A. 30:40C-45 et seq.).

The Division now proposes N.J.A.C. 10:121 as new rules, containing provisions that are material changes from the former text of the expired rules as they appear in the New Jersey Administrative Code.

The proposed new rule at N.J.A.C. 10:121-1.1, Approval of Agencies, reflect existing practice of the Division of Youth and Family Services in

that they require the out-of-State adoption agencies with which they deal to meet minimum basic standards of practice, and also to retain responsibility for any child placed in New Jersey until the adoption is finalized or the child is removed from this State.

Approval of an out-of-State agency under these rules permits that agency to place a child for adoption in New Jersey through the cooperative services of an agency licensed under the laws of this State to practice in New Jersey. It also permits such out-of-State agency to consent to the adoption in a New Jersey court. Such approval does not empower the out-of-State agency to provide direct adoption services in New Jersey.

The New Jersey Subsidized Adoption Law became effective on June 13, 1973. The purpose of the law is to encourage the adoption of hard to place children, who might otherwise remain within the foster care system. The subsidy program offers a number of benefits to families adopting eligible children. These include a monthly maintenance payment, medical coverage for the child through the Medicaid program, payment of legal fees to finalize the adoption and the provision of agreed upon special services needed by the child. Since the program's inception, benefits have been paid to over 4,000 families who have adopted hard to place children. On January 17, 1984, Governor Thomas H. Kean signed into law amendments to the Subsidy statute which liberalized the program. N.J.A.C. 10:121-2.1 is proposed to implement the statutory changes.

The Division of Youth and Family Services proposes to adopt the subsidy rule, N.J.A.C. 10:121-2.1, with three changes compared to the expired rule. These changes are based on current adoption practice.

The first change is in the definitions of "hard-to-place child." Due to the difficulty of finding homes for children of certain ethnic backgrounds, the age at which certain children become "hard-to-place" is dropped from five to two.

Another definition of "hard-to-place child" is changed from the expired rule, based on the different availability of adoptive homes for children of different ethnic backgrounds. When a child has been living in a foster home for at least 12 months, he or she is considered hard-to-place only when over the age of five. However, a child under five being adopted by foster parents may be considered hard-to-place, and therefore eligible to receive subsidy, if he/she is a member of an ethnic group for whom adoption homes are not readily available.

Children who are not hard-to-place, based on the definitions, are not eligible for adoption subsidy.

The Division proposes to begin adoption subsidy payments for eligible children placed by private adoption agencies when the Division receives the application for adoption subsidy. The expired rule required that payment not begin until the order of adoption is signed by the court.

The final change ensures that subsidy payments can be continued to a child's legal caretaker if the adoptive parent(s) dies.

The Division plans to permit N.J.A.C. 10:121-4.1 to remain expired because it does not provide authority to regulate the release of criminal history record information, which is authorized in N.J.S.A. 30:4C-26.8.

In summary, N.J.A.C. 10:121-1 sets criteria under which out-of-State adoption agencies may place children for adoption with a family living in New Jersey. N.J.A.C. 10:121-2 defines the conditions under which an adoption subsidy may be paid to the adoptive family for a hard-to-place child. N.J.A.C. 10:121-3 contains the adoption complaint investigation fee schedules. N.J.A.C. 10:121-4 deals with release of criminal history record information in cases of suspected child abuse or neglect. N.J.A.C. 10:121-5 gives the availability of medical information forms.

Due to the need for extensive staff review, which could not be completed by the expiration date of March 13, 1989, the Department is proposing new rules.

#### Social Impact

The proposed new rules will protect adoptive children placed into New Jersey from being placed in inappropriate situations and/or ones in which no person or organization has clear legal responsibility for his or her care and maintenance.

The Division's primary goal for all children who cannot return to their biological parents due to the inability of these people to properly parent them is to secure permanent families for them. Most frequently this is accomplished through adoption. The adoption subsidy program assists in achieving this desirable goal by providing financial and medical assistance to children who would be unlikely to achieve adoption without such help. During calendar year 1988, 560 children were placed for adoption with subsidy.

These proposed rules contain revisions in the definition of "hard-to-place child". The impact of the changes to the definition is to provide

subsidy payments more equitably, based on the differing availability of homes for children of various ethnic backgrounds. The Division is increasing its resources for black children, for whom families are most needed, with the intent of encouraging the development of new adoptive homes.

Likewise, the Division is encouraging private adoption agencies to develop homes and place hard-to-place children by offering subsidy payments earlier in the adoption process.

The purpose of clarifying that subsidy payments are transferred upon an adoptive parent's death is to ensure that the Division's commitment to the financial support of a hard-to-place child shall continue in a legal and timely manner.

#### Economic Impact

No economic impact is anticipated from N.J.A.C. 10:121, as financial responsibility remains with the out-of-State agency and there currently is an office within the Department of Human Services, Division of Youth and Family Services, which administers this and other activities involved in placement of dependent children across state lines.

The adoption subsidy program results in a cost savings to the Division. Although payments to adoptive parents through subsidy continue in the same amount as the payments that were made for the child while in foster care, administrative costs of supervising the child are ended once the adoption is finalized.

The economic impact of the changes to the definition of "hard-to-place child" can not be calculated in advance. Lowering the age at which certain children may be considered hard-to-place may encourage their adoption, thus bringing subsidy payments to selected adoption homes, who previously would have received nothing. The Division's overall budget will not be affected, as the Division pays the same amount per child whether for adoption subsidy or foster care board rate.

Foster families adopting children who are not handicapped or part of a sibling group will no longer receive a subsidy unless the child is over five or a member of an ethnic group for whom adoptive homes are not readily available and the child has been in the home at least twelve months. If the child is adopted anyway by the foster family or a selected family, the Division will save money.

The economic impact of paying a subsidy earlier for children whose adoption is handled through a private adoption agency will add some costs to the Division's budget. This money will be well-spent, as such payment conforms to the goals and objectives of the Division.

There is no economic impact resulting from the continuation of subsidy payments upon the death of an adoptive parent. The Division makes a commitment to pay a subsidy until the child's 18th birthday. This change merely clarifies procedures for payment to include the circumstance of the death of the adoptive parent.

#### Regulatory Flexibility Analysis

Adoption subsidy is available to the hard-to-place child under the care of New Jersey private agencies certified to practice adoption pursuant to State adoption law. (N.J.S.A. 9:3-37 et seq.). In order to be certified by the Division's Bureau of Licensing, these agencies must meet the requirements for certification as contained in N.J.A.C. 10:121A. There are currently 20 such agencies located in New Jersey.

No additional compliance requirements are imposed on these agencies through the adoption subsidy program. The private agency must, however, process the necessary paperwork with the adoptive parents who will receive an adoption subsidy for the private agency child. The forms required by the Division include the Application for Subsidized Adoption Payments, (DYFS 14-182), Determination of Eligibility for Subsidy (14-183) and the Agreement Between the New Jersey Division of Youth and Family Services and the Adoptive Parents Regarding Subsidy Payments (DYFS 14-184).

The adoption subsidy program, and, specifically, the proposed revision to begin subsidy payments to private agency families at the time of placement of the child rather than at the finalization of the adoption, does not result in any adverse economic impact on the private sector. In fact, it impacts on the agencies positively by having the Division assume some of the costs for servicing the hard-to-place child which are now being covered by those agencies.

**Full text** of the expired rules proposed as new may be found in the New Jersey Administrative Code at N.J.A.C. 10:121.

**Full text** of the amendments to the expired rules proposed as new follows (additions indicated in boldface **thus**; deletions shown in brackets [thus]).

CHAPTER 121  
ADOPTIONSSUBCHAPTER 1. APPROVAL OF AGENCIES DESIRING TO  
PLACE CHILDREN IN NEW JERSEY

## 10:121-1.1 Approval of agencies

(a) [The following rules and regulations] **This section shall** apply to agencies, public or private, whose principal offices are not located within the State of New Jersey, which do not otherwise maintain an adequately staffed office within the State of New Jersey and which do not provide direct adoption services in New Jersey but do on occasion place children for adoption with families living in or moving to New Jersey. [Such agencies, whenever] **Whenever** the contemplated adoption may not or cannot be completed in their own state, **approval under this section will permit the agency to consent to an adoption in a New Jersey court. An agency must, before placing a child for adoption with a family living in New Jersey:**

1. **Be a non-profit or governmental agency and be licensed, certified or otherwise approved in its own state to place children for adoption under procedures and standards established in that state, which procedures and standards shall be consistent with those of the State of New Jersey with respect to services provided to birth parents and termination of parental rights; [and]**

2. **Enlist the cooperation of a duly certified New Jersey adoption agency [which] to provide[s] all direct adoption services in New Jersey [for the purpose of providing] including home evaluation, concurrence with the proposed placement and proper supervision of the adoption placement until the final decree of adoption is entered by a court of competent jurisdiction or until some alternate plan is made for the child; and**

3. **Provide the New Jersey Department of [Institutions and Agencies] Human Services, Division of Youth and Family Services, with a written statement certifying that (a)1 and 2 above have been complied with and, further, that [it will continue to assume] interstate placement requirements of both states will be followed, including continued responsibility for the child until an adoption is finalized, the child is [adopted] removed from the State of New Jersey or some other plan approved by the Department of Human Services, Division of Youth and Family Services, is made.**

## SUBCHAPTER 2. ADOPTION SUBSIDY

## 10:121-2.1 Definitions

For the purposes of this subchapter, the following definitions shall apply.

...  
"Hard-to-place child" means any child who the State of New Jersey has the legal right to place for adoption but who is reasonably expected not to be placed for adoption due to the lack of a prospective adoptive home for any of the following reasons:

1.-6. (No change.)

7. **The child is over [five] two years of age and a member of an ethnic group for whom adoptive homes are not readily available. Information regarding availability of homes may be obtained from the Adoption Service Unit of the Division[.];**

8. (No change.)

9. **The child is over five years of age and has been living with foster parents for at least 12 months and adoption by the foster parents [would be] is the most appropriate plan for the child. A child under five may be deemed hard-to-place and qualify for subsidy under this subsection if he or she is a member of an ethnic group for whom adoptive homes are not readily available.**

## 10:121-2.2 Payments for the care and maintenance of a hard-to-place child (adoption subsidy)

(a)-(c) (No change.)

(d) **Payments shall be made on behalf of a child placed for adoption by the Division except that whenever a child who would otherwise be eligible for subsidy payments is in the care of any approved New Jersey adoption agency other than the Division pursuant to [P.L. 1977, c.367 (] N.J.S.A. 9:3-37 et seq.[)] that child shall, upon application by the agency and satisfaction of the regular requirements**

of the adoption subsidy program, be approved for participation in the adoption subsidy program. Subsidy payments for children in private agency adoptions [do not] **shall** begin [until the order of adoption is signed by the court] **when the Division receives the application for adoption subsidy from the private agency.** [The private agency placing the child for adoption must bear the cost of any pre-adoptive maintenance while the child is still in their legal custody.] A determination as to the child's eligibility to receive subsidy may be made by the Division. However, such determination must be made prior to the child's adoptive placement, in order to assist the prospective adoptive parents in making a decision as to their ability to accept the child into their home. The Division is responsible for monitoring the adoption subsidy to the private agency. The Division may approve adoption subsidy payments for a child without legal transfer of care or custody of the child to the Division.

(e)-(f) (No change.)

(g) **The written agreement covering subsidy payments shall remain in effect regardless of adoptive parent(s) income until the child's 18th birthday, provided that the adoptive parents remain legally responsible for the support of the child and the child continues to receive support from such parents. On an annual basis the Division will determine that the adoptive parents continue to be legally responsible for the support of the child and that the child continues to receive support from the adoptive parents or the subsidy payments will be terminated. In the event of the death of the adoptive parent(s), subsidy payments shall be transferred to the new caretaker when the caretaker demonstrates legal responsibility for the child as a result of being named guardian in the adoptive parent's will or having obtained a custody order through the courts.**

(h)-(l) (No change.)

## 10:121-2.3 [Variations] Exceptions

(a) **The requirements and standards prescribed in this subchapter may be subject to exceptions such as those provided in (b) below in specific cases where the Division determines that strict compliance would result in undue hardship or jeopardize the health, safety and welfare of the prospective adoptive parent or child, or the public generally, except that no exception to these [regulations] rules may exceed the limitations provided by Federal or State law.**

(b) **Exceptions to the provisions of this chapter may be made upon request for:**

1. **Families who are funded below the 100 percent board rate whose cases were approved prior to January 17, 1984 [as] so that their level of funding may be increased to the applicable 100 percent rate, if documentation shows a dramatic decrease in their financial circumstances; [or]**

2. **Medical coverage for families whose subsidy cases were approved prior to January 17, 1984 when there is documentation of the development of a severe and permanent physical or mental handicap under the hard-to-place guidelines, and there is no third party medical insurance or where inadequate third party medical insurance is available to provide for the needs of the child[.]; or**

3. **The continuation of subsidy payment for all cases at an 80 percent foster care board rate for those children between the ages of 18 to 21 years of age who are enrolled in a curriculum directed toward gainful employment at any educational level below college.**

## 10:121-3.2 Fees for adoption complaint investigation

(a) **The fees and methods of payment for Preliminary Investigation and Report services provided by the Division of Youth and Family Services are as follows:**

1. (No change.)

2. **A monthly payment, which is determined by dividing the total fee (\$296.00) by the prospective adoptive applicant's monthly capacity to support, is made. The application's monthly capacity to support is obtained by completing DYFS Form 26-6a, Income Worksheet for Legally Responsible [Relatives] Persons.**

(b) **The fees and methods of payment for Supervision Services and Final Report provided by the Division of Youth and Family Services are one of the following:**

1.-2. (No change.)

3. **Monthly payments are made in accordance with the evaluated capacity to support if the adoptive parents indicate that the other**

payment options would be a financial hardship. In this case, monthly payments are determined by dividing the total fee by the applicant's monthly capacity to support. The applicant's monthly capacity to support is obtained by completing DYFS Form 26-6a, Income Worksheet for Legally Responsible [Relatives] Persons.

#### SUBCHAPTER 4. RELEASE OF CRIMINAL HISTORY RECORD INFORMATION

10:121-4.1 [Release of State and Federal criminal history record information in cases of prospective adoptive and prospective foster parents] (**Reserved**)

[In all cases which the Division of Youth and Family Services has a responsibility for investigating the circumstances of any person for consideration as a prospective foster parent or adoptive parent, the Division of Youth and Family Services may request and shall receive from the New Jersey State Police the appropriate State and Federal criminal history information pertaining to such individuals.]

## CORRECTIONS

### (a)

#### THE COMMISSIONER

#### Classification Process

#### Eligibility Criteria For Reduced Custody Consideration

#### Proposed Amendments: N.J.A.C. 10A:9-4.

Authorized By: William H. Fauver, Commissioner, Department of Corrections.

Authority: N.J.S.A. 30:1B-6 and 30:1B-10.

Proposal Number: PRN 1989-506.

Submit comments by November 1, 1989 to:

Elaine W. Ballai, Esq.  
Special Assistant for Legal Affairs  
Department of Corrections  
CN 863  
Trenton, New Jersey 08625

The agency proposal follows:

#### Summary

The proposed amendments modify N.J.A.C. 10A:9-4 by adding new subsections to N.J.A.C. 10A:9-4.6 which require inmates who have mandatory minimum sentences of more than 24 months, after the effective date of these amendments, to serve one half of the mandatory minimum term before they are eligible to be considered for reduced custody status. A new section N.J.A.C. 10A:9-4.9, provides the factors to be considered by the Institutional Classification Committee when deciding whether to assign inmates to satellite units other than the Jones Farm. Technical changes are made in other rules in the subchapter, including deletion of the term "in-and-out custody," which is actually synonymous with gang minimum custody status. The amendment to N.J.A.C. 10A:9-4.7(c) brings the rule up-to-date with the current system in which sentenced sex offenders are incarcerated in the Adult Diagnostic and Treatment Center.

#### Social Impact

"Gang minimum custody status" is the term that is used at adult correctional facilities, and "in-and-out custody status" is the term that is used at youth correctional institutions to refer to the custody level between maximum custody status and full minimum custody status. The proposed amendments deleting references to "in-and-out custody status" will establish the single appropriate term to be used within the Department when reference is made to the custody level between maximum custody status and full minimum custody status.

The proposed amendment to N.J.A.C. 10A:9-4.6(e) will have no significant impact on inmates who are considered for reduced custody prior to the adoption of the proposed amendment in this subsection. The proposed amendment using "prior to the effective date of this amendment" is intended to ensure that inmates classified to reduced custody status, in accordance with this subsection, will not be subject to a reclassification in accordance with the more stringent criteria in the proposed amendments N.J.A.C. 10A:9-4.6(f)-(g).

The proposed amendments N.J.A.C. 10A:9-4.6(f)-(g) will ensure that the accumulation of jail time and commutation and work time credits will not result in an inmate being considered for reduced custody prior to serving at least one half of his or her mandatory minimum term.

The proposed amendment to N.J.A.C. 10A:9-4.7(c)3 will provide the administrative flexibility that is necessary for the Institutional Classification Committee and the Superintendent of the Adult Diagnostic and Treatment Center to approve an inmate for gang minimum custody status which will make that inmate available for use in a work detail on the grounds of that facility.

The proposed amendment to N.J.A.C. 10A:9-4.9 will have no significant social impact because it simply codifies the existing criteria for assigning inmates to satellite units, which takes into consideration the concerns of communities that are in close proximity to the satellite units and the public at large.

The other minor word changes will have no significant social impact because they are only used for purposes of clarification and they do not alter the concepts set forth in the rules of this subchapter.

#### Economic Impact

The proposed amendments will have no significant economic impact because additional resources will not be needed to implement or maintain the amendments.

#### Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendments do not impose reporting, record keeping or other compliance requirements on small business. The proposed amendments impact on inmates and the New Jersey Department of Corrections.

Full text of the proposal follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):

#### SUBCHAPTER 4. ELIGIBILITY CRITERIA FOR REDUCED CUSTODY CONSIDERATION

##### 10A:9-4.1 Eligibility for reduced custody

(a) The criteria set forth in this [Subchapter] subchapter shall be applied by **Institutional** Classification Committees (I.C.C.) to determine whether an inmate is eligible for reduced custody consideration, as follows:

1. Eligible to be considered for full minimum custody status, preceded by the successful completion of a period of time in gang minimum [or in-and-out] status;
2. Eligible to be considered for gang minimum custody status [ or in-and-out custody status] only; or
3. (No change.)

##### 10A:9-4.3 Custody levels

(a) (No change.)  
(b) Inmates classified as "gang minimum custody status" [or "in-and-out custody status"] shall be assigned to activities or jobs which routinely require them to move outside the security of the correctional facility, but on the grounds of the facility and within eyesight of a correction officer, civilian instructor or other employee authorized to supervise inmates.

(c) (No change.)

(d) Except as provided by N.J.A.C. 10A:9-4.4, the successful completion of a period of time in gang minimum custody status [or in-and-out custody status] shall be a prerequisite for full minimum custody status.

1. The amount of time in gang minimum custody status [or in-and-out custody status] shall be at the discretion of the Institutional Classification Committee (I.C.C.).

2. Inasmuch as the Mountainview Youth Correctional Facility is classified as a minimum security facility, inmates at that facility are not required to fulfill the prerequisite time in gang minimum custody status [or in-and-out custody status].

(e) (No change.)

##### 10A:9-4.4 Authority of Classification Committees

(a) [Reductions] **Changes** in inmates' custody levels within a particular correctional facility shall be made by the Institutional Classification Committee (I.C.C.).

1. In an emergency situation, or when additional information is received which negatively affects an inmate's suitability to remain in

reduced custody, the inmate's custody level [can] **may** be increased [temporarily] by order of the Superintendent, Assistant Superintendent or Director of Custody Operations.

2. Such custody level changes must be reviewed and approved by the I.C.C. [at its next regularly scheduled meeting] **as soon as is reasonably feasible.**

(b)-(c) (No change.)

10A:9-4.5 Discretion of **Institutional Classification Committees (I.C.C.)**; factors to be considered

(a) Except as otherwise noted, Classification Committees are the only bodies authorized to reduce or increase an inmate's custody status.]

(b)(a) In making decisions to reduce an inmate's custody status, **Institutional Classification Committees (I.C.C.)** shall take into consideration all relevant factors which, in their professional judgment, bear upon the inmate's suitability for reduced custody **status**. These factors [shall] **may** include, but not be limited to:

1.-6. (No change.)

(c)(b) When considering inmates whose present offense or past history involves, arson, escape, assault, murder or sexual offenses, or who have been known to have psychological problems, the **Institutional Classification Committees (I.C.C.)** shall utilize psychiatric or psychological evaluations which are not more than six months old and which confirm suitability for reduced custody status.

(d)(c) **Institutional Classification Committees (I.C.C.)** shall not be compelled by these criteria to automatically grant a reduction in custody **status** to every inmate who is eligible for consideration.

(e)(d) **Institutional Classification Committees (I.C.C.)** have no authority to grant reductions in custody **status** to inmates who fall outside the eligibility guidelines unless appropriate requests for [variances] **rule exemptions** are filed and approved, pursuant to N.J.A.C. [10A:1. ADMINISTRATION, ORGANIZATION AND MANAGEMENT] **10A:1-2, General Provisions.**

(f)(e) An inmate who has been granted reduced custody **status** may have his or her custody **status** increased for any of the following reasons, subject to confirmation by the **Institutional Classification Committee (I.C.C.)**:

1.-6. (No change.)

(g)(f) The inmate shall receive a written notice of the reason(s) for the return to increased custody status within five working days.

10A:9-4.6 Criteria for consideration for gang minimum custody status[, in-and-out custody status,] and full minimum custody status

(a) Except as provided in N.J.A.C. 10A:9-4.7 and 10A:9-4.8, inmates who meet the criteria set forth in this section are eligible to be considered for full minimum custody status preceded by the successful completion of a period of time in gang minimum custody status [or in-and-out custody status]. Pursuant to N.J.A.C. 10A:9-4.3(d)1, the amount of time in gang minimum custody status [or in-and-out custody status] shall be at the discretion of the Institutional Classification Committee (I.C.C.).

(b) **Institutional Classification Committees (I.C.C.)** are not obligated to advance an inmate from gang minimum custody status [or in-and-out custody status] to full minimum custody status even though the inmate qualifies for consideration under the criteria set forth in this section.

(c) When considering inmates for reduced custody status who are serving ordinary or extended prison sentences with no mandatory minimum, the I.C.C. shall take into account all New Jersey County Jail credits awarded prior to commitment on the instant offense. Inmates must have served the following number of years of their sentences in maximum custody to be eligible to be considered for gang minimum custody status[, in-and-out custody status] and full minimum custody status.

Length of Sentence	Years in Maximum
[Over] 30 years to life	5
Over 25 <b>and</b> up to [and including] 30 years	4
Over 20 <b>and</b> up to [and including] 25 years	3
Over 15 <b>and</b> up to [and including] 20 years	2
Over 10 <b>and</b> up to [and including] 15 years	1
10 years and under	[none] None

(d) Inmates sentenced to serve mandatory minimum terms of 24 months or less are eligible to be considered for gang minimum custody status[, in-and-out custody status] and full minimum custody status immediately following admission to a correctional facility.

(e) **Prior to the effective date of this amendment, [Inmates] inmates** sentenced to serve mandatory minimum terms of **more than 24 months** are eligible to be considered for gang minimum custody status[, in-and-out custody status] and full minimum custody status when the following service of time has been met. Any New Jersey County Jail credit awarded on the instant offense shall be counted. No credit toward this requirement is to be given on any prior sentence which an inmate may currently be serving.

1.-2. (No change.)

3. However, in any instance where the application of [(d)2](e)2 above would result in an inmate being eligible for consideration in less time than if he or she had no mandatory minimum, then the formula set forth in (c) above shall be applied such that the greater amount of time shall be spent in maximum custody. (EXAMPLE: If the inmate has a 20 year term and a mandatory minimum of three years, he or she shall serve the two years required in [10A:9-4.6](c) **above** instead of the one year which would be required under [10A:9-4.6](e)2 above.)

(f) **After the effective date of this amendment, inmates sentenced to serve mandatory minimum terms of more than 24 months are eligible to be considered for gang minimum custody status and full minimum custody status when the inmate has served one-half of the mandatory minimum. Any New Jersey county credit awarded on the instant offense shall be counted. No credit toward this requirement is to be given on any prior sentence which an inmate may currently be serving.**

(g) In any instance where the application of (f) above would result in an inmate being eligible for consideration in less time than if he or she had no mandatory minimum, then the formula set forth in (c) above shall be applied such that the greater amount of time shall be spent in maximum custody. (EXAMPLE: If the inmate has a 20 year term and a mandatory minimum of three years, he or she shall serve the two years required in (c) above instead of the one and one-half years which would be required under (f) above.

[(f)](h) (No change in text.)

[(g)](i) Inmates with indeterminate sentences must have served the following number of months of their sentences to be eligible to be considered for gang minimum custody status[, in-and-out custody status] and full minimum custody status:

Length of Sentence	Months in Maximum
30 years to life	42
25 to 29 years	30
20 to 24 years	18
15 to 19 years	6
Up to 15 years	None

[(h)](j) Inmates presently serving sentences for controlled dangerous substance (C.D.S.) offenses shall be eligible to be considered for gang minimum custody status[, in-and-out custody status,] and full minimum custody status. When considering these offenders, the I.C.C. shall take into account the following:

1.-6. (No change.)

[(i)](k) (No change in text.)

[(j)](l) Inmates who have New Jersey detainers, New Jersey open charges less than five years old or who are on bail, are eligible to be considered for gang minimum custody status [or in-and-out custody status,] and full minimum custody status unless the detainer, the open charge or the bail is for one of the following:

1.-13. (No change.)

[(k)](m) Inmates who have escaped or attempted escape and who are not excluded from reduced custody pursuant to N.J.A.C. 10A:9-4.8(e) shall be eligible for reduced custody as follows:

1. If an inmate is presently serving a sentence for escape or attempted escape from inside the security of a main correctional facility or county jail, within or outside New Jersey, he/[or she shall be eligible to be considered for gang minimum custody status [or in-and-out custody status] and full minimum custody status only when five years have elapsed since the date of apprehension of the escape or the date of attempted escape and he or she is otherwise eligible according to the criteria set forth in this subchapter.

2. If an inmate is presently serving a sentence for escape or attempted escape from a minimum security detail or unit, within or outside New Jersey, he or she shall be eligible to be considered for gang minimum custody status [or in-and-out custody status] and full minimum custody status when two years have elapsed from the date of apprehension of the escape or two years from the date of the attempted escape and he or she is otherwise eligible according to the criteria set forth in this subchapter.

3. (No change.)

10A:9-4.7 Criteria for consideration for gang minimum custody status [or in-and-out custody status] only

(a) Inmates who meet the criteria set forth in this section shall be eligible to be considered for gang minimum custody status [or in-and-out custody status] but not for full minimum custody status.

(b) (No change.)

(c) An inmate who is presently serving a sentence for one count of a sexual offense and has no prior adult convictions for sexual offenses, or an inmate who is presently serving a sentence for a nonsexual offense but who has a prior adult conviction for one count of a sexual offense, may be considered for gang minimum custody status [or in-and-out custody status] provided:

1. [He or she] **The inmate** is otherwise eligible according to the criteria set forth in this subchapter; **and**

2. There is a psychiatric or psychological evaluation, not more than six months old, which focuses specifically on the inmate's criminal sexual behavior and his or her likelihood for success in reduced custody status; [and] **or**

3. [There is positive recommendation for parole from the Special Classification Review Board (See N.J.A.C. 10A:9-8) if the inmate has been sentenced pursuant to N.J.S.A. 2A:164-3 et seq. or N.J.S.A. 2C:47-1 et seq.] **The inmate is housed at the Adult Diagnostic and Treatment Center (A.D.T.C.) and is approved for reduced custody status by the Institutional Classification Committee (I.C.C.) and Superintendent of A.D.T.C. only, for job assignment on A.D.T.C. property.**

(d) An inmate who presently is serving a sentence for one conviction of arson or fire setting or malicious destruction involving arson, with no previous such adult convictions; or an inmate presently serving a sentence for a nonarson offense but who has a prior adult conviction for arson, fire setting or malicious destruction involving arson, is eligible to be considered for gang minimum custody status [or in-and-out custody status] provided:

1. (No change.)

2. There is a psychiatric or psychological evaluation, no more than six months old, which focuses specifically on the inmate's likelihood for success in gang minimum custody status [or in-and-out custody status] in light of the present or past conviction for arson.

10A:9-4.8 Not eligible to be considered for reduced custody status

(a) Inmates serving sentences for the offenses described below are not eligible to be considered for any type of reduced custody status, **except those inmates housed at the Adult Diagnostic Treatment Center (A.D.T.C.) described in N.J.A.C. 10A:9-4.7(c)3.**

(b)-(e) (No change.)

10A:9-4.9 Assignment of inmates to satellite units, except Jones Farm

(a) **Only those inmates who are classified as full minimum custody status may be assigned to satellite units.**

(b) **When assigning inmates to satellite units, the Institutional Classification Committee (I.C.C.) may consider the following factors:**

1. **Notoriety or reputation of a particular inmate in the surrounding community;**

2. **Proximity of the satellite unit to the local community;**  
3. **Impact on community relations with the parent institution, considering the inmate's criminal history and present record of incarceration; and**

4. **Any other factor which the Superintendent or Institutional Classification Committee (I.C.C.) deems relevant to the inmate's successful placement at a satellite unit.**

(c) **Each parent institution shall develop written guidelines consistent with this subchapter. These guidelines shall be submitted to the Deputy Commissioner, New Jersey Department of Corrections, for review.**

(d) **At the time of initial placement of an inmate in the correctional system, the Inter-Institutional Classification Committee (I.I.C.C.) may assign an eligible inmate directly to an appropriate satellite unit.**

## INSURANCE

### (a)

#### DIVISION OF ACTUARIAL SERVICES

#### Credit Life Insurance and Credit Accident and Health Insurance

#### Premium Rate Standards

#### Proposed Amendments: N.J.A.C. 11:2-3.1 and 3.12

Authorized By: Kenneth D. Merin, Commissioner, Department of Insurance.

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), 17B:29-1.

Proposal Number: PRN 1989-512.

Submit comments by November 1, 1989 to:

Verice M. Mason  
Assistant Commissioner  
Legislative and Regulatory Affairs  
Department of Insurance  
CN 325  
Trenton, NJ 08625-0325

The agency proposal follows:

#### Summary

New Jersey's credit insurance law (N.J.S.A. 17B:29-1 et seq.) was last amended in 1982. The State's credit insurance rules were adopted in 1959 and have never been amended even though there has been improvement in mortality and morbidity experience since then.

The most recent study prepared by the National Association of Insurance Commissioners shows a combined aggregate loss ratio of 46 percent for credit life and credit accident and health insurance in New Jersey. This is unacceptable. The proposed amendments will lower New Jersey's premium rate standards for both credit life and credit accident and health insurance from approximately five to 10 percent resulting in an increase in loss ratios.

The provision in N.J.A.C. 11:2-3.1, which limited the application of the subchapter to loans or other credit transactions of five years' duration or less, is removed. Concomitantly, the standards for premium rates set forth in N.J.A.C. 11:2-3.12(f) and (g) are expanded to include terms of up to 10 years. Only insurance sold in connection with first mortgage loans made to individual borrowers for the purpose of purchasing residential real estate is excepted from the scope of these rules.

#### Social Impact

The proposed amendments will impact New Jersey's credit insurance industry and consumers by lowering premiums, thereby reducing the overall cost of coverage.

#### Economic Impact

New Jersey consumers who purchase credit insurance will save millions of dollars each year as a result of the proposed amendments. Correspondingly, credit insurers will experience a decrease in expense and profit margins. Any new costs incurred by the Department in reviewing additional rate submissions required by the proposed amendments will be covered by existing budgetary resources.

#### Regulatory Flexibility Analysis

The Department believes that few, if any, insurers affected by the proposed amendments are "small businesses" as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Furthermore, the De-

partment finds that the proposed amendments do not impose reporting, recordkeeping, or other compliance requirements that do not already exist under the present rules.

Full text of the proposal follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):

AGENCY NOTE: The amendments to this subchapter shall become operative 60 days after publication of the notice of adoption in the New Jersey Register.

11:2-3.1 Scope

All life insurance and all accident and health insurance sold in connection with loans or other credit transactions shall be subject to the provisions of this [Subchapter] **subchapter** except such insurance sold in connection with [a loan or other credit transaction of more than five years' duration] **first mortgage loans made to individual borrowers for the purpose of purchasing residential real estate.**

11:2-3.12 Standards for premium rates

(a)-(e) (No change.)

(f) Standards for premium rates for credit life insurance shall be as follows:

1. If premiums are paid monthly on outstanding balances[,], the **monthly premium rate per \$1,000 of insurance in force is \$0.62.**

[Average Amount of Insurance In Force on All Debtors Of a Creditor]	[Monthly Premium Rates Per \$1,000 of Insurance in Force]
[Less than \$250,000]	[\$1.00]
[250,000 to 1,000,000]	[0.85]
[1,000,000 to 5,000,000]	[0.77]
[5,000,000 and over]	[0.69]

2. If premiums are paid in one sum for the entire duration of the indebtedness:

[Average Amount of Insurance In Force on All Debtors of a Creditor]	Single Premium Rates (Discounted for Interest and Mortality) Per \$100.00 of Initial Insured Indebtedness Repayable in Indicated Number of Equal Monthly Installments			
	6	12	24	36
Less than \$250,000	\$0.35	\$0.64	\$1.21	\$1.76
250,000 to 1,000,000	0.29	0.54	1.03	1.49
1,000,000 to 5,000,000	0.27	0.49	0.93	1.35
5,000,000 and over	0.24	0.44	0.83	1.21]

**Single Premium Rates (Discounted for Interest and Mortality) Per \$100.00 of Initial Insured Indebtedness Repayable in Indicated Number of Equal Monthly Installments**

6	\$0.22
12	0.40
24	0.75
36	1.09
48	1.42
60	1.74
72	2.05
84	2.35
96	2.64
108	2.92
120	3.19

3.-6. (No change.)

(g) Standards for premium rates for credit accident and health insurance shall be as follows:

1. If premiums are paid in one sum for the entire duration of the indebtedness, the following rates per \$100.00 of initial indebtedness repayable in indicated number of equal monthly installments:

Number of Equal Monthly Installments	Single Premium Rates per \$100.00 of Initial Indebtedness			
	Column I		Column II	
6	[\$1.35]	\$1.28	[\$1.50]	\$1.43
12	[ 1.80]	1.71	[ 2.00]	1.90
24	[ 2.16]	2.05	[ 2.40]	2.28
36	[ 2.38]	2.26	[ 2.65]	2.52
48		2.49		2.76
60		2.66		2.95
72		2.80		3.12
84		2.95		3.29
96		3.11		3.45
108		3.24		3.60
120		3.35		3.72

2.-5. (No change.)  
(h)-(j) (No change.)

(a)

**DIVISION OF ENFORCEMENT AND CONSUMER PROTECTION**

**Unfair Trade Practices Insurer Tie-Ins**

**Proposed New Rules: N.J.A.C. 11:2-25**

Authorized By: Kenneth D. Merin, Commissioner, Department of Insurance.

Authority: N.J.S.A. 17:29B-4 et seq.; 17:29B-4(4); 17:29B-4(7)(b); 17:29B-9; 17:29B-4(11); 17:1C-6(e).

Proposal Number: PRN 1989-511.

Submit comments by November 1, 1989 to:

Verice M. Mason, Assistant Commissioner  
Legislative and Regulatory Affairs  
20 West State Street  
CN 325  
Trenton, NJ 08628

The agency proposal follows:

**Summary**

The Department of Insurance is concerned that insurers may be refusing to underwrite or renew insurance policies in this State unless the insured or a member of the insured's family has in effect, or purchases from the insurer concurrently, a collateral policy of insurance in addition to the other insurance policy. By way of example, but not by way of limitation, insurers may be refusing to underwrite or renew homeowners' insurance unless the insured, or a member of the insured's family, has in effect, or purchases concurrently, an automobile, or other property/casualty, and/or life policy with the insurer or an affiliated insurer.

The Unfair Trade Practices Act, N.J.S.A. 17:29B-1 et seq., prohibits any person from engaging in any trade practice which is an unfair method of competition or an unfair or deceptive act or practice in the business of insurance.

These proposed new rules clarify that the type of tie-in sales discussed above constitutes an unfair trade practice.

The proposed new rules also provide that an insurer may properly require the purchase of collateral insurance from another non-affiliated insurer if the purchase of such insurance is based upon appropriate underwriting guidelines.

The proposed new rules complement rules against tie-ins previously proposed as part of the rules concerning insurance producer standards of conduct (see 21 N.J.R. 1317(a), 1322).

The proposed new rules apply to all insurers and to all lines of insurance.

**Social Impact**

The proposed new rules will protect the consumer public from an unfair and coercive practice in the sale of insurance, thus enabling insureds to purchase only those products which are most suitable to their needs.

**Economic Impact**

To the extent that an insurer utilizes tie-ins, it will likely experience a decrease in the sales of its insurance products.

Insureds will likely experience an economic gain since the market for their insurance dollars will be more competitive, thus enabling them to more prudently allocate their insurance dollars.

**Regulatory Flexibility Analysis**

Some of the insurers to which the proposed new rules will apply may be "small businesses" within the meaning of N.J.S.A. 52:14B-16 et seq.

Since the underlying legislation does not so allow, and consistent with the Department's duty to protect the public interest, there is no small business exception to the proposed new rules. The size of an insurer is irrelevant to the need to prohibit unfair and coercive practices in the sale of insurance.

The proposed new rules will not require the acquisition of or impose concomitant costs for professional services.

There are no identifiable initial or annual costs of compliance.

The proposed new rules do not impose upon insurers reporting or recordkeeping requirements.

Full text of the proposal follows.

**SUBCHAPTER 25. TIE-INS****11:2-25.1 Purpose; scope**

(a) The purpose of this subchapter is to prohibit "tie-ins" by insurers. A tie-in is an agreement by a party to sell one product only on the condition that the buyer also purchases a different (or tied) product, or agrees that he will not purchase that product from any other supplier.

(b) This subchapter applies to all lines of insurance and to all insurers as defined in N.J.A.C. 11:2-25.2.

**11:2-25.2 Definitions**

The following words and terms, as used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Insurer" means any company, corporation, association, organization, society, order, individual, or group of individuals, or other entity, including eligible surplus lines companies, transacting the business of insurance in New Jersey pursuant to Titles 17 and 17B of the New Jersey Statutes, including Part 9 of Title 17B of said statutes.

**11:2-25.3 Tie-ins prohibited**

No insurer shall require an applicant or policyholder, or a member of the applicant's or policyholder's family, to purchase from that insurer, or any insurer with which it is in any way affiliated, a collateral policy of insurance as a condition precedent to securing or renewing a policy of insurance. Nothing in this section shall prevent an insurer from requiring the purchase of a collateral insurance policy from an insurer with which it is not in any way affiliated if such a condition precedent is based upon appropriate underwriting guidelines of the insurer.

**11:2-25.4 Penalties**

Insurers violating the provisions of this subchapter shall be subject to the penalties and sanctions imposed by law, including but not limited to those imposed by N.J.S.A. 17:29B-1 et seq.

**(a)****DIVISION OF FINANCIAL EXAMINATIONS AND LIQUIDATIONS****Annual Audited Financial Reports****Proposed New Rules: N.J.A.C. 11:2-26**

Authorized By: Kenneth D. Merin, Commissioner, Department of Insurance.

Authority: N.J.S.A. 17:1-8.1; 17:1C-6(e); 17:23-1 et seq. and 17B:21-1 et seq.

Proposal Number: PRN 1989-513.

Submit comments by November 1, 1989 to:

Verice M. Mason, Assistant Commissioner  
Legislative and Regulatory Affairs  
Department of Insurance  
CN-325  
Trenton, New Jersey 08625-0325

The agency proposal follows:

**Summary**

N.J.S.A. 17:23-6 and 17B:21-5 require every insurance company incorporated under the laws of the State of New Jersey to conduct internal audits at a frequency and in such form as the Commissioner may prescribe. In lieu of these requirements, the Department has permitted an insurer to undergo an examination by an independent certified public accountant and to file the accountant's report with the Department. Since there have been numerous insurer insolvencies in the recent past and to reduce the likelihood of insolvencies occurring in the future, the Department has now determined that all insurers, including eligible surplus lines insurers and risk retention groups, should undergo examination by an independent certified public accountant and submit a report pursuant to the examination requirements in N.J.S.A. 17:23-1 et seq. and 17B:21-1 et seq.

In order to accomplish this, the Department proposes these new rules which are based on a model rule from the National Association of Insurance Commissioners. The proposed new rules require all insurers transacting business in this State (including foreign and alien insurers) to undergo an annual examination of their financial records by an independent certified public accountant and to file these audited financial reports with the Department. The proposed new rules also clearly set forth the data requirements of these reports, as well as the manner in which these reports are to be prepared. These rules will improve the Department's surveillance of the financial condition of insurers by requiring an independent evaluation of an insurer's financial records in order to lessen the likelihood of insurer insolvencies, thereby protecting the interests of the public.

The filing requirements in the proposed rules further ensure that the Department will receive complete and uniform information from all insurers thus ensuring consistent review of the financial data submitted. The proposed rules, therefore, provide a more complete mechanism to check the financial information insurers file with the Department by requiring an independent certified public accountant examination of an insurer's financial records and by requiring notification to the insurer if it materially misstated its financial condition as reported to the Department.

Proposed N.J.A.C. 11:2-26.1 and 26.2 set forth the purpose and the scope of the proposed new rules.

Proposed N.J.A.C. 11:2-26.3 sets forth the definition of terms used in the subchapter.

Proposed N.J.A.C. 11:2-26.4 provides for the filing of the annual audited financial reports.

Proposed N.J.A.C. 11:2-26.5 sets forth the contents of the annual audited financial reports.

Proposed N.J.A.C. 11:2-26.6 describes the qualifications of the independent certified public accountant.

Proposed N.J.A.C. 11:2-26.7 describes the certification by the independent certified public accountant.

Proposed N.J.A.C. 11:2-26.8 provides for consolidated or combined audits.

Proposed N.J.A.C. 11:2-26.9 sets forth the scope of the examination and report on the financial data submitted pursuant to N.J.A.C. 11:2-26.5.

Proposed N.J.A.C. 11:2-26.10 provides for the notification of an adverse financial condition.

Proposed N.J.A.C. 11:2-26.11 describes the evaluation of accounting procedures and system of internal control.

Proposed N.J.A.C. 11:2-26.12 provides for the availability and maintenance of accountant work papers.

Proposed N.J.A.C. 11:2-26.13 sets forth the exemptions to the requirements of this subchapter.

Proposed N.J.A.C. 11:2-26.14 sets forth the compliance dates for this subchapter.

Proposed N.J.A.C. 11:2-26.15 provides for reports prepared in accordance with generally accepted accounting principles.

Proposed N.J.A.C. 11:2-26.16 sets forth the filing requirements for alien insurers.

Proposed N.J.A.C. 11:2-26.17 provides that all filings submitted pursuant to this subchapter are confidential and not public documents.

Proposed N.J.A.C. 11:2-26.18 sets forth the penalties for violation of this subchapter.

Proposed N.J.A.C. 11:2-26.19 provides that if any section of this subchapter is held invalid, the remaining parts are not to be affected.

#### Social Impact

The primary impact of the proposed new rules is that insurers will be required to undergo an annual examination of their financial records by an independent certified public accountant and submit these audited financial reports to the Department.

The Department will benefit in that these audited financial reports will allow a more effective review of an insurer's financial condition. This will lessen the likelihood of insurer insolvencies, thus benefitting the public. Furthermore, since the data and filing requirements of the audited financial reports are clearly and fully set forth in the proposed rules, the reports submitted should contain complete, accurate and uniform information. Insurers will also benefit in that the requirements regarding the audited financial reports are uniform and clearly and fully set forth, thus ensuring consistency in the review of an insurer's financial condition.

#### Economic Impact

Insurers will be required to bear the costs of the required annual examination of their financial records by an independent certified public accountant to the extent they did not use an independent certified public accountant to prepare the reports currently required. Insurers will also have an additional burden of filing the audited financial reports with the Department. Insurers, however, do not have to generate or obtain any new data. The Department, therefore, believes that any additional burden imposed by the new rules is minimal. Finally, since the new rules improve the Department's regulatory oversight of an insurer's financial condition, less insurer insolvencies will result, thus benefitting the public and reducing the financial burden on the New Jersey Property-Liability Insurance Guaranty Association.

The Department will experience an economic impact in that it will have to review the audited financial reports filed by insurers. Any such impact will be absorbed within the current budget.

#### Regulatory Flexibility Analysis

The proposed new rules may apply to "small businesses" as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

To the extent the new rules apply to "small businesses," they will apply to insurance companies transacting business in this State. The reporting, recordkeeping or other compliance requirements are clearly and fully set forth in the proposed new rules. The initial and annual compliance costs would be those associated with obtaining and filing the audited financial report. The types of professional services needed to comply with the proposed new rules would be those of an independent certified public accountant. To the extent that the new rules apply to "small businesses," they may impose a greater economic burden on "small businesses" in that they may have to devote proportionately more financial resources and staff to the obtaining and filing of the audited financial report.

The proposed new rules, however, provide a mechanism to minimize their impact on "small businesses." The new rules provide that any foreign or alien insurer having less than \$250,000 in direct written premiums in any year and less than 500 policyholders in this State at the end of such year is exempt from the requirements of the rules for that year. The new rules further provide that the Commissioner may grant an exemption if he or she finds that compliance would constitute a hardship on the insurer. The Department believes that these exemptions adequately reduce any additional burden that may be imposed on small businesses. Therefore, no additional exemption or differentiation in compliance requirements is specifically provided based on insurer size.

Full text of the proposed new rules follows:

### SUBCHAPTER 26. ANNUAL AUDITED FINANCIAL REPORTS

#### 11:2-26.1 Purpose

The purpose of this subchapter is to improve the Department's surveillance of the financial condition of insurers by requiring an annual examination by independent certified public accountants of the financial statements reporting the financial condition and the results of operations of insurers.

#### 11:2-26.2 Scope

This subchapter shall apply to all insurers transacting business in the State of New Jersey except as provided at N.J.A.C. 11:2-26.13.

#### 11:2-26.3 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Alien insurer" means an insurer formed under the laws of any country other than the United States of America, its states, districts, territories, commonwealths or possessions.

"Audited financial report" means and includes those items specified in N.J.A.C. 11:2-26.5.

"Accountant" and "independent public accountant" means an independent certified public accountant or accounting firm in good standing with the American Institute of Certified Public Accountants and in all states in which they are licensed to practice; for alien insurers, it means a chartered or similarly certified accountant.

"Commissioner" means the Commissioner of the Department of Insurance.

"Department" means the Department of Insurance.

"Insurer" means any person, association, partnership or corporation licensed, authorized or eligible to transact the business of insurance in this State pursuant to Subtitle 3 of Title 17 or Subtitle 3 of Title 17B of the Revised Statutes of the State of New Jersey including, but not limited to, eligible surplus lines insurers, inter-insurance exchanges and risk retention groups as defined in 15 U.S.C. section 3901. Insurer does not include any statutory mechanism for providing insurance coverage in this State, including, but not limited to, the New Jersey Automobile Full Insurance Underwriting Association created pursuant to N.J.S.A. 17:30E-1 et seq. and municipal joint insurance funds formed pursuant to N.J.S.A. 40A:10-36 et seq.

"Workpapers" means the records kept by the independent certified public accountant of the procedures followed, the tests performed, the information obtained, and the conclusions reached pertinent to his or her examination of the financial statements of an insurer. Workpapers may include work programs, analyses, memoranda, letters of confirmation and representation, abstracts of company documents and schedules or commentaries prepared or obtained by the independent certified public accountant in the course of his or examination of the financial statements of an insurer and which support his opinion thereof.

#### 11:2-26.4 Filing of annual audited financial reports; extensions

(a) All insurers (unless exempted pursuant to N.J.A.C. 11:2-26.13) shall have an annual audit by an independent certified public accountant and shall file an audited financial report with the Commissioner on or before June 30 for the year ended December 31 immediately preceding.

(b) Extensions of the June 30 filing date may be granted by the Commissioner for 30 day periods upon showing by the insurer and its independent certified public accountant the reasons for requesting such extension and determination by the Commissioner of good cause for an extension. The request for an extension must be submitted in writing not less than 10 days prior to the due date of the financial report in sufficient detail to permit the Commissioner to make an informed decision with respect to the requested extension.

#### 11:2-26.5 Contents of annual audited financial report

(a) The annual audited financial report shall reflect the financial condition of the insurer as of the end of the most recent calendar year and the results of its operations, changes in financial position and changes in capital and surplus for such calendar year in conformity with statutory accounting practices prescribed, or otherwise permitted, by the Department.

(b) The annual audited financial report shall include:

1. A report of an independent certified public accountant;
2. A balance sheet reporting admitted assets, liabilities, capital and surplus;
3. A statement of gain or loss from operations;
4. A statement of changes in financial position;
5. A statement of changes in capital and surplus; and

6. Notes to financial statements. These notes shall be those required by generally accepted accounting principles and shall include:

- i. A reconciliation of differences, if any, between the audited statutory financial statements and the annual statement filed pursuant to N.J.S.A. 17:23-1 and 17B:21-1 with a written description of the nature of these differences; and
- ii. A narrative explanation of all significant intercompany transactions and balances.

(c) The financial statements included in the audited financial report shall be prepared in a form and using language and groupings substantially the same as the relevant sections of the annual statement filed with the Commissioner:

1. The financial statement shall be comparative, presenting the amounts as of December 31 of the current year and the amounts as of the immediately preceding December 31. (However, in the first year in which an insurer is required to file an audited financial report, the comparative data may be omitted);
2. Amounts may be rounded to the nearest thousand dollars; and
3. Insignificant amounts may be combined.

#### 11:2-26.6 Qualifications of independent certified public accountant

(a) The Commissioner shall not recognize any person or firm as an independent certified public accountant that is not in good standing with the American Institute of Certified Public Accountants and in all states in which the accountant is licensed to practice, or, for alien insurers, that is not a chartered or similarly certified accountant.

(b) Except as otherwise provided herein, a certified public accountant shall be recognized as independent as long as he or she conforms to the standards of his or her profession, as contained in the Code of Professional Ethics of the American Institute of Certified Public Accountants and Rules and Regulations, Code of Ethics and Rules of Professional Conduct of the New Jersey Board of Public Accountancy or similar code.

#### 11:2-26.7 Certification by independent certified public accountant

(a) Each insurer required by this subchapter to file an annual audited financial report shall file with each such report a letter obtained from the accountant retained to conduct the annual audit set forth in this subchapter. The letter shall contain the name and address of such accountant and shall contain a certification by such accountant that he or she is aware of the provisions of the Insurance Code and the rules and regulations of this State that relate to accounting and financial matters. The accountant shall also certify that he or she will express his or her opinion on the financial statements in the terms of their conformity to the statutory accounting practices prescribed or otherwise permitted by the Department and specify such exceptions as he or she may believe appropriate.

(b) In addition to the requirements in (a) above, if an accountant who was not the accountant for the immediately preceding filed audited financial report is engaged to audit the insurer's financial statements, the letter shall clearly state that the accountant currently retained to conduct the annual audit set forth in this subchapter is not the same accountant retained to conduct the immediately preceding annual audit.

#### 11:2-26.8 Consolidated or combined audits

(a) An insurer may make written application to the Commissioner for approval to file audited consolidated or combined financial statements in lieu of separate annual audited financial statements. In such cases, a columnar consolidating or combining worksheet shall be filed with the report as follows:

1. Amounts shown on the consolidated or combined audited financial report shall be shown on the worksheet;
2. Amounts for each insurer subject to this section shall be stated separately;
3. Noninsurance operations may be shown on the worksheet on a combined or individual basis;
4. Explanations of consolidating and eliminating entries shall be included; and
5. A reconciliation shall be included of any differences between the amounts shown in the individual insurer columns of the worksheet and comparable amounts shown on the annual statements of the insurers.

#### 11:2-26.9 Scope of examination and report

Financial statements furnished pursuant to N.J.A.C. 11:2-26.5 shall be examined by an independent certified public accountant. The examination of the insurer's financial statements shall be conducted in accordance with generally accepted auditing standards and consideration should be given to such other procedures illustrated in the Financial Condition Examiner's Handbook promulgated by the National Association of Insurance Commissioners as the independent certified public accountant deems necessary.

#### 11:2-26.10 Notification of adverse financial condition

(a) An insurer required to furnish the annual audited financial report shall require the independent certified public accountant to immediately notify in writing an executive officer and all directors of the insurer of the final determination by that independent certified public accountant that the insurer has materially misstated its financial condition as reported to the Commissioner as of the balance sheet date currently under examination or that the insurer does not meet the minimum capital and surplus requirements as of that date. The insurer shall furnish such notification to the Commissioner within five days of receipt thereof.

(b) If the accountant, subsequent to the date of the audited financial report filed pursuant to this subchapter, becomes aware of facts which might have affected his or her report, the accountant shall take such action as prescribed in Volume 1, Section AU 561 of the Professional Standards of the American Institute of Certified Public Accountants, incorporated herein by reference.

#### 11:2-26.11 Evaluation of accounting procedures and system of internal control

(a) In addition to the annual audited financial report, each insurer shall file with the Commissioner a report of evaluation performed by the accountant, in connection with his or her examination, of the accounting procedures of the insurer and its system of internal control.

(b) A report of the evaluation by the accountant of the accounting procedures of the insurer and its system of internal control, including any remedial action taken or proposed, shall be filed annually by the insurer with the Commissioner within 60 days after the filing of the annual audited financial report.

(c) This report shall generally follow the form for reports on internal control based on audits described in Volume 1, Section AU 640 of the Professional Standards of the American Institute of Certified Public Accountants, incorporated herein by reference.

#### 11:2-26.12 Availability and maintenance of workpapers

(a) Every insurer required to file an audited financial report pursuant to this subchapter shall require the accountant (through the insurer) to make available for review by the Commissioner, the workpapers prepared in the conduct of his or her examination. The insurer shall require that the accountant retain the audit workpapers for a period of not less than five years after the period reported thereon.

(b) In the conduct of the periodic review by the Commissioner, photocopies of pertinent audit workpapers may be made and retained by the Commissioner. Such reviews by the Commissioner shall be considered investigations and all working papers obtained during the course of such investigations shall be confidential and not public documents pursuant to the Public Records Acts, N.J.S.A. 47:1A-1 et seq.

#### 11:2-26.13 Exemptions

(a) This subchapter shall apply to all insurers except that foreign or alien insurers having direct premiums written in this State of less than \$250,000 in any year and having less than 500 policyholders in this State at the end of any year are exempt from compliance with this subchapter for such year (unless the Commissioner makes a specific finding that compliance is necessary for the Commissioner to carry out statutory responsibilities).

(b) Insurers filing audited financial reports in another state, pursuant to such other state's requirement of audited financial reports which have been found by the Commissioner to be substantially

similar to the requirements herein, are exempt from compliance with this subchapter if:

1. A copy of the audited financial report and the evaluation of accounting procedures and systems of internal control report which are filed with such other state are filed with the Commissioner in accordance with the filing dates specified in N.J.A.C. 11:2-26.4 and 11, respectively (Canadian insurers may submit accountants' reports as filed with the Canadian Dominion Department of Insurance); and

2. A copy of any notification of adverse financial condition report filed with such other state is filed with the Commissioner within the time specified in N.J.A.C. 11:2-26.10.

(c) In addition to the exemption in (a) above, upon written application of any insurer, the Commissioner may grant an exemption from compliance with this subchapter if the Commissioner finds, upon review of the application, that compliance would constitute a financial or organizational hardship upon the insurer. An exemption may be granted at any time and from time to time for a specified period or periods.

(d) Upon written application of any insurer, the Commissioner may, for a specified period or periods, permit an insurer to file annual audited financial reports on some basis other than a calendar year basis.

#### 11:2-26.14 Compliance dates

(a) Domestic insurers retaining a certified public accountant on the effective date of this subchapter who qualifies as independent shall comply with this subchapter for the year ending December 31, 1989 and each year thereafter unless the Commissioner permits otherwise.

(b) Domestic insurers not retaining a certified public accountant on the effective date of this subchapter who qualifies as independent shall meet the following schedule for compliance unless the Commissioner permits otherwise:

1. As of December 31, 1989, file with the Commissioner:

- i. A report of an independent certified public accountant;
- ii. An audited balance sheet; and
- iii. Notes to the audited balance sheet;

2. For the year ending December 31, 1990 and each year thereafter, such insurers shall file with the Commissioner all reports required by this subchapter.

(c) Foreign and alien insurers shall comply with this subchapter for the year ending December 31, 1989 and each year thereafter, unless the Commissioner permits otherwise.

#### 11:2-26.15 Reports prepared in accordance with generally accepted accounting principles

With the Commissioner's approval, an insurer may file the required reports prepared in accordance with generally accepted accounting principles, provided that the notes to the financial statements include a reconciliation of differences between net income and capital and surplus on the annual statement filed pursuant to N.J.S.A. 17:23-1 and 17B:21-2 and comparable totals on the audited financial statements, with a written description of the nature of these differences.

#### 11:2-26.16 Alien insurers

(a) In the case of alien insurers, the annual audited financial report shall be defined as the annual statement of total business on the form filed by such companies with their domiciliary supervision authority duly audited by an independent chartered or similarly certified accountant.

(b) For such insurers, the letter required in N.J.A.C. 11:2-26.6 shall state that the accountant is aware of the requirements relating to the annual audited statement filed with the Commissioner pursuant to N.J.A.C. 11:2-26.4 and shall affirm that the opinion expressed is in conformity with such requirements.

#### 11:2-26.17 Confidentiality of documents

All documents submitted to the Commissioner pursuant to this subchapter are confidential and not public documents as defined in the Public Records Act, N.J.S.A. 47:1A-1 et seq.

#### 11:2-26.18 Penalties

Failure to comply with the provisions of this subchapter may result in the imposition of penalties as provided by law.

#### 11:2-26.19 Severability

If any section of this subchapter is held to be invalid, the remaining parts of this subchapter are not to be affected.

## (a)

### DIVISION OF PROPERTY/LIABILITY

#### Commercial Lines Insurance: Policy Form Standards

#### Proposed New Rules: N.J.A.C. 11:13-7

Authorized By: Kenneth D. Merin, Commissioner, New Jersey

Department of Insurance.

Authority: N.J.S.A. 17:1-8.1; N.J.S.A. 17:1C-6(e); N.J.S.A. 17:29AA-29.

Proposal Number: PRN 1989-515.

Submit comments by November 1, 1989 to:

Verice M. Mason, Assistant Commissioner

Legislative and Regulatory Affairs

Department of Insurance

20 West State Street

CN 325

Trenton, New Jersey 08625-0325

The agency proposal follows:

#### Summary

These proposed new rules set forth standards for disapproval of commercial lines policy forms that are required to be filed pursuant to N.J.S.A. 17:29AA-6. They interpret the provisions of N.J.S.A. 17:29AA-11, which authorizes disapproval of policy forms that are unfair, inequitable, misleading or contrary to law, or which produce rates that are excessive, inadequate or unfairly discriminatory.

Most of the standards set forth in these rules have been applied to disapprove commercial insurance policy forms for the last several years on a case-by-case basis. It is appropriate to adopt them as comprehensive rules for the information of insurers which file the forms. The standards address policy language that broadly limits insurer liability or excludes certain occurrences from coverage. Some of the prohibited limits or exclusions significantly alter coverage traditionally afforded for purchasers of commercial liability insurance and thus are contrary to the reasonable expectations of the insured when purchasing the policy. These limits or exclusions when included in a policy of commercial liability insurance are inconsistent with the function of the insurance mechanism, which is to spread the risk of loss. Other proposed standards require special action by the insurer to notify the insured when certain provisions are included in the policy.

Finally, a mandatory provision is proposed that specifies that the insured is entitled upon request to information concerning claims that have been made under the policy. Many insurers currently provide this information voluntarily, but others do not. This rule will require provisions in each policy that establish the insured's right to certain information upon request. As with the other standards, the proposed rules would require specific provisions be included in the policy both to inform purchasers and to establish the standards as a contractual right under the policy, to be enforceable if necessary between the insurer and insured.

Proposed N.J.A.C. 11:13-7.1 sets forth the purpose and scope of the rules.

Proposed N.J.A.C. 11:13-7.2 defines certain words and terms used throughout the subchapter.

Proposed N.J.A.C. 11:13-7.3 sets forth standards for provisions that establish aggregate policy limits.

Proposed N.J.A.C. 11:13-7.4 sets forth standards for the use of provisions that include defense costs within policy limits.

Proposed N.J.A.C. 11:13-7.5 prohibits the use of sublimits or inclusion of prejudgment and postjudgment interest within policy limits.

Proposed N.J.A.C. 11:13-7.6 sets forth standards for the use of claims made policy forms.

Proposed N.J.A.C. 11:13-7.7 prohibits the use of certain exclusions from coverage in liability policies.

Proposed N.J.A.C. 11:13-7.8 requires all commercial insurance policies to contain a provision establishing the right of an insured to receive certain claim information upon request.

Proposed N.J.A.C. 11:13-7.9 directs insurers with policy forms inconsistent with the standards to amend those forms and refile them within 180 days.

#### Social Impact

Since these rules primarily articulate standards currently being applied for the acceptance of commercial insurance policy form filings, the primary impact is to notify insurers which file the forms what policy language is not acceptable. The standards themselves set forth the policy form language consistent with the reasonable expectation of coverage for insureds who purchase commercial liability insurance. These standards promote the function of the insurance mechanism by helping to ensure that it properly spreads the risk of loss.

#### Economic Impact

These rules will have a negligible economic impact. Initially, some additional administrative work will be required by insurers to refile policy forms and the Department to review those forms currently in use that may be inconsistent with one or more of the standards set forth in the rules. Over time, however, clear standards about what form language is acceptable to the Department will reduce the work of insurers and the Department in submitting and disapproving policy forms that do not meet these standards.

To the extent that these standards require coverage of losses that an individual insurer may seek to avoid, it should be noted that the Commercial Insurance Deregulation Act authorizes insurers to price policies appropriately based on expected losses, limited by N.J.S.A. 17:29AA-10 which prohibits rates that are excessive, inadequate, or unfairly discriminatory.

#### Regulatory Flexibility Analysis

These proposed new rules may apply to "small businesses" as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These "small businesses" would consist of insurance companies authorized to write commercial lines insurance.

Since the purpose of these rules is to establish minimum standards for policy forms used by all insurers, it would be inconsistent to establish different standards based upon company size. It should be noted, however, that the economic impact of these proposed rules is minimal, in that they merely require the filing or refiling of policy forms consistent with the standards. All insurers regardless of size are required to file their commercial lines policy forms with the Department pursuant to N.J.S.A. 17:29AA-6.

Most insurers either have in-house staff to develop their own policy forms, or use standard policy forms developed by a rating organization of which they are a member or subscriber. Thus it would appear that there are no additional costs of professional services required to comply. Furthermore, it should be noted that by setting forth these standards in administrative rules, insurers that qualify as small businesses will avoid the cost of submitting and having disapproved policy forms inconsistent with the standards.

The rules provide a six-month period after adoption during which policy forms that are inconsistent with the standards must be amended and refiled. This should be more than sufficient time to allow all insurers, regardless of size, to comply with the requirements of the proposed rules.

Full text of the proposed new rules follows:

### SUBCHAPTER 7. COMMERCIAL LINES INSURANCE: POLICY FORM STANDARDS

#### 11:13-7.1 Purpose and scope

(a) The rules in this subchapter interpret provisions of the Commercial Insurance Deregulation Act, N.J.S.A. 17:29AA-1 et seq., and set standards for the acceptance or disapproval of policy forms submitted pursuant to N.J.S.A. 17:29AA-6. These standards are established pursuant to N.J.S.A. 17:29AA-11, which prohibits forms which are unfair, inequitable, misleading or contrary to law, or which produce rates that are excessive, inadequate, or unfairly discriminatory.

(b) These rules do not apply to policy forms not required to be submitted pursuant to N.J.S.A. 17:29AA-6. Nothing in this rule shall, however, authorize the acceptance or use, or prohibit the disap-

proval, of a policy form that is otherwise prohibited by any other law or rule.

(c) These rules apply to all insurers which file copies of policy forms pursuant to N.J.S.A. 17:29AA-6.

#### 11:13-7.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise:

"Aggregate limits" means a provision in an insurance policy that sets forth as a limit of the insurer's liability a total amount of all claims covered for the policy period.

"Claims made policy" means an insurance policy that covers liability for injury or damage that the insured is legally obligated to pay (including injury or damage occurring prior to the effective date of the policy) arising out of incidents, acts or omissions, as long as the claim is first made during the policy period or any extended reporting period.

"Commercial lines insurance" includes all kinds of policies except those excluded by N.J.S.A. 17:29AA-3a and N.J.A.C. 11:18-1.1.

"Commissioner" means the Commissioner of the Department of Insurance.

"Cost of legal defense" or "defense costs" means allocated attorney and all other litigation expenses that can be separately identified as arising from the defense of a specific claim.

"Day" means calendar day.

"Department" means the New Jersey Department of Insurance.

"Extended reporting period" or "tail" means that period of time specified in a policy in which claims first made after termination of coverage under the policy for injury or damage that occurs during the policy term, or that occurs on or after a retroactive date if any, will be considered to be made during the policy term.

"Insurer" means any person, corporation, association, joint underwriting association subject to N.J.S.A. 17:29AA-22, partnership or company licensed under the laws of this State to transact the business of insurance and rating organizations that file policy forms on behalf of their members and subscribers.

"Liability insurance policy" means any insurance policy that provides coverage for legal liability, even if it contains other types of coverage.

"Occurrence policy" means an insurance policy that covers liability for injury or damage that the insured is legally obligated to pay arising out of incidents, acts or omissions that occurred during the policy period, for which a claim may be made during or subsequent to the policy period.

"Policy" or "insurance policy" includes all endorsements.

"Pollutants" means any solid, liquid, gaseous, or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste.

"Professional liability policy" includes medical malpractice and lawyers professional liability.

"Retroactive date" means a date concurrent with the effective date of the policy or a particular date prior to the effective date of the policy upon which the policy provides that coverage will be applicable.

"Waste" includes materials to be recycled.

#### 11:13-7.3 Aggregate policy limits

(a) No commercial insurance policy shall be issued or renewed on a form required to be filed pursuant to N.J.S.A. 17:29AA-6 which contains an aggregate limits provision, except as provided in this section.

(b) Commercial policy forms for general liability and professional liability insurance may contain an aggregate limits provision provided that it conforms to the standards set forth in this section.

(c) Policy forms for permitted lines which are filed with aggregate limits provisions shall meet the following minimum standards and shall contain policy provisions, which may be in the form of a mandatory endorsement, so as to incorporate these standards into the terms of each policy.

1. The policy form shall include prejudgment interest as a supplementary coverage. Prejudgment interest shall not be included within the limit of liability nor within the aggregate limit of liability.

2. The policy form shall contain a separate notice to the policyholder that states that the policy contains an aggregate limits provision and that explains clearly the implications of an aggregate limits provision.

i. The notice shall be attached to the first page of the policy.  
ii. The notice shall be provided to the named insured when the policy is first issued.

iii. The Department shall apply the criteria set forth in N.J.S.A. 52:12-2 and 56:12-10 in determining whether the explanation is clear.

3. If a general liability coverage, the policy form shall provide for a notice to be sent by certified or registered mail to the named insured as losses are paid or incurred as follows:

i. Not later than 30 days of the date when paid or incurred losses equal or exceed 70 percent of the aggregate limit;

ii. Not later than 15 days of the date when incurred losses equal or exceed 100 percent of the aggregate limit;

iii. Not later than three days of the date when paid losses equal or exceed 100 percent of the aggregate limit;

iv. Upon exhaustion of the aggregate limit, the insurer shall promptly send a notice by certified or registered mail to the named insured and all other parties being defended (or against whom a claim under the policy has been made) which contains information about all pending claims.

4. If a professional liability coverage, the policy form shall provide for notice to be sent by certified or registered mail to the named insured as follows:

i. Not later than three days of the date when the paid losses equal or exceed 100 percent of the aggregate limit;

ii. Upon exhaustion of the aggregate limit, the insurer shall promptly send notice by certified or registered mail to the named insured and all other parties being defended (or against whom a claim under the policy has been made) which contains information about all pending claims.

5. The policy form shall provide that failure of the insurer to notify the named insured as provided by sections three and four above shall serve to increase the aggregate limit five percent for each day the insurer fails to send the required notice.

6. The policy form shall provide that the aggregate limit can be exhausted only by the payment of losses.

7. The policy form shall provide as a supplemental coverage a minimum amount of \$100,000 to reimburse the insured for expenses necessary to transfer control and to continue defense of all claims received on or before the date the aggregate limit is exhausted.

8. The policy form shall provide that:

i. The insurer shall notify the named insured of any recovery of money by subrogation or otherwise;

ii. Any recovery shall be credited net of expenses towards the aggregate limit;

iii. When the policy term has not expired, the policy shall be reinstated to the extent of a recovery received as if the aggregate limit had not been exhausted; and

iv. When a policy term has expired, the recovery net of expenses shall be provided to reimburse the insured for defense costs and indemnity payments that would have been covered by the policy. This reimbursement shall be provided in addition to the minimum \$100,000 reimbursement set forth in (c)7 above.

9. When a policy form may be used to provide coverage to a group of insureds (other than an association or purchasing group) which are not related by common ownership or joint economic enterprise, the insurer shall provide a separate notice to each member of the group that states that the policy is subject to a group aggregate limit that explains clearly that the aggregate limit may be exhausted by claims against other members of the group.

i. A copy of the notice shall be delivered by the insurer to each member of the group, regardless of whether a copy of the policy is delivered to each.

ii. The Department shall apply the criteria set forth in N.J.S.A. 56:10-2 and 56:10-12 in determining whether the explanation is clear.

#### 11:13-7.4 Defense costs within policy limits

(a) No commercial insurance policy shall be issued or renewed on a form required to be filed pursuant to N.J.S.A. 17:29AA-6 which

contains a provision that includes defense costs within policy limits, except as provided in this section.

(b) Commercial insurance policies for professional liability insurance may contain a provision that includes defense costs within policy limits provided it conforms to the standards set forth in this section.

(c) Policy forms for professional liability insurance which are filed with provisions including the defense costs within policy limits shall contain policy provisions, which may be in the form of a mandatory endorsement, so as to incorporate these standards into the terms of each policy.

1. The policy form shall provide a minimum limit of liability of \$1,000,000.

2. Defense costs shall not reduce the portion of the limit of liability that remains available to pay claims until defense costs have been incurred in an amount that equals or exceeds 100 percent of the policy limit of liability. The portion of the limit of liability that remains available to pay claims may be reduced only by the portion of incurred defense costs greater than 100 percent of the policy limit of liability.

3. The portion of the limit of liability available to pay claims shall not be reduced to an amount less than 75 percent of the policy limit of liability, regardless of the amount of defense costs incurred.

4. No defense costs shall be charged against any deductible amount.

#### 11:13-7.5 Miscellaneous provisions regarding policy limits of liability

(a) No commercial insurance policy shall be issued or renewed on a form required to be filed pursuant to N.J.S.A. 17:29AA-6 which contains provisions concerning policy limits of liability that are not in compliance with the standards set forth in this section.

(b) All commercial insurance policy forms filed shall meet the following minimum standards. In the event that any policy form filed includes provisions regarding sublimits, prejudgment interest or post-judgment interest, the form shall also contain provisions, which may be in the form of a mandatory endorsement, so as to incorporate these standards into the terms of each policy.

1. No insurance policy shall contain a separate, lower limit of liability for any coverage that is not permitted to be excluded in any liability policy.

2. No liability insurance policy shall contain a provision that includes prejudgment or post-judgment interest within the limit of liability.

i. Prejudgment and post-judgment interest shall be provided by all liability policies as a supplementary coverage.

ii. Prejudgment and post-judgment interest may be limited to the interest on the limit of liability.

#### 11:13-7.6 Claims made policy forms

(a) No commercial insurance policy which is a claims made policy shall be issued or renewed on a form required to be filed pursuant to N.J.S.A. 17:29AA-6 except as provided in this section.

(b) Commercial insurance policies for professional liability and pollution liability (other than auto) may be issued on a claims made policy form provided that it conforms to the standards set forth in this section.

(c) Professional liability and pollution liability insurance (other than auto) may be issued on a claims made policy form provided that the policy contains provisions, which may be in the form of a mandatory endorsement, so as to incorporate these standards into the terms of each policy.

1. Claims made policies shall not contain a retroactive date.

2. Claims made policies shall not exclude specific accidents, products, work or locations.

3. Claims made policies shall be offered to the insured so as to provide a choice between the following:

i. With extended reporting period or tail coverage that provides a limited time period of at least 60 days within which a claim may be reported; and

ii. With extended reporting period or tail coverage that provides an unlimited time within which a claim may be reported.

4. A claims made policy form that includes tail coverage shall provide a minimum of the same limit of liability per accident and aggregate limit as the claims made policy it supplements.

5. A claims made policy form shall not contain a retroactive date with regard to tail coverage.

6. A claims made policy form may provide that any occurrence policy that also covers a claim is primary to the claims made policy.

#### 11:13-7.7 Exclusions from coverage

(a) No commercial insurance policy shall be issued or renewed on a form required to be filed pursuant to N.J.S.A. 17:29AA-6 which contains provisions excluding coverage as set forth in this section.

(b) In the event that any policy form includes exclusions or restrictions of coverage as set forth in this section, the forms shall also contain provisions, which may be in the form of a mandatory endorsement, so as to incorporate these standards into the terms of each policy.

1. No commercial automobile liability policy shall contain a provision that excludes coverage for the discharge of pollutants resulting from motor vehicle accidents.

2. No liability insurance policy shall contain a provision that excludes from coverage any injury caused in whole or in part, either directly or indirectly, by asbestos or arising out of or incidental to the inhalation, use, manufacture, handling, shipment, installation, removal or disposal of asbestos.

3. No general liability insurance policy shall contain a provision that excludes coverage for bodily injury or property damage resulting from the serving or selling of alcoholic beverages by any insured or insured's indemnitee not in the business of selling or serving alcoholic beverages.

4. No liability insurance policy shall contain a provision that excludes coverage for designated operations.

5. No liability insurance policy shall contain a provision that excludes from coverage bodily injury, property damage, or medical expense arising out of or resulting from the actual alleged, threatened, attempted, or proposed sexual molestation or abuse of any person by any insured, employee of any insured, or any other person actually or apparently acting on behalf of any insured. Nothing in this section shall prohibit a policy from containing a provision by which the insurer may seek recovery by subrogation against an insured, employee of any insured, or any other person actually or apparently acting on behalf of any insured.

6. No liability insurance policy shall contain a provision that excludes from coverage liability for the transmission of or the exposure to a communicable disease by the insured to any other person.

7. No general liability policy shall contain a provision that excludes coverage of claims brought against an insured by job applicants, current employees or former employees alleging injury arising out of the employment or termination of any person. For the purposes of this section "injury" includes physical or emotional injury from sexual harassment, discrimination of any kind, or resulting from wrongful or constructive termination.

#### 11:13-7.8 Claims listing upon request

(a) All commercial insurance policies issued or renewed on a form required to be filed pursuant to N.J.S.A. 17:29AA-6 shall contain a provision that provides the insured with the right to request and receive from the insurer within 45 days a list of paid and open claims.

1. The list of paid claims shall include the name and address of the claimant(s); the date of the occurrence; the date(s) payment was made; and the amount(s) paid for losses and allocated loss adjustment expenses.

2. The list of open claims shall include the name and address of the claimant; the date of the occurrence; and the amount reserved for losses and allocated loss adjustment expenses.

(b) The right of the insured to request a claims listing as set forth in (a) above may be limited to no more than two times during any 12 month interval.

(c) Nothing in this section shall be construed to alter an insurer's obligation to provide notice to the insured regarding aggregate limits provisions in accordance with N.J.A.C. 11:13-7.3.

#### 11:13-7.9 Refiling policy forms

(a) Insurers with policy forms containing provisions inconsistent with the standards set forth in this subchapter shall amend those forms and refile them in accordance with N.J.S.A. 17:29AA-6 within 180 days of the effective date of this subchapter.

(b) Policy forms refiled as set forth in (a) above shall comply with the standards set forth in this subchapter.

(c) Policy forms refiled in accordance with this rule shall be accompanied by a certification of an officer of the insurer that the policy form is being refiled in accordance with the standards set forth in this subchapter and that the refiling has been done within the time provided by N.J.A.C. 11:13-7.9(a).

## LAW AND PUBLIC SAFETY

### (a)

#### BOARD OF DENTISTRY

#### Parenteral Conscious Sedation

**Proposed Repeal: N.J.A.C. 13:30-8.11**

**Proposed New Rule: N.J.A.C. 13:30-8.2**

Authorized By: State Board of Dentistry, Samuel Furman,  
D.D.S., President.

Authority: N.J.S.A. 45:6-3.

Proposal Number: PRN 1989-501.

Submit comments by November 1, 1989 to:  
William Gutman, Executive Director  
Board of Dentistry, Room 321  
1100 Raymond Boulevard  
Newark, New Jersey 07102

The agency proposal follows:

#### Summary

The State Board of Dentistry ("Board") is proposing to repeal the present provision concerning the use of intravenous sedation, N.J.A.C. 13:30-8.11, and substitute the new rule concerning Parenteral Conscious Sedation ("PCS") that follows. The rule provides that in order for a dentist to use PCS in his or her practice, the dentist must first obtain a permit which is subject to review biennially by the Board. The dentist must complete an application provided by the Board and demonstrate that he or she has either administered PCS on a regular basis during the three years immediately preceding the effective date of this rule or has completed a minimum of 100 hours of didactic training and 100 hours of clinical training in PCS within the three years immediately preceding the effective date of this rule or thereafter. In addition, every applicant must complete a course in emergency training, specifically the "Basic Life Support: Course C" of the American Heart Association. Every applicant must also possess basic equipment and supplies needed for emergency situations and employ no fewer than two fully trained people, certified in "Basic Life Support: Course C," who shall be present in order to monitor the patient whenever PCS is used.

An exception to the requirement of a PCS permit is made for a licensee who holds a current general anesthesia permit, and for a licensee who utilizes the services of a PCS permit holder or an anesthesiologist, provided the permittee or anesthesiologist remains present throughout administration of PCS and until the patient is dismissed.

The rule further requires that the PCS permit holder make a physical evaluation of the patient and retain the patient's medical history for seven years.

#### Social Impact

The proposed new rule is designed to protect patients by ensuring that anyone using or assisting in PCS procedures during dental treatment is competent, adequately prepared for contingencies and equipped with proper materials. Under the new rule, practitioners not only must have optimum training but also will be required to preserve their skills by continuing education, a measure that will further safeguard their patients.

Regulation of the use of PCS in a dental practice is essential because there is a higher possibility of injury or mortality in this type of procedure than with most other forms of anesthesia. Requirements for the use of this procedure are, therefore, distinctly beneficial to the health, safety and welfare of the public.

**Economic Impact**

The proposed new rule requires specific training in Parenteral Conscious Sedation (PCS), with attendant expense for such training, unless the dentist supplies an affidavit attesting to three years of regular administration of PCS in his or her practice prior to the rule's effective date. Continuing education courses create additional costs. Moreover, there may be an expense for an additional employee if a dentist presently employs only one person in the office to assist in monitoring a patient who receives PCS. The basic equipment which is required also presents considerable expense. There will be further costs for text materials for the American Heart Association course, but these are negligible. Since all of these expenses will be borne by the PCS licensee, the fees charged to patients for procedures involving PCS may be expected to rise somewhat. The Board believes, however, that possible increases in the cost of dental services involving PCS are compensated by enhanced protection of the patient's safety and well-being.

**Regulatory Flexibility Analysis**

If, for the purposes of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., dentists are deemed "small businesses" within the meaning of the statute, the following statement is applicable:

This new rule is intended to protect patients for whom the use of PCS during dental treatment is necessary. It will be applicable to all licensees who wish to obtain a permit from the Board of Dentistry to employ this type of anesthesia, since, by the very nature of this rule, no exemptions are possible except for holders of general anesthesia permits. Holders of such permits presently number approximately 400 out of a total of 10,017 persons licensed by the Board of Dentistry.

As discussed in the Economic Impact section, certain costs will be incurred by the licensee in order to comply with the new rules, the first of which is the cost of continuing education. This amount cannot be precisely determined since the several options listed for fulfillment of the requirement—teaching, lectures, seminars, etc.—vary considerably in cost.

Second, if a dentist presently employs only one trained person to monitor the patient during a PCS procedure, employment of another individual will clearly create additional expense, to a degree determined by the pay scale in that office and locality.

Third, the PCS permit holder must possess certain equipment required by the Board. If he or she does not, the purchase of this equipment will impose further expense.

Finally, some cost is entailed for participation in the American Heart Association course required under N.J.A.C. 13:30-8.2(e) and (f), but this amount is negligible, covering text materials only. Affidavits and certifications to the Board involve similarly minimal sums.

A recordkeeping requirement mandates the retention of patient medical histories for a minimum of seven years. The Board considers this requirement to be consonant with high standards of professional practice and an essential safeguard for the patient who may undergo repeat procedures or whose continuing treatment by the dentist or other health-care professionals requires reference to such records.

Full text of the proposal follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):

**13:30-8.2 [(Reserved)] Parenteral conscious sedation**

(a) **The use of parenteral conscious sedation (hereinafter referred to as "PCS") by a dentist without first having met the minimum standards of training and procedure as stated herein shall constitute a deviation from the normal standards of practice required of a licensee.**

(b) **Parenteral conscious sedation is defined as a depressed level of consciousness produced by the parenteral administration of pharmacologic substances that retains the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal command. This modality includes administration of medications via all parenteral routes, that is, intravenous, intramuscular, subcutaneous, submucosal, or inhalation, but does not include nitrous-oxide inhalation analgesia.**

(c) **No dentist shall use PCS for dental patients after six months from the effective date of this rule unless such dentist possesses a PCS permit issued by the State Board of Dentistry. The dentist holding such permit shall be subject to review, and such permit shall be renewed in November 1991 and biennially thereafter.**

(d) Any dentist who wishes to obtain a Board permit to employ PCS shall complete an application as provided by the Board office and shall provide one of the following:

1. An affidavit attesting that the dentist has administered PCS on a regular routine basis in his or her daily practice during the three year period immediately preceding the effective date of this rule. "Regular routine basis" shall be defined as an average of no less than three times per week; or

2. Certified or verifiable proof that the dentist has completed a minimum of 100 hours of continuing education in didactic training and 100 hours in clinical training in PCS within three years preceding the effective date of this rule or thereafter.

(e) Every applicant for a permit to use PCS shall obtain emergency training by completing "Basic Life Support: Course C" of the American Heart Association and shall maintain current certification in the course. The applicant shall furnish proof of this training and certification to the Board upon application for a permit and proof of recertification upon biennial renewal of the permit.

(f) Every applicant for a permit to use PCS additionally shall certify to the Board that the dentist employs no fewer than two persons who will be present in the office and assist in monitoring the patient whenever PCS is employed. The applicant shall further certify that these persons are trained in and capable of monitoring vital signs and of assisting in emergency procedures and that they maintain current certification in "Basic Life Support: Course C."

(g) Every applicant for a permit to use PCS shall certify as part of the application that he or she possesses basic equipment and supplies to deal with emergency situations. The permit holder's facility shall contain the following readily accessible and properly operating equipment: emergency drug kit; positive pressure oxygen; stethoscope; suction; nasopharyngeal tubes; oropharyngeal tubes; and a blood pressure monitoring device.

(h) Any licensee who holds a current general anesthesia permit issued by the Board of Dentistry shall be authorized to use PCS and shall not be required to make application for a permit pursuant to this section.

(i) Any dentist who utilizes the services of a PCS permit holder or an M.D. or D.O. who is a member of the anesthesiology staff of an accredited hospital shall not be deemed to be practicing PCS, provided that such permit holder or anesthesiologist must remain present and bears full responsibility during the entire procedure and until any patient has recovered fully and has been dismissed. Any permit holder invited by a dentist to provide PCS services shall bear full responsibility for compliance with all terms and conditions of this rule including, but not limited to, the minimum requirements for equipment and assisting staff.

(j) Prior to the administration of a PCS agent for the purpose of controlling pain, a physical evaluation shall be made by the permit holder and a complete medical history shall be obtained which shall include previous medications, allergies and sensitivities. Said history shall be maintained in the files of each dentist for a period of not less than seven years. Specific records on the use of PCS shall be kept as part of every patient chart and shall include the type of agent, the dosage and the duration of sedation.

(k) Every licensee who holds a PCS permit shall present satisfactory proof to the Board upon biennial renewal that the holder has completed at least 20 credit hours during the previous two year period in continuing education courses devoted to PCS and presented by an accepted program in a suitable institution. Satisfactory credit hours to fulfill this continuing education requirement may be obtained from the following:

1. Professional service review organizations;
2. Teaching;
3. Lectures;
4. Seminars; or
5. Other methods approved by the Board.

(l) Any designee of the Board shall be authorized during ordinary business hours to enter and inspect any dental office for the purpose of enforcing the provisions of this rule.

(m) Any licensee who administers PCS without first having obtained a permit from the Board or any licensee who fails to comply with the rules set forth herein, shall be deemed to have engaged in professional misconduct and/or gross malpractice or negligence and may be sub-

jected to appropriate disciplinary action including an action for the suspension or revocation of the licensee's license to practice dentistry in the State of New Jersey.

[13:30-8.11 Intravenous sedation

Every licensee who utilizes intravenous sedation on a regular basis shall employ sufficient auxiliary personnel to monitor the administration of this procedure and shall certify to the Board upon Request that said personnel is or are capable of assisting in and trained for the procedure.]

(a)

## DIVISION OF CONSUMER AFFAIRS

### State Board of Dentistry

#### Use of General Anesthesia

#### Proposed Amendment: N.J.A.C. 13:30-8.3

Authorized By: State Board of Dentistry, Samuel Furmán,  
D.D.S., President.

Authority: N.J.S.A. 45:6-3.

Proposal Number: PRN 1989-502.

Submit comments by November 1, 1989 to:  
William Gutman, Executive Director  
Board of Dentistry, Room 321  
1100 Raymond Boulevard  
Newark, New Jersey 07102

The agency proposal follows:

#### Summary

The State Board of Dentistry is proposing to amend its rule concerning the use of general anesthesia, which is designed to protect the public in this highly specialized area. The amendment sets forth with greater specificity the requirements to be met before administering general anesthesia in appropriate dental procedures. For example, the Board now specifies that no fewer than two trained individuals shall be present to assist in monitoring a patient under general anesthesia; formerly, the rule required "sufficient personnel" for this purpose. These individuals, as well as the dentist, must receive training for emergency situations, specifically the American Heart Association's "Basic Life Support: Course C." The amendment also mandates 20 hours in continuing education credits prior to biennial renewal of the general anesthesia permit instead of the former "100 credit points," and increases the period for retention of a patient's complete medical history from three years to seven.

Several changes have been made for clarity, such as the changes in the present N.J.A.C. 13:30-8.3(g), proposed to be recodified as N.J.A.C. 13:30-8.3(k). N.J.A.C. 13:30-8.3(c)3 has been entirely deleted because it is out-of-date. N.J.A.C. 13:30-8.3(h), which lists ways of fulfilling the continuing education requirement, has been repositioned, and "clinical experience" deleted from the list.

The State Board of Dentistry is amending the rule in order to bring it into conformity with what occurs in the current practice of dentistry. Also, these rules are now consistent with new rules concerning Parenteral Conscious Sedation which the Board is concurrently proposing.

#### Social Impact

Since this amendment is intended to make existing rules clearer and more specific, the social impact will be beneficial both to the dental profession and those patients who undergo dental procedures involving general anesthesia. The administration of general anesthesia requires a high degree of training and skill, and certain safeguards must be in place in order to protect the dental patient against any health contingency. The proposed provision which mandates special training in emergency health measures for the dentist as well as the minimum two persons assisting in the procedure, are clearly protective of the public welfare. Requiring that the patient medical history be retained for at least seven years, instead of three, ensures immediately available data if a patient needs further treatment, even long after an initial procedure, or if such information is required by other health care professionals. The Board believes that the more precise requirements contained in the amendment will help avoid any critical situations, and enhance the safety and well-being of the patient.

#### Economic Impact

The changes in the current rule should not have appreciable economic impact for additional training except for negligible costs for text materials for the American Heart Association course. There will, however, be a cost for an additional employee if a dentist presently employs only one person in the office to assist in monitoring patients under general anesthesia, and that expense may well be passed on to patients. The Board believes, however, that the added safeguards fully justify any possible economic impact resulting from the amended requirements.

#### Regulatory Flexibility Analysis

If, for the purposes of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., dentists are deemed "small businesses" within the meaning of the statute, the following statement is applicable:

The total number of licensees presently regulated by the Board of Dentistry is 10,017. Approximately 400 licensees who possess a general anesthesia permit will be immediately affected by this proposed amendment. The new record-keeping requirement consists of maintaining a patient history for seven years in the files of the dentist as opposed to three years in the present regulation; this extended period will possibly result in additional costs for file space. The reporting requirement is, as in the present rule, that the applicant must certify as to training programs completed by the persons who assist in monitoring the patient; such certification does not create significant impact in terms of time or expense. As to professional services, any costs incurred due to this amendment would be limited to the course given by the American Heart Association, where minimal fees for materials will be involved. There are no initial capital costs required for compliance. Since all of these requirements are for the sole purpose of further safeguarding the public, no exemption for any of the licensees is possible as such exemption would defeat the purpose of the rule.

Full text of the amendment follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):

#### 13:30-8.3 Use of general anesthesia

(a) The use or employment of general anesthesia [in the private office of] **by** a dentist without first having met the minimum standards of training and procedure as stated herein [may] **shall** constitute a deviation from the normal standards of practice required of a licensee. [The Board of Dentistry shall determine whether the extent of the deviation shall be such as to require disciplinary action pursuant to the Dental Practice Act, N.J.S.A. 45:6-1 et seq.]

(b) General anesthesia consists of the deliberate use of any drug, combination of drugs, element or other material with the specified intent to induce a loss of sensation and consciousness.

[(c) General provisions concerning use of general anesthesia are as follows:

1.][**(c)** No dentist shall employ or use general anesthesia on an outpatient basis for dental patients [after November 1, 1977,] unless such dentist possesses a permit [or authorization] issued by the State Board of Dentistry. The dentist holding such permit shall be subject to review, and such permit shall be renewed biennially.

2.][**(d)** In order to receive such a permit, the dentist shall apply on an official application form and submit certified **or verifiable** proof that he or she:

i. Has completed a minimum of three years postdoctoral training in oral surgery, or a minimum one-year training course in anesthesiology; or

[(1)]ii. Is a diplomate in oral surgery or is Board-eligible in oral surgery; or

[(2)]iii. Is a fellow of the American Dental Society of Anesthesiology, or is a member of the American Society of Oral Surgeons and/or is a member of the New Jersey Society of Oral Surgeons; or].

[(3) Has administered general anesthesia on a regular routine basis in his everyday practice during the three year period next preceding the effective date of this original rule (effective November 19, 1976) and thereafter successfully completes not less than 300 credit points of refresher courses in general anesthesia as prescribed by the Board and presented by an accepted program in a suitable institution prior to November 1, 1979; and]

[(ii.)(e) Every applicant for a general anesthesia permit must certify that he or she employs [sufficient personnel (as deemed by the Board)]

no fewer than two persons who must be present in the office to assist in monitoring the patient under general anesthesia[.]. Such personnel shall be certified by the permit holder as being trained in and capable of monitoring vital signs, and of assisting in emergency procedures [; and].

[(iii)](f) Every applicant for a general anesthesia permit must certify that he or she possesses basic equipment and supplies to deal with emergency situations, which equipment and supplies shall be readily accessible and in good order. This shall consist of no less than the list that shall be supplied by the Board.

[3.](g) [Each and every anesthesia facility] The dental facility of any permit holder shall be inspected and approved by the State Board of Dentistry or its designee, [only] once every six years.

[(d)](h) This [certificate] permit shall be renewed biennially upon satisfactory proof being submitted to the Board that the holder has completed at least [100 credit points every two years] 20 hours during the previous two year period in continuing education courses devoted to general anesthesia and approved by the Board. [Permit holders failing to apply for timely renewal shall be subject to a monetary penalty of \$200 and shall have said office anesthesia facility inspected and approved by the State Board of Dentistry or its designee before a certificate of renewal will be granted.]

(i) Satisfactory credit hours to fulfill the continuing education requirement may be obtained in any one of the following areas:

1. Professional service review organizations;
2. Teaching;
3. Lectures;
4. Seminars; or
5. Other methods approved by the Board.

[(e)](j) Prior to the administration of an anesthetic agent for the purpose of controlling pain, a physical evaluation shall be made by the permit holder and a complete medical history which shall include previous medications, allergies and sensitivities shall be obtained. Said history shall be maintained in the files of each dentist for a period of not less than [three] seven years succeeding the taking of same. Specific records on use of general anesthesia shall be kept and shall include type of agent, dosage and duration.

[(f) Noncompliance with these rules or administering general anesthesia without first registering with the Board may subject the licensee to appropriate disciplinary action which may include suspension or revocation of his or her license to practice dentistry.]

[(g)](k) Any dentist who [works in connection with] utilizes the services of a permit holder or [a]an [trained] M.D. or D.O. who is a member of the anesthesiology staff of an accredited hospital shall not be deemed to be practicing general anesthesia provided that such permit holder or anesthesiologist [shall] remains present and bears full responsibility during the entire procedure and [on the premises of the dental facility] until any patient [given general anesthesia] regains consciousness [shall] not be deemed to be practicing general anesthesia. Any permit holder invited by a dentist to provide general anesthesia services shall bear full responsibility for compliance with all terms and conditions of this rule including, but not limited to, the minimum requirements for equipment and assisting staff.

[(h) Credit points shall be specified by the Board for the following areas:

1. PSRO;
2. Teaching;
3. Lecture;
4. Seminars;
5. Clinical experience;
6. or other methods approved by the Board.]

(l) Every applicant for a permit to use general anesthesia must obtain emergency training by completing the "Basic Life Support: Course C" of the American Heart Association and must maintain current certification in said course. This training also shall be required of all persons who assist in monitoring a patient under general anesthesia. The permit applicant must furnish proof of said training and certification to the Board.

(m) Any designee of the Board shall be authorized during ordinary business hours to enter and inspect any dental office for the purpose of enforcing the provisions of this rule.

(n) Any licensee who administers general anesthesia without first having obtained a permit from the Board or any licensee who fails to comply with the rules set forth herein, shall be deemed to have engaged in professional misconduct and/or gross malpractice or negligence and may be subjected to appropriate disciplinary action including an action for the suspension or revocation of the licensee's license to practice dentistry in the State of New Jersey.

## TRANSPORTATION

### (a)

#### DIVISION OF CONSTRUCTION AND MAINTENANCE ENGINEERING SUPPORT BUREAU OF MAINTENANCE SUPPORT

##### Permits

##### Permits for Driveways (Access); Street Intersection Proposed Amendments: N.J.A.C. 16:41-2.2, 2.3, 2.4, 7.1, 7.2 and 7.3

Authorized By: Robert A. Innocenzi, Acting Commissioner,  
Department of Transportation.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:7A-11 and 27:7A-17.  
Proposal Number: PRN 1989-499.

Submit comments by November 1, 1989 to:

Charles L. Meyers  
Administrative Practice Officer  
Department of Transportation  
1035 Parkway Avenue  
CN 600  
Trenton, New Jersey 08625

The agency proposal follows:

##### Summary

The Department of Transportation proposes to increase the fee schedule for application and permit fees for access to the State highway system. The proposed changes also include some modifications to current categories of access permits and applies access permit fees to street intersection permit requests which are generated from some new developments.

The proposed fee schedule will substantially increase the fees paid by those wishing to expand or change the use of their property and those wishing new or modified access to the state highway system, increasing the typical fees paid by anywhere from \$32.00 for a Private Use access to \$11,800 for Major with Planning Review. The fee increase is being proposed to recoup the total costs associated with review of access permit applications. The Department is cognizant of the State Highway Access Management Act which requires that the Department not attempt to enforce a revised Access Code before it is adopted, and considers the change in fee levels proposed herein as not being inconsistent with the existing act.

##### Social Impact

The Department will be able to recover its administrative costs from those that benefit directly from highway access driveways rather than all taxpayers as is currently done through general State appropriations. The only group directly impacted by these proposed amendments are property owners who wish to expand or change the use of their property and those who wish a new or modified driveway or street onto the State highway system. The department receives 1,100 to 1,200 applications per year for access to the State highway system. An applicant should not normally have to wait more than 30 days to receive a minor access permit, 85 days for a normal Major permit or 185 days for a Major with Planning Review permit from the time of receipt of a complete application. Financing review by user fees rather than general appropriations will allow the Department more flexibility in responding to the demand for timely review of applications.

##### Economic Impact

The State of New Jersey will receive additional revenues from the new fee structure. Property owners will incur an added expense for placing new driveways or modifying existing driveways on the State highway system or changing the use of property with existing access.

The following information indicates the impact on typical access approvals:

	Current	Proposed	Increase
Private Use	\$ 18.00	\$ 50.00	\$ 32.00
Residence and Business	37.00	100.00	63.00
Minor	75.00	350.00	285.00
Major	185.00	5,000	4,815
Major with Planning Review	310.00	12,000	11,690

The Department of Transportation currently generates approximately \$100,000 annually from access permit application and permit fees. The proceeds are currently returned to the General Fund. The anticipated fee increase is estimated to generate a revenue base of approximately \$2.5 million annually. Current appropriation act language allows for revenues in excess of \$600,000 collected on all types of highway permits to be returned to the Department as appropriated revenues. It is anticipated that all highway permit revenues in excess of \$600,000 collected from an increase in access permit fees will be returned to the Department of Transportation. The public at large will benefit from the proposed amendments change since they will no longer be taxed to support this particular activity. Other State agencies would be impacted only if they construct or modify facilities on State highways.

User fee financing should generally provide a more responsive resource base for processing applications in a timely manner. There may be savings to access applicants in those cases where delays in the processing of permit applications result in additional costs or loss of potential revenues.

**Regulatory Flexibility Analysis**

The proposed rule amendments will not impose any additional book-keeping or recordkeeping on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, it will impact small businesses most directly by substantially increasing the application and permit fees required for access to the State highway system and by providing a timely response to the application. The proposed rule changes do not change the level or type of documentation required for an access permit, so no additional administrative burden will be placed on small businesses.

**Full text** of the proposal follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):

16:41-2.2 Authority

(a) (No change.)

(b) In this connection, attention is directed to N.J.S.A. 27:7-44.1 which provides as follows:

1. (No change.)

2. Any person guilty of any violation of this section shall be liable to a fine not exceeding \$100.00 for each such day's violation, and the costs of prosecution, to be recovered by a civil action in the name of the State before any court of competent jurisdiction, by the commissioner. Said fines shall be paid into the State Treasury to the credit of the funds available for construction, maintenance and repair of roads. Any such violation may be removed from any State highway as a trespass by a civil action brought by the commissioner in the superior court. The court may proceed in the action in a summary manner or otherwise."

(c) (No change.)

16:41-2.3 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise[.]:

... ["Commercial major"] "**Major**" and "major development" means an entrance or driveway serving shopping centers, business establishments, manufacturing plants, parking and/or sales lots, truck terminals, **gasoline stations**, churches, recreational areas, subdivisions, housing projects and similar establishments where the expected traffic volume [is less than 500 cars per day or more with or without speed-change lanes involved as shown by the applicants analysis of anticipated activity] **warrants design review by the Major Permits Unit as shown in Tables A through J**, incorporated herein by reference as Appendix A.

["Commercial minor"] "**Minor**" and "minor development" means an entrance or driveway serving shopping centers, business establishments, manufacturing plants, parking and/or sales lots, truck terminals, **gasoline stations**, churches, recreational areas, subdivisions, housing projects and similar establishments where the expected traffic volume [is less than 500 cars per day as shown by the applicants analysis of anticipated activity and verified by the NJDOT] **does not warrant design review by the Major Permits Unit as specified in Tables A through J**.

16:41-2.4 Permit provisions

(a) Any person, before constructing one or more driveways entering on any State highway in New Jersey; or intending to reconstruct, change or modify any existing driveway; **or intending to expand or change the use of property with existing access to a State highway**; or proposing to construct sidewalk, curbing or any related work within the limits of highway right-of-way must apply to and obtain a permit from the New Jersey Department of Transportation.

(b) The Department retains the right to determine the final classification of the [type] **types** of permit requested (Note—applications for street intersections must comply with the requirements of N.J.A.C. 16:41-7.)

1. Types of permits are:

i. through ii. (No change.)

[iii. Automobile service station:]

[iv.]iii. [Commercial minor] **Minor** and minor development;

[v.]iv. [Commercial major] **Major** [and major development] **with planning review**.

(c) through (g) (No change.)

(h) [Fee] **The fee schedule is as follows:**

	Application Fee	Permit Fee
1. Private driveway	\$6.00	12.00 each opening
2. Combined residence and business	\$12.00	25.00 each opening
3. Automobile Service Station	\$25.00	50.00 each opening
4. Commercial minor and minor development	\$25.00	50.00 each opening
5. Commercial major and major development without speed change lanes	\$60.00	125.00 each opening and geometric drive
6. Commercial major and major development with speed change lanes	\$60.00	250.00 each opening and geometric drive]

- 1. **Private Driveway** \$35.00 \$15.00
- 2. **Combined Residence and Business** \$75.00 \$25.00
- 3. **Minor and Minor Development** \$265.00 \$85.00
- 4. **Major** \$3,750 \$1,250
- 5. **Major with Planning Review** \$9,000 \$3,000

[7.]6. Extension fee includes:

- i. Private driveway \$10.00;
- ii. All other access \$20.00;

[8.]7. Concept review [ \$100.00] \$500.00

(i) through (1) (No change.)

(m) All applications must be accompanied by the appropriate fee based on the submitted documentation. Additional [application fees] **applications** may be required upon Departmental review and possible recommended changes.

(n) through (p) (No change.)

(q) **Subject to receiving an Access Permit Application and associated application fee**, [The] the New Jersey Department of Transportation at its discretion may enter into a contractual agreement with the developers of large projects in lieu of the issuance of a permit. The agreement would generally be concerned with major developments involving roadway improvements to be phased over an extended period of time. Supporting documentation will comply with the requirements for permit applications.

(r) **Upon receipt of the required application fee and Department approval for the requested highway access, the permit fee will be waived**

for applicants registered under the laws of New Jersey as a non-profit corporation and providing low or moderate income housing units to be constructed pursuant to the "Fair Housing Act", P.L. 1985, c.222 (N.J.S.A. 52:27D-301 et seq) or under court settlement. The permit fee will be waived only if more than 25 percent of the development is affordable housing units. The proportion shall be determined by comparing the land area to be developed for affordable housing units, exclusive of common and roadway areas, to the total area.

16:41-2.20 Violations

(a) (No change.)

(b) Any person guilty of any violation shall be liable to a fine not exceeding \$100.00 for each such day's violation and the costs of prosecution to be recovered by a civil action in the name of the State before any court of competent jurisdiction, by the [commissioner] Commissioner. (See [section 2 of this subchapter] N.J.A.C. 16:41-2.2.)

SUBCHAPTER 7. STREET INTERSECTION

16:41-7.1 Permit application

The New Jersey Department of Transportation requires that a permit must be obtained prior to intersecting State highways with new streets or revisions of existing streets. Applications are to be made by the borough, township, or county engineer by [letter] Application Form "APPLICATION FOR HIGHWAY OCCUPANCY".

16:41-7.2 Application requirements

(a) Any [letter] application requesting a permit for street intersections must be accompanied by:

1. [Six] Eight copies of a plan with the intersection enlarged at a scale of 1 inch = 30 feet showing profile[.], if a development is

involved. The intersection plans are to show such details as curb, gutter, sidewalk, [degree or] curb radii, and drainage structures, if any[.]. The development plans shall be signed by the borough, township or county engineer whomever might be involved, and also the secretary or chairman of the planning board, if such board exists;

[2.] Two copies of subdivision plans, showing profile, if a development is involved. The development plans shall be signed by the borough, township or county engineer, whomever might be involved, and also the secretary or chairman of the planning board, if such board exists[.];

[3.] 2. A copy of the resolution accepting the street, if one is available.

(b) (No change.)

(c) If a local government seeks permission for street access to a State highway based on a major development, the request should be submitted by the local government and developer jointly as a Highway Access Permit application under the provisions of N.J.A.C. 16:41-2. The Department reserves the right to return any application for a Street Intersection Permit to the local government if NJDOT determines such application is based on a major development.

16:41-7.3 Fee schedule

(a) The fee schedule is:

1. Application fee:

i. (No change.)

ii. Improvement of a street: \$5.00.

2. Permit fee:

i. (No change.)

ii. Improvement of a street: \$25.00.

APPENDIX A

TABLE A  
Type Of Permit and Review Determination

Type Of Improvement: APARTMENT COMPLEXES (All Types), CONDOMINIUMS, MOBILE HOMES, PUD'S, RETIREMENT COMMUNITIES, HOUSING DEVELOPMENTS (Detached & Townhouses).

2-Way Traffic Volume Of Less Than 500 Vehicles Per Day				
IF PROPOSED IMPROVEMENT IS TO A HIGHWAY WITH	PROPOSED ADDITIONAL UNITS	TYPE OF PERMIT	REVIEWS	
			DESIGN	PLANNING
3 Lanes or LESS	100 Or LESS	MINOR	NO	NO
	MORE Than 100	MAJOR	YES	NO
4 Lanes Or MORE	300 Or LESS	MINOR	NO	NO
	MORE Than 300	MAJOR	YES	NO

2-Way Traffic Volume Of 500 Vehicles Or MORE Per Day					
IF PROPOSED IMPROVEMENT IS TO A HIGHWAY WITH	THE HIGHWAY HAS AN AADT OF	PROPOSED ADDITIONAL UNITS	TYPE OF PERMIT	REVIEWS	
				DESIGN	PLANNING
3 Lanes Or LESS	12,500 Or LESS	350 Or LESS	MAJOR	YES	NO
		351 Or MORE	MAJOR	YES	YES
	12,501 Or MORE	175 Or LESS	MAJOR	YES	NO
		176 Or MORE	MAJOR	YES	YES
4 Lanes Or MORE	30,000 Or LESS	750 Or LESS	MAJOR	YES	NO
		751 Or MORE	MAJOR	YES	YES
	30,001 Or MORE	375 Or LESS	MAJOR	YES	NO
		376 Or MORE	MAJOR	YES	YES

**TABLE B**  
**Type Of Permit and Review Determination**  
**Type Of Improvement: HOTELS/MOTELS**

2-Way Traffic Volume Of Less Than 500 Vehicles Per Day				
IF PROPOSED IMPROVEMENT IS TO A HIGHWAY WITH	PROPOSED ADDITIONAL ROOMS	TYPE OF PERMIT	REVIEWS	
			DESIGN	PLANNING
3 Lanes or LESS	85 Or LESS	MINOR	NO	NO
	MORE Than 85	MAJOR	YES	NO
4 Lanes Or MORE	250 Or LESS	MINOR	NO	NO
	MORE Than 250	MAJOR	YES	NO

2-Way Traffic Volume Of 500 Vehicles Or MORE Per Day					
IF PROPOSED IMPROVEMENT IS TO A HIGHWAY WITH	THE HIGHWAY HAS AN AADT OF	PROPOSED ADDITIONAL ROOMS	TYPE OF PERMIT	REVIEWS	
				DESIGN	PLANNING
3 Lanes Or LESS	12,500 Or LESS	335 Or LESS	MAJOR	YES	NO
		336 Or MORE	MAJOR	YES	YES
	12,501 Or MORE	168 Or LESS	MAJOR	YES	NO
		169 Or MORE	MAJOR	YES	YES
4 Lanes Or MORE	30,000 Or LESS	720 Or LESS	MAJOR	YES	NO
		721 Or MORE	MAJOR	YES	YES
	30,001 Or MORE	360 Or LESS	MAJOR	YES	NO
		361 Or MORE	MAJOR	YES	YES

**TABLE C**  
Type Of Permit and Review Determination

Type Of Improvement: WAREHOUSES, INDUSTRIAL PARKS, And FLEXSPACE

2-Way Traffic Volume Of Less Than 500 Vehicles Per Day				
IF PROPOSED IMPROVEMENT IS TO A HIGHWAY WITH	PROPOSED ADDITIONAL SQUARE FEET	TYPE OF PERMIT	REVIEWS	
			DESIGN	PLANNING
3 Lanes Or LESS	25,000 sq. ft. Or LESS	MINOR	NO	NO
	MORE Than 25,000 sq. ft.	MAJOR	YES	NO
4 Lanes Or MORE	60,000 sq. ft. Or LESS	MINOR	NO	NO
	MORE Than 60,000 sq. ft.	MAJOR	YES	NO

2-Way Traffic Volume Of 500 Vehicles Or MORE Per Day					
IF PROPOSED IMPROVEMENT IS TO A HIGHWAY WITH	THE HIGHWAY HAS AN AADT OF	PROPOSED ADDITIONAL SQUARE FEET	TYPE OF PERMIT	REVIEWS	
				DESIGN	PLANNING
3 Lanes Or LESS	12,500 Or LESS	57,000 sq. ft. Or LESS	MAJOR	YES	NO
		MORE Than 57,000 sq. ft.	MAJOR	YES	YES
	12,501 Or MORE	28,500 sq. ft. Or LESS	MAJOR	YES	NO
		MORE Than 28,500 sq. ft.	MAJOR	YES	YES
4 Lanes Or MORE	30,000 Or LESS	122,000 sq. ft. Or LESS	MAJOR	YES	NO
		MORE Than 122,000 sq. ft.	MAJOR	YES	YES
	30,001 Or MORE	61,000 sq. ft. Or LESS	MAJOR	YES	NO
		MORE Than 61,000 sq. ft.	MAJOR	YES	YES

**TABLE D**  
**Type Of Permit and Review Determination**

**Type Of Improvement: GENERAL OFFICE BUILDINGS**

2-Way Traffic Volume Of Less Than 500 Vehicles Per Day				
IF PROPOSED IMPROVEMENT IS TO A HIGHWAY WITH	PROPOSED ADDITIONAL SQUARE FEET	TYPE OF PERMIT	REVIEWS	
			DESIGN	PLANNING
3 Lanes Or LESS	30,000 sq. ft. Or LESS	MINOR	NO	NO
	MORE Than 30,000 sq. ft.	MAJOR	YES	NO
4 Lanes Or MORE	70,000 sq. ft. Or LESS	MINOR	NO	NO
	MORE Than 70,000 sq. ft.	MAJOR	YES	NO

2-Way Traffic Volume Of 500 Vehicles Or MORE Per Day					
IF PROPOSED IMPROVEMENT IS TO A HIGHWAY WITH	THE HIGHWAY HAS AN AADT OF	PROPOSED ADDITIONAL SQUARE FEET	TYPE OF PERMIT	REVIEWS	
				DESIGN	PLANNING
3 Lanes Or LESS	12,500 Or LESS	65,000 sq. ft. Or LESS	MAJOR	YES	NO
		MORE Than 65,000 sq. ft.	MAJOR	YES	YES
	12,501 Or MORE	40,000 sq. ft. Or LESS	MAJOR	YES	NO
		MORE Than 40,000 sq. ft.	MAJOR	YES	YES
4 Lanes Or MORE	30,000 Or LESS	140,000 sq. ft. Or LESS	MAJOR	YES	NO
		MORE Than 140,000 sq. ft.	MAJOR	YES	YES
	30,001 Or MORE	85,000 sq. ft. Or LESS	MAJOR	YES	NO
		MORE Than 85,000 sq. ft.	MAJOR	YES	YES

**TABLE E**  
**Type Of Permit and Review Determination**  
**Type Of Improvement: MEDICAL OFFICE BUILDINGS**

2-Way Traffic Volume Of Less Than 500 Vehicles Per Day				
IF PROPOSED IMPROVEMENT IS TO A HIGHWAY WITH	PROPOSED ADDITIONAL SQUARE FEET	TYPE OF PERMIT	REVIEWS	
			DESIGN	PLANNING
3 Lanes Or LESS	9,000 sq. ft. Or LESS	MINOR	NO	NO
	MORE Than 9,000 sq. ft.	MAJOR	YES	NO
4 Lanes Or MORE	28,000 sq. ft. Or LESS	MINOR	NO	NO
	MORE Than 28,000 sq. ft.	MAJOR	YES	NO

2-Way Traffic Volume Of 500 Vehicles Or MORE Per Day					
IF PROPOSED IMPROVEMENT IS TO A HIGHWAY WITH	THE HIGHWAY HAS AN AADT OF	PROPOSED ADDITIONAL SQUARE FEET	TYPE OF PERMIT	REVIEWS	
				DESIGN	PLANNING
3 Lanes Or LESS	12,500 Or LESS	60,000 sq. ft. Or LESS	MAJOR	YES	NO
		MORE Than 60,000 sq. ft.	MAJOR	YES	YES
	12,501 Or MORE	30,000 sq. ft. Or LESS	MAJOR	YES	NO
		MORE Than 30,000 sq. ft.	MAJOR	YES	YES
4 Lanes Or MORE	30,000 Or LESS	128,600 sq. ft. Or LESS	MAJOR	YES	NO
		MORE Than 128,600 sq. ft.	MAJOR	YES	YES
	30,001 Or MORE	64,300 sq. ft. Or LESS	MAJOR	YES	NO
		MORE Than 64,300 sq. ft.	MAJOR	YES	YES

**TABLE F**  
**Type Of Permit and Review Determination**  
**Type Of Improvement: EDUCATIONAL INSTITUTIONS**

2-Way Traffic Volume Of Less Than 500 Vehicles Per Day				
IF PROPOSED IMPROVEMENT IS TO A HIGHWAY WITH	PROPOSED ADDITIONAL EST. ENROLLMENT	TYPE OF PERMIT	REVIEWS	
			DESIGN	PLANNING
3 Lanes Or LESS	250 students Or LESS	MINOR	NO	NO
	MORE Than 250 students	MAJOR	YES	NO
4 Lanes Or MORE	700 students Or LESS	MINOR	NO	NO
	MORE Than 700 students	MAJOR	YES	NO

2-Way Traffic Volume Of 500 Vehicles Or MORE Per Day					
IF PROPOSED IMPROVEMENT IS TO A HIGHWAY WITH	THE HIGHWAY HAS AN AADT OF	PROPOSED ADDITIONAL EST. ENROLLMENT	TYPE OF PERMIT	REVIEWS	
				DESIGN	PLANNING
3 Lanes Or LESS	12,500 Or LESS	1,310 students Or LESS	MAJOR	YES	NO
		MORE Than 1,310 students	MAJOR	YES	YES
	12,501 Or MORE	655 students Or LESS	MAJOR	YES	NO
		MORE Than 655 students	MAJOR	YES	YES
4 Lanes Or MORE	30,000 Or LESS	2,800 students Or LESS	MAJOR	YES	NO
		MORE Than 2,800 students	MAJOR	YES	YES
	30,001 Or MORE	1,400 students Or LESS	MAJOR	YES	NO
		MORE Than 1,400 students	MAJOR	YES	YES

**TABLE G**  
**Type Of Permit and Review Determination**  
**Type Of Improvement: HOSPITALS**

2-Way Traffic Volume Of Less Than 500 Vehicles Per Day				
IF PROPOSED IMPROVEMENT IS TO A HIGHWAY WITH	PROPOSED ADDITIONAL SQUARE FEET	TYPE OF PERMIT	REVIEWS	
			DESIGN	PLANNING
3 Lanes Or LESS	40,000 sq. ft. Or LESS	MINOR	NO	NO
	MORE Than 40,000 sq. ft.	MAJOR	YES	NO
4 Lanes Or MORE	100,000 sq. ft. Or LESS	MINOR	NO	NO
	MORE Than 100,000 sq. ft.	MAJOR	YES	NO

2-Way Traffic Volume Of 500 Vehicles Or MORE Per Day					
IF PROPOSED IMPROVEMENT IS TO A HIGHWAY WITH	THE HIGHWAY HAS AN AADT OF	PROPOSED ADDITIONAL SQUARE FEET	TYPE OF PERMIT	REVIEWS	
				DESIGN	PLANNING
3 Lanes Or LESS	12,500 Or LESS	185,000 sq. ft. Or LESS	MAJOR	YES	NO
		MORE Than 185,000 sq. ft.	MAJOR	YES	YES
	12,501 Or MORE	92,500 sq. ft. Or LESS	MAJOR	YES	NO
		MORE Than 92,500 sq. ft.	MAJOR	YES	YES
4 Lanes Or MORE	30,000 Or LESS	396,000 sq. ft. Or LESS	MAJOR	YES	NO
		MORE Than 396,000 sq. ft.	MAJOR	YES	YES
	30,001 Or MORE	198,000 sq. ft. Or LESS	MAJOR	YES	NO
		MORE Than 198,000 sq. ft.	MAJOR	YES	YES

**TABLE H**  
**Type Of Permit and Review Determination**

Type Of Improvement: SHOPPING CENTERS AND RETAIL STORE(S)

2-Way Traffic Volume Of Less Than 500 Vehicles Per Day				
IF PROPOSED IMPROVEMENT IS TO A HIGHWAY WITH	PROPOSED ADDITIONAL SQUARE FEET	TYPE OF PERMIT	REVIEWS	
			DESIGN	PLANNING
3 Lanes Or LESS	20,000 sq. ft. Or LESS	MINOR	NO	NO
	MORE Than 20,000 sq. ft.	MAJOR	YES	NO
4 Lanes Or MORE	60,000 sq. ft. Or LESS	MINOR	NO	NO
	MORE Than 60,000 sq. ft.	MAJOR	YES	NO

2-Way Traffic Volume Of 500 Vehicles Or MORE Per Day					
IF PROPOSED IMPROVEMENT IS TO A HIGHWAY WITH	THE HIGHWAY HAS AN AADT OF	PROPOSED ADDITIONAL SQUARE FEET	TYPE OF PERMIT	REVIEWS	
				DESIGN	PLANNING
3 Lanes Or LESS	12,500 Or LESS	60,000 sq. ft. Or LESS	MAJOR	YES	NO
		MORE Than 60,000 sq. ft.	MAJOR	YES	YES
	12,501 Or MORE	30,000 sq. ft. Or LESS	MAJOR	YES	NO
		MORE Than 30,000 sq. ft.	MAJOR	YES	YES
4 Lanes Or MORE	30,000 Or LESS	127,000 sq. ft. Or LESS	MAJOR	YES	NO
		MORE Than 127,000 sq. ft.	MAJOR	YES	YES
	30,001 Or MORE	75,000 sq. ft. Or LESS	MAJOR	YES	NO
		MORE Than 75,000 sq. ft.	MAJOR	YES	YES

**TABLE I**  
Type Of Permit and Review Determination

Type Of Improvement: RESTAURANTS, FAST FOOD, And  
CONVENIENCE STORES AND GASOLINE/FUEL STATIONS

2-WAY TRAFFIC VOLUME IN VEHICLES PER DAY IS	TYPE OF PERMIT	REVIEWS	
		DESIGN	PLANNING
Less Than 500 Vehicles Per Day	MAJOR	YES	NO
500 Vehicles Per Day Or Less	MAJOR	YES	By NJDOT Design Unit Request

**TABLE J**  
Type Of Permit and Review Determination

Type Of Improvement: ARENAS, THEATERS, MUSEUMS, AUDITORIUMS

2-Way Traffic Volume Of LESS Than 500 Vehicles Per Day			
IF THE PROPOSED ADDITIONAL NUMBER OF SEATS IS	TYPE OF PERMIT	REVIEWS	
		DESIGN	PLANNING
1,000 Seats Or LESS	MINOR	NO	NO
MORE Than 1,000 Seats	MAJOR	YES	NO

2-Way Traffic Volume Of 500 Vehicles or More Per Day			
IF THE PROPOSED ADDITIONAL NUMBER OF SEATS IS	TYPE OF PERMIT	REVIEWS	
		DESIGN	PLANNING
1,000 Seats Or LESS	MAJOR	YES	NO
MORE Than 1,500 Seats	MAJOR	YES	YES

**TREASURY-GENERAL**

**(a)**

**DIVISION OF BUILDING AND CONSTRUCTION  
Consultant Selection Procedures**

**Proposed Amendments: N.J.A.C. 17:19-10**

Authorized By: Thomas H. Bush, Director, Division of Building and Construction, Department of the Treasury.

Authority: N.J.S.A. 52:18A-30 and 52:18A-151 et seq.

Proposal Number: PRN 1989-503.

Submit comments by November 1, 1989 to:

Thomas H. Bush, Director  
Division of Building and Construction  
CN 235  
Trenton, NJ 08625-0235

The agency proposal follows:

**Summary**

The intent of these proposed amendments to the rules on the selection of contracted consultants is to update these rules to reflect recently initiated improvements and an expanded scope of operations. The consultant selection process has been expanded to cover the assignment of construction management, scheduling and other professional or technical consulting entities in addition to the architectural and engineering services traditionally utilized by the Division of Building and Construction (DBC) to accomplish its mission of managing the design and construction of

State facilities. In addition, the Division has developed more responsive and timely means of engaging the consultants, necessitating a change to portions of these administrative rules. The Division proposes to amend certain rules identifying classification (previously termed "prequalification") levels that have been inappropriately made part of the administrative code. Significant changes to the rules are sequentially summarized in the following narrative:

N.J.A.C. 17:19-10.3 is amended to add definitions for the terms "administrator", "classification", "classification level", "consultant" and "Consultant Selection Board" and to eliminate the terms "architect/engineer", "Architect/Engineer Selection Board", "Architect/Engineer Contracting Group", "Architect/Engineer Selection Group", "minor project", "miscellaneous panel", "multiple of actual salary cost", "percentage fee", "prequalification" and "program fee".

N.J.A.C. 17:19-10.4 modifies text to reduce specificity and therein provide the flexibility essential to establish workable classifications.

N.J.A.C. 17:19-10.5 amends unnecessarily specific and inflexible reference to the actual forms required to apply for classification and is intended to expand optional means of public notification.

N.J.A.C. 17:19-10.6 deletes the requirement for actual fund transfers prior to initiation of consultant selection activities.

N.J.A.C. 17:19-10.7 increases the minimum level for designation of projects as "major" and as "intermediate" in magnitude and removes the designation of "minor project" from these rules, an action consistent with the intent of the Division to cease all references to that term. The text relative to "miscellaneous panels" is similarly deleted as the use of such panels is being curtailed and replaced by the implementation of a term contract program.

N.J.A.C. 17:19-10.8 is amended to provide more precise language relative to the final consultant selection and fee approval processes.

N.J.A.C. 17:19-10.9 modifies the composition of the Consultant Selection Board to four DBC staff members (including the State Architect as Chairperson) and a representative of the General Services Administration as the five permanent members. It also expands Using Agency participation by increasing the number of voting participants from the agencies from one to two.

#### Social Impact

The proposed amendments reflect revised procedures which are being implemented to provide the Division with greater flexibility to respond to the expanding need for more control of the larger and more complex projects which it manages. The revised procedures continue to provide equal opportunity for consultants to seek and achieve assignments and serves the State's best interests by ensuring that capable and responsive consultants are contracted to provide construction-related services.

#### Economic Impact

The proposed amendments retain the requirements that foster and promote the selection of the most qualified consultants at fair and reasonable cost to the State.

#### Regulatory Flexibility Analysis

The consultant selection rules set forth the procedures for the awarding of State contracts to construction-related consultants. Essentially all consultant firms affected by these rules are small businesses and most are domiciled in the State. Since these rules address the Division's procedures for consultant selection, the only compliance requirements placed upon small businesses, as upon businesses in general, involve the completion of application forms for classification project-specific activities, the minimum necessary for the Division to make prudent selections of consultants.

Full text of the proposal follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):

### SUBCHAPTER 10. [ARCHITECT/ENGINEER] CONSULTANT SELECTION PROCEDURES

#### 17:19-10.1 Purpose

The [architect/engineer] **consultant** selection procedures are established to allow qualified [design] **architectural, engineering, construction management or other consultant** firms an open opportunity for selection for State [design] **project** assignments on the basis of demonstrated competence and experience. The selection of [architects and engineers] **consultants** based upon a combination of technical qualifications and [competitive] cost proposals enables the public interest to be best served.

#### 17:19-10.2 Scope

(a) The principal elements of the [architect/engineer] **consultant** selection procedures provide for:

1. Verification of the [professional] qualifications of firms interested in providing [design] **consultant** services to the State;
2. [Advertisement of project] **Project initiation and advertisement and/or other solicitation requirements;**
- [3. Selection Board competition]
- [4.] **3. Screening of all interested and qualified firms; [by the Initial Screening Committee and Selection Board in order to establish those firms to be interviewed; and]**
- 4. Selection Board evaluation procedures; and**
- [5. Veto authority of the Board's recommendations by the Director, Division of Building and Construction (DBC).]
- 5. Final selection approval authority.**

#### 17:19-10.3 Definitions

The following words, terms and abbreviations, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

**"Administrator"** means the Administrator, General Services Administration.

**["Architect/Engineer"** means an architect, engineer or other design professional so recognized by the appropriate State professional licensing board.

**"Architect/Engineer Selection Board"** (Board) means the body appointed by the Administrator, General Services Administration to review and evaluate architectural and engineering firms competing for selection for Division design projects.

**"Architect/Engineer Contracting Group"** means a body within the Division responsible for the Architect/Engineer contracting process.

**"Architect/Engineer Selection Group"** means a body within the Division responsible for the selection of architects and engineers.]

**"Chairperson"** means the principal member of the [Architect/Engineer Selection] Board so appointed by the Administrator, General Services Administration, who will be responsible for the management and operations of the Board.

**"Classification"** means a process of reviewing information and experience data to determine the classification level and professional disciplines of consultant firms.

**"Classification level"** means the maximum construction cost estimate dollar and/or fee level for which a consultant is classified. Classification rating levels are established and periodically adjusted by administrative procedure authorized by the Director.

**"Construction cost estimate"** for the purpose of these procedures means the estimated construction cost of [the] a specific project [developed and approved jointly by the using agency and the Division].

**"Consultant"** means an architect, engineer, construction manager, or other consultant providing technical and professional services in support of a design or construction project.

**"Consultant Selection Board"** (Board) means the body appointed by the Administrator, General Services Administration to review and evaluate competing consultant firms.

**["Competitive cost proposal"] "Cost proposal"** means a specific fee proposal covering compensation for services as specified. Each shall be submitted in response to a uniform request for proposal and scope of work for the specific project.

**"Director"** means the Director of the Division of Building and Construction or his or her duly authorized representative.

**"Division"** means the Division of Building and Construction in the Department of the Treasury, General Services Administration.

**"Exempt assignment"** means an assignment which, due to its nature or circumstances, is awarded outside of the normal selection procedures.

**"Initial Screening Committee"** (Committee) means the body appointed by the Board to perform initial screening of consultants.

**"Intermediate project"** means a project which has a construction cost estimate [between \$350,000 and \$650,000] **less than \$5,000,000** where [advertising] **public notification** is [appropriate] **not required.**

**"Major project"** means a project which has a construction cost estimate of [\$650,000 or more] **\$5,000,000 and higher** where [advertising] **public notification** [is] **may be** appropriate.

**"Member"** means an individual appointed by the Administrator, General Services Administration, to serve on the [Architect/Engineer Selection] Board.

**["Minor project"** means a project which has a construction cost estimate between \$25,000 and \$350,000 where advertising is not required.

**"Miscellaneous panel"** means a list of professional architects and engineers, and other professional consultants, eligible for the assignment to projects with a construction cost estimate less than \$350,000 or an anticipated architect/engineer fee less than \$35,000.

**"Multiple of actual salary cost"** means a design fee based upon an established multiple or factor times direct salary cost. Direct salary is the gross salary paid an individual exclusive of taxes, fringe benefits, etc.

**"Percentage fee"** means a fee for architectural and engineering services based upon a percentage of the construction cost estimate.

**"Prequalification"** means a process of reviewing the information and experience questionnaire (DBA Form 48A) to determine the classification level and professional disciplines of architect/engineer firms.

**"Program fee"** means a separate fee, usually based upon a multiple of actual salary costs, covering the cost of program development and construction cost estimate.]

"Screening" or "ranking" means the process of evaluation utilized by the Committee and Board to determine those firms to be given final consideration from among the total applicants for a specific project.

"Secretary" means the full time administrator of the day-to-day Board operations and procedures who is responsible for overseeing classification records, advertising of projects, scheduling of meetings, preparing agendas, recording board scores, preparing minutes of Board meetings and similar administrative activities.

"Technical scoring" means the process of developing numerical ratings of [architects and engineers] **consultants** by individual Board members in their evaluation of those firms seeking assignments.

"Using agency" means that Department or other element of State government for which the Division [procures or] provides [design and/or construction] **consultant selection services for design and construction projects.**

#### 17:19-10.4 Classification of [design] **consultant** firms

(a) [Architectural, engineering and other consulting firms] **Firms** desiring to be considered for consultant work with the Division must [first] submit [an Information and Experience Questionnaire (DBC form 48A) to] **classification forms as specified** by the Division. [The questionnaire] **These forms** provide[s] comprehensive information on the management of the firm, its financial history, the type and value of past [design] **project** work and other related information. This information is used by the Board members to assist in the evaluation of firms for Division work and [by the Architect/Engineer Selection Group] to establish the maximum construction cost estimate dollar level **and/or fee level** and professional disciplines for which the firm is qualified. **The result of this evaluation is the firm's "classification".**

(b) Review of the [questionnaire] **firm** by the Division [for prequalification purposes] shall be completed within 30 **calendar** days of receipt [of the questionnaire] **of the classification forms**, and a notification of results shall be mailed to the firm within the same time period.

(c) If a classification **or any part of a requested classification** is denied, the firm will be notified in writing of the reasons for denial. Measures that the firm may take in order to become qualified will be identified by the [Supervisor of the Architect/Engineer Selection Group] **Division.**

(d) If a firm does not agree with its classification as assigned by the Division, it may appeal to the [Supervisor, Architect/Engineer Selection Group] **Chairperson** for reconsideration. If resolution is not achieved, the [Supervisor, Architect/Engineer Selection Group] **Chairperson** shall request the Board's evaluation of the firm's qualifications. The Board will review the records and consider a reclassification. Results of this review will be made known to the firm in writing by the Secretary of the Board. If the firm still does not agree with its classification, it may appeal in writing to the Director whose decision will then be final.

(e) It is the responsibility of each firm to update [its Information and Experience Questionnaire (DBC Form 48A) with the Division on an annual basis] **and keep current all classification forms.** Major changes occurring in the firm's status [during the course of a year] should be brought to the attention of the Division in order that the [prequalification] **classification** record is always current.

(f) Any firm seeking classification must have at least one principal on its staff who has been engaged in active private practice with full financial responsibility for a period of two years immediately preceding its request for classification.

(g) [An architectural or engineering] **Any** firm wishing to introduce its capabilities and experience to the Board is encouraged to request an appearance before the Board. This appearance is not associated with a specific project but is solely for the purpose of familiarizing the Board with the firm's background and [design] **project** accomplishments. Such appearances are of benefit to Board members in their subsequent evaluations for specific projects.

(h) Firms also are encouraged to submit brochures, pamphlets, photos and other literature for inclusion in their [prequalification] **classification** files which will be reviewed during the selection processes.

(i) The classification [rating] **level** assigned does not necessarily reflect the level on which [an architect/engineer] **a consultant** has performed for other clients. The Board endeavors to assign a [rating] **level** which is justified by applicable overall experience, length of time in business, prior Division experience, staffing, and management depth.

(j) Classification levels include the following categories:

1. \$350,000: Architects/Engineers with this rating may be considered for State project workload up to \$350,000;
2. \$650,000: Architect/Engineers with this rating may be considered for State project workload up to \$650,000;
3. \$1,000,000: Architect/Engineers with this rating may be considered for State project workload up to \$1,000,000;
4. \$2,500,000: Architects/Engineers with this rating may be considered for State project workload up to \$2,500,000;
5. \$5,000,000: Architects/Engineers with this rating may be considered for State project workload up to \$5,000,000;
6. \$10,000,000: Architects/Engineers with this rating may be considered for State project workload up to \$10,000,000;
7. \$25,000,000: Architects/Engineers with this rating may be considered for State project workload up to \$25,000,000;
8. Unlimited: Total workload is above \$25,000 with no top limit.
9. Not Applicable: Special category wherein construction cost estimates are not applicable (such as soils engineering acoustics; landscaping; energy conservation, etc.)]

(k)(j) State project workload shall be determined by deducting the proportionate value of incomplete work on other State projects from the assigned classification level. The Board shall not make assignments which exceed the amount of maximum State project workload of a given firm without the written approval of the Director.

(l)(k) Firms may increase eligibility for a specific project by a joint-venturing with other firms. To be approved as a joint-venture firm, the venture must be [prequalified] **classified** as an entity. In addition, each individual firm of the joint-venture shall have been [prequalified] **classified.**

(m)(l) Firms may apply for a specific project on a joint-venture basis without prior [preclassification] **classification** as a joint-venture [team] by simultaneous submissions of [DBC 48A and 48B (Specific Project Questionnaire)] **classification forms.**

#### 17:19-10.5 Public notification

(a) The Chairperson [of the Architect/Engineer Selection Board] may **publicly** solicit the interest of [prequalified Architect/Engineer] **classified consultant** firms for [projects in major and intermediate] **certain** project classifications **based on administrative policy authorized by the Director.** The [chairperson] **Chairperson** will direct the [secretary] **Secretary** to advertise these projects.

1. In design and construction publications and trade journals covering the construction industry in New Jersey and contiguous areas **or other areas as required;**

2. In local newspapers;

3. By written notice to New Jersey professional societies; [and]

4. By use of direct mailings to [prequalified] **classified** firms[.]; **and**

5. **By other direct mailings.**

(b) Public notification shall include instructions to [the effect that any firm seeking to provide services for the projects so advertised must submit a Specific Project Questionnaire (DBC Form 48B) no later than] **specify any special information or experience that a firm must submit** by the date and time specified in the advertisement. Failure to respond within the time limits noted in the advertisement shall be cause for rejection of a firm's application.

[1. The DBC Form 48B shall identify the firm's capabilities and qualifications as these may relate to the specific project advertised. It shall include its consultants in order to provide the total team effort. This questionnaire supplements the information contained in the Information and Experience Questionnaire (DBC Form 48A) submitted for prior prequalification and classification purposes. Special expertise in relation to the project at hand is one of the factors considered by the Board in evaluating firms during the screening process.

(c) The Division will not acknowledge receipt of Specific Project Questionnaires (DBC Form 48B). These documents will be made a part of the Board's records and shall be retained for a period of one year after selection has been completed.]

#### 17:19-10.6 Project initiation

(a) The selection procedure [will] **may** be initiated upon the receipt by the Division of a [written] request [and encumbrance of funds] from a State client using agency. The written request shall include a description of the scope of work of the project, the time period in which the design and construction is to be completed and a current working cost estimate[d] (if applicable) of the proposed project for both the design and the construction of the project. **Information regarding the availability of funding should also be included.**

(b) The Chairperson or his or her appointed representative shall evaluate the agency request and determine whether the scope of work and [availability of funds] **other provided information** are adequate. The Chairperson shall authorize the consideration of a project by the Board.

(c) [When required, the] **The** Chairperson will ensure that all major projects are advertised or **otherwise solicited** as expeditiously as possible.

(d) The Director may authorize the initiation of [specific projects] **the consultant solicitation process** without first receiving the [necessary] complete funding **for the consultant services.**

#### 17:19-10.7 Project [assignment procedures] **Assignment Procedures**

(a) Major projects are **usually** those with a construction cost estimate of [\$650,000] **\$5,000,000** and higher, **and/or with estimated professional fees of \$300,000 and higher.** Major projects shall be subject to [the following procedures] **public notification and/or highly competitive solicitation procedures as follows:**

##### 1. **Verification of qualifications and initial screening as follows:**

[1.]i. The consideration of the assignment of [an architect/engineer] **a consultant** for a major project by the Board shall commence as expeditiously as possible after the close of the advertisement or solicitation period.

[2.]ii. The Secretary shall tabulate a list of all firms which have [submitted a DBC form 48B for the project being considered,] **compiled with the public notification or other solicitation requirements** upon verification that each firm is [prequalified] **classified** in reference to the [construction cost estimate for the project and within the limit of total State work for which it is classified] **project requirements.** The Secretary shall distribute said list to all members of the **Initial Screening** Committee in addition to making available the files and other submissions of each of the firms for evaluation.

[3.]iii. The Committee will evaluate and rate the firms on the basis of a predetermined rating system. The [secretary] **Secretary** will tabulate the results and list the [final five firms and one selected at random] **finalists** in alphabetical order. The Board may adjust the number of final firms as projects warrant.

[4.]iv. Prior to the scheduled meeting of the Board, each member shall have the responsibility to review the files and other submissions of the final listed firms in order that they may evaluate and rank each firm. The evaluations [of] **by** each member shall be submitted to the Secretary who will tabulate the individual and total and the number of place preference vote scores for all of the firms being considered. [i. Any member] **Members** of the Committee or Board whose scores indicate[s] below average performance or capabilities of [a] **any** firm, must attach an explanation to their screening sheets prior to submission to the Secretary.

##### 2. **Procedures for interviews and technical proposals as follows:**

[5.] i. The Chairperson shall then convene a meeting of the Board for the purpose of reviewing the results of the screening process. The Board shall, after full review and evaluation of all the firms, select firms [to be interviewed by the Board] **for interview.** [The Board has the responsibility when pre-interview and/or interview conferences are not held to furnish those firms preparing interview presentations or cost proposals a complete description of the project and scope of work and also arrange for the time and access to the project site.] If it is determined that the interview procedure would not be beneficial, the Board may exercise its authority to waive the interviewing process and select firms to submit cost proposals. **Regardless**

**of whether pre-interview and/or interview conferences are held, the Board has the responsibility to furnish those firms preparing interview presentations and/or cost proposals a complete description of the project and scope of work and also to arrange for the time and access to the project site.**

[6.]ii. The Chairperson or his or her designee shall conduct a pre-interview conference on all major projects [where] **when** it is deemed appropriate. The purpose of the pre-interview conference is to allow all of the firms to be interviewed an opportunity to review the scope of work for the project and to question **and/or be guided** by the Board, Division [design] staff and agency representatives on the particulars of the project.

[7.]iii. At a pre-interview conference, attendance by at least one principal of the firm is mandatory. Non-attendance by a principal may result in disqualification of the firm from further consideration on the project. The order and time of appearance of the firms for the selection interviews will be determined by lottery at the end of the pre-interview conference. The Chairperson or his or her designee will attempt to establish a date for the selection interviews acceptable to all parties.

[8.]iv. The **selection** interview [will] **may** take place during a regularly scheduled meeting of the Board or **at another time specified by the Chairperson.** Upon completion of the interviews, the firms shall be **technically** rated individually by each member based on a predetermined standard list of criteria. **As required, additional technical and/or organizational information may be requested from the firms before a final technical rating is prepared.**

[9.]v. The Secretary shall tabulate the **technical** scores and after open discussion a vote will be taken to determine the firms to be invited to submit cost proposals.

##### 3. **Procedures for cost proposals as follows:**

[10.] i. The Chairperson or his or her designee shall call for and conduct a preproposal conference if it is deemed necessary. The purpose of the preproposal conference is to [assure] **ensure** that the firms submitting cost proposals have a clear and equal understanding of both the scope of work and the contractual agreement. Attendance by **appropriate** representatives of the competing firms, the using agency and [project management] **the Division** is required.

[11.]ii. Sealed cost proposals will be accepted on a pre-determined day and time by the [Supervisor of the Architect/Engineer Contracting Group who, the presence of the Secretary, shall open and read aloud the competitive cost proposals] **Secretary.** The Secretary shall **open** and record the proposals received and prepare a tabulation for distribution to the Board members **for evaluation at the next regularly scheduled Board meeting.** [The opening shall be conducted in public, and any representatives of the competing firms may be in attendance.] **If proposals are still under evaluation, cost proposal data may be kept confidential until the evaluations are completed at which time they will be made a matter of public record and open to public scrutiny.**

[12.]iii. The Board shall then convene at a time and date determined by the Chairperson and shall review the technical scores of the firms in conjunction with the cost proposals and other pertinent data **which may include, but not be limited to, the quality of the consultant team proposed for assignment, experience of the firm and proposed team with similar projects, past performance of the consultant and the consultant's proposed approach to the project and design schedule.** The Board will deliberate for another vote in making its final selection and recommendation. **As required, the Board may conduct (an) additional interview(s) or request additional technical, organizational or cost data from one or more of the firms submitting a cost proposal before the final selection and recommendation is made.** The Board shall have the responsibility of determining which selection will be most advantageous to the State, technical qualifications, cost and other factors considered.

(b) Intermediate projects are those with a construction cost estimate of [\$350,000 to \$650,000] **less than \$5,000,000 and usually with professional fees of less than \$300,000.** Intermediate projects are assigned to the Board by the Director; in some cases the Director may assign alternate Division selection procedures. **Usually projects of \$1,000,000 or less will not be assigned to the Board for selection.**

1. The Board shall have full authority to waive [advertising] **public notification.** Based upon such relevant factors as the location, size

and nature of the project, and under the guidance of the Chairperson, the Board Secretary shall develop a list of [prequalified] **classified** firms in sufficient number to [insure] **ensure** adequate competition. Due consideration will be given to assignments of work to small, minority-owned and women-owned businesses.

2. [Screening and solicitation] **Solicitation and evaluation of technical and cost proposals** shall, thereafter, follow procedures as described under major projects.

[(c) Minor projects are those with a construction cost estimate less than \$350,000. Minor projects will be assigned through the use of miscellaneous panels as follows:

1. Annually, the Board shall advertise on a Statewide basis for those firms that may be interested in being placed on miscellaneous panels. The purpose of the list shall be to assign minor and exempt projects on an expeditious basis directly from a pre-established list.

2. Following the advertisement and receipt of DBC Form 48B, the Board shall determine the composition of miscellaneous panels and publish the list.

3. The Board shall select the firms to be placed on the miscellaneous panels from among those firms submitting a completed DBC Form 48B. The Board shall also have authority to delete firms from the list for reasons of poor performance and to add others during the year as may be required to provide the capabilities necessary to support the Division's workload.

4. The list shall be published in a format clearly indicating a separation on a regional or Statewide basis and then by professional discipline. The list, once published, shall become a public document and available upon written request to all.

5. Assignments from the lists of miscellaneous panels will be made by the Supervisor, Architect/Engineer Contracting Group. In addition to making assignments, the Group will maintain appropriate records and will report to the assignments made. Selections from the miscellaneous panels shall reflect a fair equitable distribution of work, proximity of the firm to the location of the project and consideration of appropriate disciplines and specialties of the firm.

6. The Board will establish procedures to comply with NJ Small Business Set-Aside Act requirements.

(d) Facility consultants are those consultants which the Director may delegate to a department and/or institution the authority to issue work orders for professional assignment to architect/engineers as selected by the Board and contracted by the Division to include:

1. Prequalification and classification of firms interested in providing facility consultant services shall be similar to those prescribed under N.J.A.C. 17:19-10.4.

2. Facility consultant contracts will be issued on a fiscal year basis by the Division. Contracts may be modified, cancelled or extended by request of the department and/or institution and/or the Division, with concurrence of the Architect/Engineer Selection Board and upon approval of the Director.]

[(e)] (e) Exempt assignments are those which are of an urgent, critical or special nature, as may be identified and substantiated in writing by [Departmental Commissioners and approved by] **a using agency and/or the Director.** [The Board shall have the authority and responsibility to recommend to the Director that the selection procedures described above may be waived.] With the Director's [written] approval [and the Treasurer's written concurrence, by means of a waiver of advertising], the Board may [make] **evaluate and recommend** project assignments in the following categories:

1. Emergency projects: Such projects are of an emergency or critical nature, normally involving life-safety considerations, loss of property, or disruption of a vital State program (for example, storm or fire damage, equipment and/or systems failures in occupied facilities, jeopardized funding of a project, potential loss of an agency's program funding, etc.).

2. [Contiguous] **Contiguous** projects: Where the nature of a project is closely related to another ongoing project, or where a new project at the same facility is minor in nature as related to an ongoing project, it may be in the State's best interest to continue with [an architect/engineer] **a consultant** already working on an existing contiguous assignment.

3. Repetitive projects: Where [an architect/engineer] **a consultant** has designed a project which the State wishes to have repeated at

the same site or adapted to another site, utilizing in a general manner the same basic documents, the substantial reduction in time required and in consultant costs for site adaptation may make assignment to the same [architect/engineer] **consultant** advantageous to the State.

4. **Facility consultant services: Where authority is delegated to a using agency to issue work orders for professional services under administrative procedures sanctioned by the Director.**

[4.] 5. Special services: Where the nature of the project or the service is such that it does not fall within one of the categories listed elsewhere herein, the assignment may be considered a special service. Assignments in this category may include, but are not limited to, surveying, soils engineering, and photogrammetry. These services normally complement basic [architect/engineer] **design and construction** services on an ongoing project and may seriously affect and/or delay the ongoing project if immediate and expeditious selection is not made.

#### 17:19-10.8 Final [selection approval] **Selection Approval**

(a) [All selections and recommendations of the Board shall be approved by the Director, as well as all percentage or negotiated fees for any given project. The Director's approval shall be obtained by means of his/her signature on the minutes and recommendations of the Board as submitted by the Chairperson.] **The Chairperson shall submit in writing all selections and recommendations of the Board to the Director for approval including all fees for any given project. The Director shall specify the format and generic content of this submission including minimal evaluation criteria.**

(b) The Director may, for substantial and justifiable reasons, reject the recommendations of the Board and request reconsideration. The Board will deliberate and reconsider the matter and resubmit its recommendations **taking into account the Director's concerns and/or reasons for rejection.** In the event of disagreement, the decision of the Director is final [provided it is approved by] **pending the approval of the Administrator [General Services Administration, in writing.] and the State Treasurer through the waiver of advertising process described hereinafter.**

(c) Although the selection procedure may include the elements of [advertisement] **public notification**, technical evaluation, **competitive negotiation** and cost [competition] **proposal**, all selections and assignments [imposed by the statutes] must be approved by the State Treasurer through a waiver of advertising pursuant to N.J.S.A. 52:34-8.

#### 17:19-10.9 Consultant Board composition

(a) The Administrator [of the General Services Administration] has full authority and responsibility to appoint and replace [General Services Administration] personnel serving as permanent members or alternates on the [Architect/Engineer Selection] Board. The permanent five-member Board shall be constituted as follows:

1. Chairperson, who shall be [an architect or engineer employed by] **the State Architect, of the Division, unless another Division employee is designated by specific action of the Administrator[.];**

2. [Two] **Three** other Division members, who shall be staff [architects or engineers] **professionals[.]; and**

[3. One other Division member who need not be a staff architect or engineer.]

[4] 3. One member from the Administrator's staff or other designee.

(b) Of the five members identified above, due consideration will be given to minority and/or female participation on the Board.

(c) Board participation by members is paramount. Every effort will be made to consider Board participation [to] **in relation to other assigned duties within the [other] activities of the Division and the General Services Administration.**

(d) The Administrator [of the General Services Administration] shall also have the authority and the responsibility to appoint alternate members from [the respective Director's] **his or her or the Division's staff.** [An alternate need not match the professional qualifications of the member he/she replaces.]

(e) When the Board is considering [project selections] **the selection of a consultant for a specific project**, composition of the Board shall be increased to include [one] **two** voting representatives of the sponsoring [department or agency] **using agency. The using agency may**

send more than two representatives to the Board sessions; however, the multiple representation shall be limited to a combined vote of two.

[(f)] Either the agency or the institution may send more than one representative to the Board sessions; however, the multiple representation shall be limited to the combined vote of one.]

[(g)] (f) In certain instances where a project is extremely complex, or is unusual in nature, or involves special considerations that require expert advice and assistance, the Administrator [of the General Services Administration] or the Director may add other voting participants to the [board] Board. [However, the total members of voting participants on the Board shall never exceed nine.] **The total Board composition, however, shall never exceed nine voting members.**

[(h)] (g) **Representatives of the using agency will be notified of those Board meetings where their projects will be considered in order that they may participate in the selection process.** The Board shall proceed in [their] its deliberations even if the [agency or institution] using agency representatives fail to appear, providing the record indicates they were given proper notice.

[(i)] Representatives of using projects will be notified of those Board meetings where their projects will be considered in order that they may participate in the selection process.]

17:19-10.10 Board rules of order

(a) On questions of parliamentary procedure not covered within these rules, the Board shall be governed according to the provisions of the latest edition of "Roberts Rules of Order [.]". Those rules shall govern the parliamentary conduct of the Board in all cases to which they are applicable and in which they are not inconsistent with these rules and regulations. On matters of procedure of a minor nature, which are covered neither in the rules nor in "Roberts Rules of Order[.]", the Board, by [two-thirds] **three-fifths** majority vote, may adopt its own rules of conduct. If agreement cannot be reached, the dispute shall be referred to the Director for his or her decision, which will be final.

[1.](b) The minimum number of Board members including the Chairperson required to conduct business is four.

[(b)](c) The Board shall establish procedures to comply with the requirements of P.L. 1983, c.482 and P.L. 1985, c.384, the Minority Business Enterprise, Women's Business Enterprise and Small Business Enterprise set-aside programs.

[(c)](d) All meetings and deliberations of the Board shall be conducted in full accordance with the New Jersey Open Public Meeting Act, P.L. 1975, c.231. [The Board shall conduct regular meetings on each and every Wednesday, commencing at 9:00 A.M. and continuing until completion of business. Other special meetings of the Board may be conducted with the approval of the Director.]

[(d)](e) Although all of the meetings and deliberations of the Board are open to the public, the Board may request that representatives of firms having completed their presentations or waiting to make them, not sit in on the interviews of their competitors.

[(e)](f) The Board shall have authority, when it deems it is in the best interest of the State, to restrict a firm to a single assignment when several projects are being considered at the same time, providing all firms involved are so advised at the time of final interview or prior to the submission of cost proposals.

(g) **The Board shall have the authority to reject or disqualify a firm, if a review of performance of the firm on current or past projects demonstrates the inability of the firm to maintain project development schedules and/or appropriate staffing and/or other contractual requirements.**

[(f)](h) The Board shall have the authority to restrict a firm receiving [their] its first assignment(s) from receiving any subsequent assignment prior to substantial completion of its initial assignment(s).

(i) **The Board shall have the authority to appoint committees to perform technical, cost and/or other evaluations as necessary on its behalf to ensure effective and efficient selection of consultants.**

[(h)](j) The [Chairperson] Director shall appoint a Vice Chairperson from among the permanent members [, providing there is a ratification of the appointment by a majority of the Board]. The Vice Chairperson shall assume the authority and responsibility of the Chairperson in his/her temporary absence or until a permanent replacement is appointed by the Administrator.

[(i)](k) The Secretary shall report to the Chairperson and shall have the responsibility under the Chairperson's supervision for the maintenance of records for [architect/engineer] **consultant** classification and the Board's deliberations. The Chairperson shall have the responsibility to [insure] **ensure** that the minutes of the deliberations of the Board and a record of its decisions and recommendations are retained for a period of no less than two years following the completion of construction of any project or the completion of design of those projects which are abandoned.

## TREASURY-TAXATION

### (a)

#### DIVISION OF TAXATION

#### Corporation Business Tax Effect of Deficiency Notice

#### Proposed Amendment: N.J.A.C. 18:7-11.3

Authorized By: John R. Baldwin, Director, Division of Taxation.

Authority: N.J.S.A. 54:10A-27.

Proposal Number: PRN 1989-508.

Submit comments by November 1, 1989 to:

Nicholas Catalano  
Chief Tax Counselor  
Division of Taxation  
50 Barrack Street  
CN 269  
Trenton, New Jersey 08646

The agency proposal follows:

#### Summary

The proposed amendment clarifies the effects of a deficiency notice by the Internal Revenue Service under circumstances where several issues are involved in a Federal audit and the taxpayer agrees to certain issues being changed or corrected but does not agree to others in the audit.

The Division requires a taxpayer to report any changes made by or to the Internal Revenue Service that are the subject of an appeal only after the taxpayer accepts the determination of the Service, or the courts, or has exhausted the right to judicial appeal. Taxpayers, however, are required to report any agreed portion of any redetermination made by or to the Internal Revenue Service in accordance with the time requirements set forth in N.J.A.C. 18:7-11.8. Therefore, taxpayers may be required to report portions of the changes made by or to the Internal Revenue Service for a single year at several times, depending on when the taxpayer accepts the redetermination.

#### Social Impact

The proposed amendment will have a constructive social impact in that it clearly sets forth the manner in which the taxpayer would file a timely notice and clarify the correct practice with respect to deficiency notices. Adoption of this amendment will benefit the public by providing an explicit statement of present practice.

#### Economic Impact

The economic impact of the proposed amendment will result from several effects. The amendment will reduce administrative costs to the State and to taxpayers and their advisers through the codification of administrative practices. It is possible that there will be a financial effect of accelerating the collection of revenue from taxpayers as the result of Federal redeterminations containing multiple changes or corrections to which taxpayers agree in part.

#### Regulatory Flexibility Statement

This amendment does not impose mandatory recordkeeping or other compliance requirements on small businesses. The reporting requirement is a statutory requirement found at N.J.S.A. 54:10A-13. The amendment makes the practice of the Division explicit with respect to the meaning of the underlying statute. Tax administration procedure is designed to treat taxpayers in similar fashion. It is to be complied with by large or small taxpayers alike.

**Full text of the proposal follows (additions indicated in boldface thus):**

18:7-11.3 Effect of deficiency notice

(a)-(b) (No change.)

(c) A taxpayer who for any reason accepts any portion of a deficiency (including a notice issued pursuant to a waiver filed by a taxpayer) made pursuant to the provisions of the Internal Revenue Code is required to report that portion of the deficiency accepted within 90 days in accordance with N.J.A.C. 18:7-11.8 and N.J.S.A. 54:10A-13.

(d) Only the portion of any deficiency (including a notice issued pursuant to a waiver filed by a taxpayer) made pursuant to the provisions of the Internal Revenue Code that is the subject of a timely petition for redetermination in the Tax Court of the United States may delay the reporting requirements set forth in N.J.A.C. 18:7-11.8 and then only to the extent permitted by (a) above.

Example: The Internal Revenue Service redetermined the net income of a taxpayer's 1983 tax return based on three separate issues, A, B and C. These three issues resulted in increases in net income for New Jersey purposes of \$5,000, \$30,000 and \$110,000 respectively. The taxpayer accepted Issue A resulting in a \$5,000 increase in income for New Jersey purposes and requested a hearing before the IRS on Issues B and C. The taxpayer has 90 days from the issuance of the deficiency to report Issue A to the Division of Taxation.

Six months later, the IRS issues a determination that it intends to hold to the entire amount represented by Issues B and C. The taxpayer accepts the determination on Issue B, but appeals Issue C to the Tax Court of the United States. The taxpayer has 90 days from the issuance of the IRS determination to report the \$30,000 increase in net income represented by Issue B to the Division.

One year later, the Tax Court issues an unfavorable decision to the taxpayer on Issue C. The taxpayer accepts the verdict and decides not to appeal the issue any further. The \$110,000 represented by Issue C must be reported to the Division within 90 days of the court decision.

**OTHER AGENCIES**

**(a)**

**CASINO CONTROL COMMISSION**

**Accounting and Internal Controls  
Personnel Assigned to the Operation and Conduct  
of Gaming and Slot Machines**

**Proposed Amendment: Alternative I, N.J.A.C.**

**19:45-1.12; Alternative II, N.J.A.C. 19:45-1.12;**

**Alternative III, N.J.A.C. 19:45-1.12**

Authorized By: Casino Control Commission, Joseph A. Papp,  
Executive Secretary.

Authority: N.J.S.A. 5:12-63(c) and 5:12-69(c).

Proposal Number: PRN 1989-509.

Submit comments by November 1, 1989 to:

Deno R. Marino  
Deputy Director, Operations  
Casino Control Commission  
1300 Atlantic Avenue, 4th Floor  
Atlantic City, NJ 08401

The agency proposal follows:

**Summary**

The proposed amendment to N.J.A.C. 19:45-1.12 would permit one pit boss to supervise the operation of a pit consisting of a mixture of all table games, including craps, subject to certain limitations. This proposal includes three alternatives, only one of which will be adopted by the Casino Control Commission.

Alternative I would allow a pit boss to supervise a combination of table games including craps, blackjack, roulette, minibaccarat, big six, or baccarat provided the number of tables supervised does not exceed a total of eight. Alternative II would allow a pit boss to supervise a combination of table games including craps, blackjack, roulette, minibaccarat, big six, or baccarat; however, the total number of games supervised could range from a total of eight to a total of 10, depending on the number of craps games included within the pit. Alternative III would allow a pit boss to

supervise a combination of table games including craps, blackjack, roulette, minibaccarat, big six or baccarat; however, the total number of games supervised could range from a total of eight to a total of 11 depending on the number of craps games included within the pit.

**Social Impact**

There will be no social impact from the proposed alternatives.

**Economic Impact**

The proposed alternatives may result in some savings in the form of reduced wage expenditures because of the ability of one pit boss to supervise a pit consisting of craps as well as "other table games" simultaneously.

**Regulatory Flexibility Statement**

The proposed amendment will only affect the operations of New Jersey casino licensees, and therefore, will not impact on any business protected under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Full text of the proposal follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):

**Alternative I**

19:45-1.12 Personnel assigned to the operation and conduct of gaming and slot machines

(a) The following personnel shall be used to operate and conduct table games in an establishment:

1.-5. (No change.)

6. Pit boss shall be:

i. The third level supervisor assigned the responsibility for the overall supervision of the operation and conduct of craps games at not more than eight craps tables. [; and] **Nothing in this subsection shall, however, preclude a pit boss from supervising a combination of table games including craps, blackjack, roulette, minibaccarat, big six, or baccarat provided the number of supervised tables does not exceed a total of eight; and**

ii. The second level supervisor assigned the responsibility for the overall supervision of the operation and conduct of table games at not more than a total of 12 blackjack, roulette, minibaccarat, big six, or baccarat tables or a combination thereof.

7.-9. (No change.)

(b)-(d) (No change.)

**Alternative II**

19:45-1.12 Personnel assigned to the operation and conduct of gaming and slot machines

(a) The following personnel shall be used to operate and conduct table games in an establishment:

1.-5. (No change.)

6. Pit boss shall be:

i. The third level supervisor assigned the responsibility for the overall supervision of the operation and conduct of craps games at no more than eight craps tables. [; and] **Nothing in this subsection shall preclude a pit boss from supervising a combination of table games including craps, blackjack, roulette, minibaccarat, big six, or baccarat, provided, however, the number of supervised tables complies with the following limitations:**

Craps Games	All Other Table Games
1	9
2	8
3	6
4	4
5	3
6	2
7	1

ii. The second level supervisor assigned the responsibility for the overall supervision of the operation and conduct of table games at not more than a total of 12 blackjack, roulette, minibaccarat, big six, or baccarat tables or a combination thereof.

7.-9. (No change.)

(b)-(d) (No change.)

Alternative III

19:45-1.12 Personnel assigned to the operation and conduct of gaming and slot machines

(a) The following personnel shall be used to operate and conduct table games in an establishment:

1.-5. (No change.)

6. Pit boss shall be:

i. The third level supervisor assigned the responsibility for the overall supervision of the operation and conduct of craps games at no more than eight craps tables. [; and] **Nothing in this subsection shall preclude a pit boss from supervising a combination of table games including craps, blackjack, roulette, minibaccarat, big six or baccarat, provided, however, the number of supervised tables complies with the following limitations:**

Craps Games
1
2
3
4
5
6
7

All Other Table Games
10
9
7
6
4
3
1

ii. The second level supervisor assigned the responsibility for the overall supervision of the operation and conduct of table games at not more than a total of 12 blackjack, roulette, minibaccarat, big six or baccarat tables or a combination thereof.

7.-9. (No change.)

(b)-(d) (No change.)

# RULE ADOPTIONS

## BANKING

### (a)

#### DIVISIONS OF BANKING, SAVINGS AND LOAN, AND CONSUMER COMPLAINTS, LEGAL AND ECONOMIC RESEARCH

#### Assessments; Change of Name, Address or Employer; Home Mortgage Disclosure

#### Adopted Concurrent New Rules: N.J.A.C. 3:1-7.4; 3:19-1.7

#### Adopted Concurrent Amendments: N.J.A.C. 3:1-6.1, 6.2, 7.1, 7.2, 7.5 and 9.6; 3:13-3.2 and 3:38-1.8

Proposed: July 17, 1989 at 21 N.J.R. 1986(a).

Adopted: August 31, 1989 by Mary Little Parell, Commissioner,  
Department of Banking.

Filed: August 31, 1989 as R.1989 d.510, **without change**.

Authority: N.J.S.A. 17:1-8, 17:16F-11.

Effective Date: August 31, 1989 (Note: As an emergency  
adoption, these new rules and amendments were effective July  
3, 1989.)

Expiration Dates: N.J.A.C. 3:1—January 6, 1991; N.J.A.C.  
3:13—November 17, 1991; N.J.A.C. 3:38—October 5, 1992.

#### Summary of Public Comments and Agency Responses:

The Department received one comment from counsel for a licensed  
motor vehicle installment seller.

COMMENT: The increases were too large and were not based on the  
services provided. For example, the fee for changing a name on a motor  
vehicle installment license increased from \$20.00 to \$75.00 while the  
biennial license fee increased from \$80.00 to \$150.00.

RESPONSE: The increase in the fee charged for changing a name on  
a motor vehicle installment license brought the charge into line with the  
fee charged other licensees for the same service. The fact that it constitutes  
a large percentage increase indicates that the prior fee was set at an  
artificially low rate. Changing a licensee's name is a time-consuming task  
requiring changes in the entries on the Department's computer system.

Even after the increase, the \$150.00 biennial fee charged motor vehicle  
installment sellers is the lowest fee charged any similar licensee. It is only  
one-half of the fee the Department is permitted to charge these licensees  
pursuant to the schedule set forth by the Legislature. This increase is  
necessary to cover the cost of licensing and the cost of responding to  
consumer complaints regarding these licensees.

COMMENT: There was no emergency justifying adoption of these  
rules initially on an emergency basis.

RESPONSE: Due to an unforeseen budget shortfall, revenue available  
to the Department of Banking and to all other State governmental agen-  
cies was cut dramatically. Many steps were taken to reduce expenditures  
based on this shortfall. For example, the Department was subject to a  
hiring freeze for an extended period of time. Further reductions in person-  
nel would have compromised the Department's ability to supervise  
licensees. This would tend to reduce public confidence in these regulated  
industries, and thereby work to their detriment. Accordingly, the Depart-  
ment felt it necessary to adopt these regulations on an emergency basis.

The new rules and amendments adopted herein were adopted on an  
emergency basis effective July 3, 1989 (see N.J.A.C. 21 N.J.R. 2398(a)).

Full text of the adoption follows.

#### 3:1-6.1 Institutions to be assessed

Every bank as defined in N.J.S.A. 17:9A-1(1), every savings bank  
as defined in N.J.S.A. 17:9A-1(13) and every State association as  
defined in N.J.S.A. 17:12B-5(1) shall be assessed a yearly fee of 0.36  
of one cent per \$100.00 of total assets.

#### 3:1-6.2 Assessed semiannually

The fee shall be assessed at a rate of 0.18 of one cent per \$100.00  
of total assets as of December 31 and a rate of 0.18 of one cent per  
\$100.00 of total assets as of June 30 of each calendar year.

#### 3:1-7.1 Name change

(a) Every licensee who shall change its name at any time shall,  
within 30 days of such change, submit proof of the name change to  
the commissioner, shall surrender its license or licenses for endorse-  
ment of such change and pay to the Department of Banking the fee  
or fees provided in schedule A of this subchapter.

##### 1. Schedule A:

- i. Motor vehicle installment seller \$75.00;
- ii. Sales finance company \$75.00;
- iii. Home repair contractor \$75.00;
- iv. Home financing agency \$75.00;
- v. Consumer loan licensee \$75.00;
- vi. Pawnbroker \$75.00;
- vii. Foreign money remitter \$75.00;
- viii. Licensed cashier of checks \$75.00;
- ix. Foreign banks \$75.00;
- x. Secondary mortgage loan licensee \$75.00;
- xi. Insurance premium finance company \$75.00;
- xii. Licensed seller of checks \$75.00;
- xiii. Mortgage banker or broker \$75.00;

(b) For all licensees with more than one office, the Department  
shall impose a \$25.00 fee for each license at a branch office affected  
by the name change.

#### 3:1-7.2 Duplicate licenses and certificates

(a)-(b) (No change.)

(c) The licensee shall pay to the Department of Banking the fee,  
or fees provided in Schedule B of this subchapter for such licenses  
or certificates.

##### 1. Schedule B:

- i. Motor vehicle installment seller—\$25.00;
- ii. Sales finance company—\$25.00;
- iii. Home repair contractor—\$25.00;
- iv. Home financing agency—\$25.00;
- v. Consumer loan licensee—\$25.00;
- vi. Pawnbroker—\$25.00;
- vii. Foreign money remitter—\$25.00;
- viii. Licensed cashier of checks—\$25.00;
- ix. Foreign banks—\$25.00;
- x. Secondary mortgage loan licensee—\$25.00;
- xi. Home repair salesmen—\$25.00;
- xii. Insurance premium finance company—\$25.00;
- xiii. Licensed seller of checks—\$25.00.
- xiv. Mortgage banker or mortgage broker—\$25.00.

#### 3:1-7.4 Address change

Every licensee referenced in Schedule A or B which changes a  
licensed business address at any time shall, within 10 days of this  
change, submit information relative to the address change to the  
Commissioner; surrender the affected license or licenses for endorse-  
ment of the change; and pay to the Department an address change  
fee of \$75.00.

#### 3:1-7.5 (No change in text.)

#### 3:1-9.6 Filing requirements; processing fee

(a)-(b) (No change.)

(c) A processing fee of \$50.00 shall accompany each quarterly  
report. The fee shall be made payable to the Treasurer, State of New  
Jersey.

(d) (No change.)

#### 3:13-3.2 Per diem per person examination charge

The individual per diem per person examination charge for an  
examination of a company which controls a bank shall be \$260.00.

#### 3:19-1.7 Home repair salesmen; change of affiliation

A licensed home repair salesman must be employed by a licensed  
home repair contractor and may represent only that employer in the  
transaction of home repair financing business. A licensed home repair  
salesman who changes his or her employer shall, within 10 days of

## ADOPTIONS

## BANKING

this change, submit to the Department a change of employer request form along with a \$25.00 fee. When submitting this form, the salesman shall surrender the license indicating the affiliation with his or her prior employer.

## 3:38-1.8 Office requirements

(a)-(d) (No change.)

(e) A licensee changing its name or the address of one or more of its offices shall file the appropriate form with the Department in accordance with the requirements set forth in N.J.A.C. 3:1-7.

(a)

## DIVISION OF BANKING

## Consumer Loan Act Rules

## Adopted Concurrent Repeals and New Rules:

**N.J.A.C. 3:17-2.1 and 6.10**

Adopted Concurrent Amendments: **N.J.A.C.**

**3:17-2.2, 6.1, 6.2, 6.6 and 7.1**

Adopted Concurrent New Rule: **N.J.A.C. 3:17-3.9**

Proposed: July 17, 1989 at 21 N.J.R. 1983(a).

Adopted: August 31, 1989 by Mary Little Parell, Commissioner, Department of Banking.

Filed: August 31, 1989 as R.1989 d.511, **without change.**

Authority: N.J.S.A. 17:10-23.

Effective Date: August 31, 1989 (Note: As an emergency adoption, these new rules, repeals and amendments were effective July 3, 1989.)

Expiration Date: June 18, 1991.

## Summary of Public Comments and Agency Responses:

**No comments received.**

The new rules, repeals and amendments were adopted on an emergency basis effective July 3, 1989 (see 21 N.J.R. 2399(a)).

Full text of the adoption follows.

## CHAPTER 17

## CONSUMER LOAN ACT REGULATIONS

## 3:17-2.1 Requirements

(a) An applicant for a consumer loan license shall include with the completed application form a non-refundable application fee of \$250.00.

(b) In addition to the application fee, the applicant shall pay to the Department an investigation fee of \$300.00. The applicant shall also pay this investigation fee when applying to change location of a place of business within the same municipality in accordance with N.J.S.A. 17:10-8.

## 3:17-2.2 Number of applications allowed

(a) The Department will not accept for filing more than one application for a license by any applicant or affiliated applicants for an original or newly created location within a single 90-day period.

(b) When the Commissioner denies an application, the applicant may not reapply for at least six months from the date of the denial.

## 3:17-3.9 Examinations

The Department may, at any time and as often as the Commissioner deems necessary, investigate the loans and business and examine the books, accounts, records, and files used therein, of every licensee and of every person, copartnership, association, and corporation engaged in the consumer loan business. The entity examined shall pay to the Commissioner the actual cost of the examination on a per diem basis.

## 3:17-6.1 Maximum term of loan

(a) No loan in an amount of \$1,000 or less shall be made for a greater period of time than 36 months and 15 days.

(b) No loan in an amount in excess of \$1,000, but not exceeding \$2,500, shall be made for a greater period of time than 48 months and 15 days.

(c) No loan in an amount in excess of \$2,500, shall be made for a greater period of time than 60 months and 15 days.

## 3:17-6.2 Monthly installments

All loans, except variable rate loans permitted pursuant to N.J.S.A. 17:10-14, shall be repaid in substantially equal monthly installments of principal and interest computed on unpaid balances sufficient to liquidate the principal thereof, except as provided in N.J.A.C. 3:17-6.3.

## 3:17-6.6 Reduction of interest to usury rate

When a licensee knows or has reason to know that the proceeds of loan of \$15,000 or less are to be delivered by the borrower to an individual already indebted to such licensee on a loan of \$15,000 or less, then such loans shall be construed as a single loan to such individual for the purpose of interest computations, and if the aggregate of such loans ever exceeds \$15,000, interest on such accounts shall be restricted to the rate authorized by Title 31, the Interest and Usury Law, and the rules and regulations promulgated by the commissioner pursuant thereto, on unpaid principal balances from the date such excess occurred.

## 3:17-6.10 Payment on installment loans

(a) Notwithstanding the provisions of N.J.S.A. 31:1-1 or any other law to the contrary, a licensee may loan any sum of money not exceeding \$15,000, repayable in installments, and may charge, contract for and receive thereon interest at an annual percentage rate or rates agreed to by the licensee and the borrower not exceeding the limits set in N.J.S.A. 2C:21-19.

(b) A licensee may not charge or receive interest in advance. A licensee shall not compound interest and may compute interest only on unpaid principal balances.

(c) For the purpose of computing interest, a licensee shall apply all installment payments no later than the next day, other than a public holiday, after the day of receipt, and shall charge interest for the actual number of days elapsed at the daily rate of 1/365 of the yearly rate.

## 3:17-7.1 Permissible other business

(a) A licensee may engage in certain other types of business as permitted in this subchapter. Such other types of businesses may be conducted by the licensee in the same office, room or place of business where the licensee conducts the business of making loans under the Consumer Loan Act.

(b) Upon obtaining any necessary license or authorization, a licensee may engage in the following other types of businesses:

1.-8. (No change.)

9. First lien loans on real property;

i. Any such business shall be conducted in accordance with the provisions of N.J.S.A. 31:1-1 et seq., N.J.A.C. 3:1, or Section 501, et seq., of the Federal Depository Institutions Deregulation and Monetary Control Act of 1980.

10.-12. (No change.)

(b)

## DIVISION OF CONSUMER COMPLAINTS, LEGAL AND ECONOMIC RESEARCH

## License Fees

Adopted Concurrent Amendments: **N.J.A.C.**

**3:18-10.1, 3:23-2.1 and 3:38-1.1 and 1.2**

Proposed: July 17, 1989 at 21 N.J.R. 1985(a).

Adopted: August 31, 1989 by Mary Little Parell, Commissioner, Department of Banking.

Filed: August 31, 1989 as R.1989 d.509, **without change.**

Authority: N.J.S.A. 17:1-8.1, 17:10-3, 9 and 23; 17:11A-38;

17:11B-5 and 13; 17:15-1; 17:15A-4 and 6; 17:15B-7 and 17;

17:16C-7, 8, 82(a), (b) and (c); 17:16D-4 and 8; and 45:22-4

and 11.

Effective Date: August 31, 1989 (Note: As an emergency adoption, these amendments were effective July 3, 1989.)  
 Expiration Date: N.J.A.C. 3:18—January 19, 1993; N.J.A.C. 3:23—July 6, 1992; N.J.A.C. 3:38—October 5, 1992.

**Summary of Public Comments and Agency Responses:**  
**No comments received.**

The amendments adopted herein were adopted on an emergency basis effective July 3, 1989 (see 21 N.J.R. 2401(a)).

Full text of the adoption follows.

**3:18-10.1 Initial license requirements**

- (a)-(d) (No change.)
- (e) License and application fees are as follows:
  - 1.-3. (No change.)
  - 4. The license fee is \$800.00 for each new branch secondary mortgage loan license applicant for the initial license period or any part thereof; provided, however, that if an initial license is issued in the second year of any biennial licensing period, the license fee is \$400.00. There shall also be a \$200.00 non-refundable processing fee due for each new applicant at the time of application.
  - 5. (No change.)

**3:23-2.1 Licenses**

The following table indicates the license fees established by the Commissioner of Banking for annual and biennial license periods, the maximum biennial license fees permitted by law and the specific statutory sections affected by the establishment of such biennial and annual license fees.

LICENSEES	STATUTORY MAXIMUM BIENNIAL FEE	BIENNIAL FEE	ANNUAL FEE
Consumer Loan (N.J.S.A. 17:10-3 & 9)	\$1,000.00	\$ 800.00	\$400.00
Foreign Money Remitter (N.J.S.A. 17:15-1)	\$1,000.00	\$ 800.00	\$400.00
Check Cashier (N.J.S.A. 17:15A-4)	\$1,000.00	\$ 800.00	\$400.00
Check Seller (N.J.S.A. 17:15A-7)	\$1,200.00	\$1,200.00	\$600.00
Retail Installment Sales			
(a) Sales Finance Company (N.J.S.A. 17:16C-7)	\$1,000.00	\$ 800.00	\$400.00
(b) Motor Vehicle Installment Seller (N.J.S.A. 17:16C-8)	\$ 300.00	\$ 150.00	\$ 75.00
(c) Home Financing Agency (N.J.S.A. 17:16C-82(a))	\$ 600.00	\$ 400.00	\$200.00
(d) Home Repair Contractor (N.J.S.A. 17:16C-82(b))	\$ 300.00	\$ 150.00	\$ 75.00
(e) Home Repair Salesman (N.J.S.A. 17:16C-82(c))	\$ 60.00	\$ 50.00	\$ 25.00
Insurance Premium Finance Company (N.J.S.A. 17:16D-4)	\$1,000.00	\$ 800.00	\$400.00
Pawnbroker (N.J.S.A. 45:22-4)	\$ 800.00	\$ 600.00	\$300.00

**3:38-1.1 License requirements**

- (a)-(b) (No change.)
- (c) The license fee is \$800.00 for each mortgage banker or mortgage broker for each biennial license period, or any part thereof provided, however, that if an initial license is issued in the second year of any biennial licensing period, the license fee shall be \$400.00.

**3:38-1.2 Applications**

(a) Each applicant for a mortgage banker or mortgage broker license must submit to the Department of Banking a completed application in a form prescribed by the Commissioner together with the required license fee and a non-refundable application fee of \$200.00.

(b)-(e) (No change.)

**COMMUNITY AFFAIRS**

**(a)**

**DIVISION OF HOUSING AND DEVELOPMENT  
 Uniform Fire Code; Fire Code Enforcement  
 Registration and Permit Fees**

**Adopted Concurrent Amendments: N.J.A.C.  
 5:18-2.8, 5:18A-2.6**

Proposed: July 17, 1989 at 21 N.J.R. 2126(a) (proposal corrected at 21 N.J.R. 2402(a).)  
 Adopted: September 1, 1989 by Anthony M. Villane, Jr., D.D.S., Commissioner, Department of Community Affairs.  
 Filed: September 1, 1989 as R.1989 d.513, **without change**.  
 Authority: N.J.S.A. 52:27D-198.  
 Effective Date: September 1, 1989.  
 Expiration Date: February 1, 1990.

**Summary of Public Comments and Agency Responses:****No comments received.**

Full text of the adoption follows.

## 5:18-2.8 Fees, registration and permit

(a) The annual registration fees for life hazard uses shall be as follows:

1. Type Aa—\$58.00 per year;
2. Type Ab—\$86.00 per year;
3. Type Ac—\$92.00 per year;
4. Type Ad—\$104.00 per year;
5. Type Ae—\$115.00 per year;
6. Type Af—\$138.00 per year;
7. Type Ag—\$173.00 per year;
8. Type Ah—\$207.00 per year;
9. Type Ai—\$276.00 per year;
10. Type Aj—\$345.00 per year;
11. Type Ba—\$92.00 per year;
12. Type Bb—\$173.00 per year;
13. Type Bc—\$276.00 per year;
14. Type Bd—\$345.00 per year;
15. Type Be—\$403.00 per year;
16. Type Bf—\$518.00 per year;
17. Type Bg—\$552.00 per year;
18. Type Bh—\$690.00 per year;
19. Type Bi—\$828.00 per year;
20. Type Bj—\$863.00 per year;
21. Type Bk—\$1,035.00 per year;
22. Type Bl—\$1,208.00 per year;
23. Type Bm—\$1,380.00 per year;
24. Type Bn—\$1,725.00 per year;
25. Type Bo—\$2,070.00 per year;
26. Type Ca—\$690.00 per year;
27. Type Cb—\$828.00 per year;
28. Type Cc—\$897.00 per year;
29. Type Cd—\$966.00 per year;
30. Type Ce—\$1,104.00 per year;
31. Type Cf—\$1,208.00 per year;
32. Type Cg—\$1,380.00 per year;
33. Type Da—\$2,070.00 per year;

(b) (No change.)

(c) The application fee for a permit shall be as follows:

1. Type 1—\$29.00;
2. Type 2—\$115.00;
3. Type 3—\$230.00;
4. Type 4—\$345.00;
5. Type 5—\$1,150.

(d) (No change.)

## 5:18A-2.6 Collection of and accounting for fees and penalties

(a) State collection of registration fees:

1. (No change.)
2. The Bureau of Fire Safety shall remit 70 percent of the amount collected to the local enforcing agency established for the inspection of life hazard uses. The payment shall be disbursed by the end of the quarter next succeeding the one in which the fees were collected.
3. The 70 percent local share shall not be considered State funds but rather local funds held in trust by the State.

(b)-(e) (No change.)

**(a)****DIVISION OF HOUSING AND DEVELOPMENT****Notice of Administrative Correction****Uniform Fire Code****Fire Code Enforcement****N.J.A.C. 5:18-2.6, 2.7, 2.11, 2.18, 3.2, 4.9 and 4.18;  
5:18A-4.9**

Take notice that the Office of Administrative Law has discovered errors and omissions in the text of several sections of the Uniform Fire Code,

N.J.A.C. 5:18, and in N.J.A.C. 5:18A-4.9. This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7(a).

In N.J.A.C. 5:18-2.6(i), the first sentence, the word "determined" was proposed and adopted as "demanded" (see 16 N.J.R. 3339(b); 17 N.J.R. 394(a)).

In N.J.A.C. 5:18-2.7(e), the phrase "or to conduct processes which produce conditions hazardous to life or property," adopted at 17 N.J.R. 394(a), was inadvertently omitted (that is, not deleted in the rulemaking process) from the text of a subsequent proposal and adoption (see 17 N.J.R. 1015(b); 17 N.J.R. 2870(a)) and has not since appeared in the Code.

The sentence, "The hearing shall be conducted by the Office of Administrative Law, with the Commissioner or his designee issuing the final decision," was added upon adoption (see R.1987 d.247) to the text of N.J.A.C. 5:18-2.11(a)2. This language was not, however, published in the notice of adoption (see 19 N.J.R. 1078(a)) or in the resulting Code update.

In N.J.A.C. 5:18-2.18(a), the phrase, "to be unabated and the penalties or fees indicated to be unpaid," which was proposed at 16 N.J.R. 3339(b) and adopted at 17 N.J.R. 394(a), was omitted from the Code.

The recitation of the State Fire Prevention Code, Article 17, Section F-2702.9 Uniforms of employees, proposed and adopted (see 17 N.J.R. 1015(b); 17 N.J.R. 2870(a)) as part of N.J.A.C. 5:18-3.2(a)2vii, was omitted from the Code.

At N.J.A.C. 5:18-4.9(a)2iv(12), the proposed phrase "heat detector units" was changed to "heat detectors" in the adoption filed by the Department of Community Affairs (see R.1987 d.247). This change was erroneously published in both the New Jersey Register (see 19 N.J.R. 1078(a)) and Code as "heat units."

The text of N.J.A.C. 5:18-4.18(a) and (b) is missing substantial language proposed and adopted by the Department (see 18 N.J.R. 1225(a); 19 N.J.R. 1078(a)).

In N.J.A.C. 5:18-4.9(d)1, the word "student" between "Each" and "shall" was inadvertently omitted from the published Code following proposal and adoption (see 16 N.J.R. 3339(b); 17 N.J.R. 394(a)).

Full text of the corrected rules follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

## 5:18-2.6 Registration of buildings and uses

(a)-(h) (No change.)

(i) The owner of a life hazard use shall pay the annual fee within 30 days of the day on which it is [determined] **demanded** by the Department or the local enforcing agency. If he fails to do so, the Department or the local enforcing agency may, pursuant to N.J.S.A. 52:27D-201, issue a certificate to the clerk of the Superior Court stating that the owner is indebted to the Department for the payment of the annual fee and the clerk shall immediately enter upon his record of docketed judgments the name of the owner and of the Department, a designation of the statute under which the fee is assessed, the amount of the fee certified and the date the certification was made. The making of the entry shall have the same effect as the entry of a docketed judgment in the office of the clerk, but without prejudice to the owner's right of appeal.

## 5:18-2.7 Permits required

(a)-(d) (No change.)

(e) A permit shall constitute permission to maintain, store or handle materials, **or to conduct processes which produce conditions hazardous to life or property**, or to install equipment used in connection with such activities in accordance with the provisions of this Code. Such permissions shall not be construed as permission to violate, cancel or set aside any of the provisions of this Code.

(f)-(k) (No change.)

## 5:18-2.11 Appeals

(a) The person aggrieved may appeal any enforcement action including rulings, orders and notices by submitting a written hearing request as set forth herein. Either the owner of the premises or of the use, or his authorized agent, may be a person aggrieved.

1. (No change.)

2. If from the act of the Department serving as the local enforcing agency, the request shall be made to the Hearing Coordinator, Division of Housing and Development, Department of Community Affairs, CN 804, Trenton, New Jersey 08625. **The hearing shall be**

conducted by the Office of Administrative Law, with the Commissioner or his designee issuing the final decision.

3. (No change.)

(b)-(c) (No change.)

#### 5:18-2.18 Certificate of Fire Code status

(a) Upon request of the owner or bonafide purchaser of a building or structure, the enforcing agency having jurisdiction over the building or structure shall issue a certificate either enumerating the violations indicated by its records **to be unabated and the penalties or fees indicated to be unpaid**, or stating that its records indicate that no violations remain unabated and no penalties or fees remain unpaid.

(b)-(c) (No change.)

#### 5:18-3.2 Modifications

(a) The following articles or sections of the State Fire Prevention Code are modified as follows:

1.-26. (No change.)

27. Article 27 (Fireworks) is amended as follows:

i.-vi. (No change.)

vii. The following new sections F-2702.0, F-2702.1, F-2702.2, F-2702.3, F-2702.4, F-2702.5, F-2702.6, F-2702.7, F-2702.8, F-2702.9, F-2702.10, F-2702.11, F-2702.12, F-2702.13, F-2702.14, F-2702.15, and F-2702.16, are added.

...  
**Section F-2702.9 Uniforms of employees: All factory employees in fireworks plants employed in loading, filling, or handling of charged fireworks in process of manufacture, or of explosive compositions, shall be clothed in suitable uniforms to be approved by the fire official.**  
...

28.-33. (No change.)

#### 5:18-4.9 Automatic fire alarms

(a) An automatic fire alarm system shall be installed as required below in accordance with the New Jersey Uniform Construction Code.

1. (No change.)

2. In all buildings of Use Group R-1 and R-2 as follows:

i.-iii. (No change.)

iv. Common areas shall be required to have an approved system of multiple station detectors installed as hereinafter provided. In buildings of Use Group R-1, less than four stories in height above grade, other than school dormitories for students up to and including the 12th grade, and in building of Use Group R-2 less than six stories in height above grade, the system shall not be required to be supervised or connected to an emergency power supply.

(1)-(11) (No change.)

(12) The maximum spacing between either heat [units] detectors or the nearest side wall or partition and a heat detector shall not exceed the spacings permitted by Underwriters Laboratories, Inc. listings.

v.-vi. (No change.)

3.-4. (No change.)

(b)-(c) (No change.)

#### 5:18-4.18 Boiler/furnace equipment rooms

(a) Boiler/furnace equipment rooms shall be enclosed by one hour fire rated construction in the following facilities: day nurseries, children's shelter facilities, residential child care facilities and similar facilities with children below the age of 2½ years, and which are classified as Use Group 1-2 in accordance with the Uniform Construction Code, **shelter facilities, residences for the developmentally disabled, group homes, teaching family homes, transitional living homes, rooming and boarding houses, hotels and multiple dwellings.**

1. (No change.)

(b) Emergency controls shall be provided [as follows] **in all structures classified as day nurseries, children's shelter facilities, residential child care, facilities and similar facilities with children below the age of 2½ years, and which are classified as Use Group 1-2 in accordance with the Uniform Construction Code and in group homes, teaching family homes; and supervised transitional living homes in accordance with the following:**

1.-2. (No change.)

5:18-4.9 Organizational, administrative, and operational functions of the Fire Code enforcement educational programs

(a)-(c) (No change.)

(d) An organization or institution shall assure that:

1. Each **student** shall be advised where to secure guidance and who is officially responsible for his program. Attention must be given to a plan for maintaining desirable student-faculty relationships.

2. (No change.)

(e)-(f) (No change.)

(a)

## DIVISION OF HOUSING AND DEVELOPMENT

### Uniform Construction Code

### Planned Real Estate Full Disclosure

### Municipal Enforcement Agency Fees; Standards for Municipal and Departmental Fees

### Adopted Concurrent Amendments: N.J.A.C.

### 5:23-4.17, 4.18, 4.19, 4.20; and 5:26-2.3 and 2.4

Proposed: July 17, 1989 at 21 N.J.R. 2127(a).

Adopted: September 1, 1989 by Anthony M. Villane, Jr., D.D.S., Commissioner, Department of Community Affairs.

Filed: September 1, 1989 as R.1989 d.512, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 52:27D-124 and 45:22A-35.

Effective Date: September 1, 1989.

Operative Date for Amendments to N.J.A.C. 5:23-4.18(c)-(e): January 1, 1990.

Expiration Date: March 1, 1993, N.J.A.C. 5:23; March 1, 1991, N.J.A.C. 5:26.

### Summary of Public Comments and Agency Responses:

Comments were received from the Secretary of Agriculture and two organizations representing the agricultural community, the New Jersey State League of Municipalities and several municipal officials, and the New Jersey Builders Association.

The Secretary of Agriculture requests that the references to "commercial farm buildings" in the rules be amended to conform to the definition set forth in N.J.A.C. 5:23-3.2(d). This change is being made on adoption. He also asks that municipal fees for commercial farm buildings be no higher than those charged by the Department of Community Affairs and that special provision be made to exempt temporary agricultural structures from fees. In response, the Department states that it has no authority to limit municipal fees for commercial farm buildings and that the issue of excluding temporary agricultural buildings from the definition of "structure," and thereby, among other things, eliminating fees for them, is currently being reviewed by the Code Advisory Board.

In addition to points made by the Secretary, the agricultural organizations that commented express concern that the new fees, as applied to farm buildings, would be too costly and that exceptions should be made for such buildings. The Department replies that farm buildings already receive favorable treatment and further preference for them is not warranted at this time.

Several other comments were received that concerned the increased Uniform Construction Code fees. The New Jersey State League of Municipalities alleges that the proposal would "increase inspection fees by 30 percent and State inspection fees by 133 percent" and that this would have a seriously adverse effect upon municipalities. In response, the Department points out that the 30 percent increase in the Department's Uniform Construction Code inspection fees does not affect any municipality that does inspections with its own employees. In municipalities that contract with private inspection agencies to provide construction code enforcement services in one or more of the subcodes, fees for those services will increase because, by statute, N.J.S.A. 52:27D-124i(2), the private agencies must charge the same fee as the Department. However, the municipality should set its construction code fees so that the added cost is passed on to the person doing construction and does not become a charge against the municipal treasury (see N.J.S.A. 52:27D-126a). In the judgment of the Department, a properly drafted ordinance should reference the applicable rules so that it will not have to be redrafted every

time any fees are changed. The 133 percent increase refers to the State training fee. By statute, N.J.S.A. 52:27D-130.1, this fee is not paid by municipalities on work they contract for when inspection is done by municipal employees. Moreover, it is charged only on new construction and the total amount of this supposedly burdensome increase is only \$16.00 for a 20,000 cubic foot building, such as a typical townhouse.

Comments that reiterated those of the State League of Municipalities were received from several municipal officials. Points made in these comments included protests against the automatic linking of private inspection agency fees to those of the Department and against the limitation of the administrative fee that may be charged by a municipality that uses private inspection agencies to 15 percent of the subcode fee. In response, the Department states that the linkage of the private agency fees to those of the Department is statutory and thus out of the control of the Department.

The 15 percent administrative fee that may be charged to cover the expenses of the construction official where subcode enforcement is by a private inspection agency does not represent any limitation on any existing authorized fee. Rather, the administrative fee was established for the first time by this rule and limiting it to what the Department considers to be a reasonable amount does not constitute imposition of a burden on municipalities. However, the fact that some municipalities may have been charging such fees without authorization—one municipal official protests that the 15 percent limitation will require a 300 percent reduction of his municipality's fee—does not alter the Department's conclusion in this regard. Indeed, as indicated by the comments by the New Jersey Builders Association, there is considerable opposition to the very existence of any administrative fee at all.

The Department recognizes that there is a need to amend municipal ordinances in order to be in compliance with N.J.A.C. 5:23-4.18(c)-(e), as amended. In order to allow a reasonable, but not unduly lengthy, time in which to accomplish these changes, the Department has made those provisions effective January 1, 1990 instead of immediately.

The New Jersey Builders Association (NJBA) is of the opinion that the fee increase is unwarranted and is intended to subsidize other operations of the Department. The Department's response is that this is not at all the case and that the increase is indeed warranted by fiscal necessity.

The need for increased fees arises from present economic conditions which affect the workload/revenue balance of the construction code enforcement programs and a budgetary decision to greatly reduce the subsidy of construction code enforcement activities that had heretofore been provided out of the State's general fund.

The Department points out that its construction code enforcement activities are funded on a "pay as you go" basis. The fees which are collected in connection with plan reviews, construction permits, planned real estate reviews and all similar code enforcement activities are appropriated for the year in which they are collected. Construction code enforcement is a lengthy activity. The Department provides the services for which the fee has been collected over an extended period of time afterwards. The Department often finds itself providing review and inspection service as long as 12 to 18 months after the fee had been collected. In simple terms, this all means that the Department must fund last years workload with this years fees. The "pay as you go" approach necessitates rate increases in years when construction activity declines as compared with the year before. The Department determined, based on its own experience and general economic indicators, that fiscal year (FY) 1990 would be such a year. Normal inflationary cost increase when combined with the anticipated decline in the rate of applications necessitated the 30 percent increase in revenues from user fees which was proposed and adopted.

The 133 percent increase in the State training fee was necessitated by different set of circumstances. The Governor's proposed budget for FY1990 provided for a General Fund Appropriation which offset approximately 20 percent of the Department's construction code enforcement expenses. That budget also anticipated fee income to the General Fund. The amount of fee income anticipated to the General Fund closely approximates the amount expenses borne directly by the General Fund on behalf of the construction code enforcement programs. Accordingly, the construction code enforcement appropriation represented a taxpayer subsidy of expenses which could properly be charged to the fee payers who use the services. The proposed FY1990 budget was soon seen to be out of balance due to newly anticipated declines in certain general state revenues. The balancing of income and expenses for FY1990 proved to be a very difficult task which required the Legislature and the Governor to make some very difficult decisions. One of those decisions was to

eliminate nearly all of the taxpayer subsidy for construction code enforcement activity. The Appropriations Act for FY1990, in contrast to the proposed Budget, makes specific provision for construction code enforcement activities previously funded by general state revenues to be funded instead through the State training fee. This major change which occurred late on June 30, 1989 was the direct cause of the 133 percent increase in the State training fee.

The Department further responds that the NJBA assertion that construction code fees are being used to subsidize other operation is incorrect. The funds raised through construction code enforcement fees support the costs of the administration and enforcement of that code and no more. The facts that support the Department's position are a matter of public record and readily available for examination.

The NJBA opposes allowing municipalities that utilize the services of private inspection agencies for subcode enforcement to charge an administrative fee of up to 15 percent. This comment indicates either lack of recognition of the necessity of paying the cost of the work done by the construction official and his immediate staff when the subcodes are enforced by private enforcing agencies or lack of awareness that these costs have thus far been recovered either by means of unauthorized surcharges (see the municipal comments opposing the 15 percent limitation for contrary reasons) or by inflating other subcode charges in those cases in which the construction official is also the appropriate subcode official. The NJBA also claims that this administrative fee will result in an increase in the municipal fee charged to persons doing construction. This will not generally be the case since any municipality that uses private inspection agencies and is not running its construction office at a deficit is already covering the cost for which the administrative fee is to be charged one way or another.

The NJBA alleges that the Department misrepresented the economic impact of its proposed amendments. The Department denies that this is the case. Its calculations indicate that the amendments will increase its fee revenues by about 30 percent, which means that the aggregate amount paid in fees will increase by about 30 percent. This should be the approximate amount of the increase for a "typical project," as was clearly indicated. Since other changes, revenue neutral in the aggregate, were made in conjunction with the approximately 30 percent increase, the impact on a project that is not typical—such as one involving large motors or other electrical devices—might well be greater. The impact in any particular case can only be determined by review of all applicable fees. Various cases of fees increased by 31 percent or more are closely accounted for by the need to round off increases to the nearest whole dollar.

The NJBA challenges the use of the emergency rule procedure to adopt this rule on July 3, 1989. While the use of the emergency procedure is not germane to the present adoption, the Department wishes to note that it was aware that it was required to accept the decision of the Legislature virtually to eliminate general revenue moneys for construction code enforcement and almost completely fund the program by raising fees. The Department needs to collect the funds that it requires for the operation of the construction code enforcement program prior to June 30, 1990 in order to maintain the level of enforcement services contemplated by the Appropriations Act and to balance income and expenses as required by law. The fees are paid as applications are received throughout the year. The amount due is based on the fee schedule in effect on the date of application. If the Department had followed ordinary rulemaking procedures, the new fees could not have been in effect until October 2, 1989, at the earliest. The Department would then have had to impose a substantially higher increase for the final nine months of the fiscal year. All other things being equal, the Department would then have reduced fees on July 1, 1990, since the fees as of that date would continue in effect for all of FY 1991. These uneven fees would have resulted in unfairness to applicants who would have submitted applications between October 2, 1989 and June 30, 1990. The Department was unable to propose new fees sooner because it could not determine, until June 30, 1989, how much revenue it would be required by the Legislature to raise. This emergency situation thus left no time for conventional rulemaking. Failure to implement the new fees immediately would have resulted in a serious shortfall that would, in turn, have necessitated a significant reduction in personnel. The result of such a reduction would have been lengthy delays for applicants with new projects and an inability to perform necessary health and safety related inspections for existing projects, as required by law. The construction of buildings of unknown safety, the unregulated removal of asbestos from buildings, and the potential fire safety problems that might have been built into numerous structures would have posed a clear and present danger to public health and safety. The clear need for the funds

and the serious fire and safety hazards that would have been created by the failure to raise them created a public safety emergency that was properly addressed by the adoption of these amendments on an emergency basis.

The NJBA expresses concern for the loss of municipal revenues. As previously indicated, municipalities that contract with private inspection agencies will only lose revenues if they do not have properly drafted ordinances that appropriately reference the rules. There is otherwise no way in which there would be a loss of municipal revenues.

The NJBA points out that fees for electrical fixtures and devices were not raised. This apparent anomaly is explained by the fact that the Department recognizes the need to resolve the difference in practice between private inspection agencies, which, in some cases, charge twice for inspection of these fixtures and devices, at rough inspection and at final inspection, and the Department which, although using the same fee schedule, charges only once, before increasing these fees. This will be the subject of future rulemaking.

The NJBA protests the 133 percent increase in the training fee. As previously pointed out, the amount of the training fee surcharge is so small to begin with that the effect of even a 133 percent increase is minimal. The Legislature, in the Fiscal Year 1990 Appropriations Act, authorized use of the training fee for other construction code enforcement purposes in recognition of the fact that it is the one fee collected by the Department both from new construction inspected by the Department and from new construction inspected by municipal and private enforcing agencies and is therefore the most appropriate source of fees to help fund the construction code enforcement program costs which had previously been supported by General Fund Appropriations.

The NJBA protests the new fees related to the fire protection subcode. The Department replies that the separation of fire subcode fees from building subcode fees is necessary in order to ensure equity between those buildings that are complicated from a fire protection standpoint and those that are not. A higher percentage of what was the combined building code and fire code fee is for fire code work in one case than in another.

By way of general response to the concerns about increased fees, the Department states that the increased fees are based upon projections of decreased construction activity during the current fiscal year. The Department will monitor Bureau collections and reexamine the fee schedule periodically during the course of the fiscal year. If revenues are, in fact, greater than have been anticipated and necessary, the Department intends to revise the fee schedule downward.

The Department also wishes to point out, by way of clarification, that its reference in the economic impact statement of the proposal to having "considered the position of third party agencies" simply meant that it took into account the positive economic impact that any increase in Department fees would necessarily have upon them due to the statutory link between their fees and those of the Department. The fee increase was not decided upon in consultation with them and was based solely upon the need to adequately fund the Department's construction code enforcement program.

**Full text** of the adoption follows (additions to proposal indicated in boldface with asterisks **\*thus\***; deletions from proposal indicated in brackets with asterisks **\*[thus]\***):

#### 5:23-4.17 Municipal enforcing agency fees

(a) Ordinance: The municipality shall set enforcing agency fees by ordinance for the following activities: plan review, construction permits, certificate of occupancy, certificates of continued occupancy, certificate of approval, demolition permit, elevator permit and sign permit.

1. The municipality shall include in any such ordinance all fees pertaining to the operations of the enforcing agency, including those for which the department has not set standards, such as fees for reinstatement of lapsed permits. All minimum fees shall be stipulated. Fees may be rounded to the nearest dollar amount if the municipality's ordinance so provides.

(b)-(d) (No change.)

#### 5:23-4.18 Standards for municipal fees

(a)-(b) (No change.)

(c) Basic construction fee: The basic construction fee shall be computed on the basis of the volume of the building, or in the case of alterations, the estimated construction cost, and the number and type of plumbing, electrical and fire protection fixtures or devices as herein provided.

1. Volume or cost: Fees for new construction or alteration shall be as follows:

i.-v. (No change.)

vi. Temporary structures and all structures for which volume cannot be computed, such as swimming pools and open structural towers, shall be charged a flat rate;

vii. (No change.)

2.-3. (No change.)

4. Fees shall be based upon the number of sprinkler heads, standpipes, and detectors (smoke and heat) and shall be reasonable unit charges. Fees may also be charged for the inspection of premanufactured fire suppression systems, for gas and oil fired appliances not connected to the plumbing system, for kitchen exhaust systems and for incinerators and crematoriums. The municipal ordinance shall clearly set forth what fees are to be charged for what devices.

(d) Demolition permit fees: Permit fees for demolition of or the removal of a building or structure shall be a flat fee. This fee may vary according to type of structure or whether there has been a condemnation, but this shall be clearly indicated in the ordinance and schedule.

\*[(f)]\*\*(e)\* (No change in text.)

\*[(g)]\*\*(f)\* Certificate of occupancy fees:

1. (No change.)

2. The municipality shall establish a flat fee for certificate of continued occupancy, for certificate of occupancy granted pursuant to a **\*[charge]\* \*change\*** of use, for multiple certificates of occupancy (as for a shopping center) and similar conditions.

(g)-(j) (No change from proposal.)

(k) Fees to be charged to municipalities by private onsite inspection and plan review agencies are as follows:

1. Where the local enforcing agency uses the services of a private onsite inspection and plan review agency to enforce one or more subcodes, then the fees charged to the municipality by the private onsite agency shall be identical to those charged by the Department pursuant to N.J.A.C. 5:23-4.20 and as provided in this paragraph.

i. Building subcode: Where a private onsite agency performs building subcode services, the fees charged to the municipality by the private agency shall be either the volume-based or cost-based fee, whichever type is appropriate, which are charged by the Department, as set forth at N.J.A.C. 5:23-4.20.

ii. Plumbing subcode: Where a private onsite agency performs plumbing subcode services, the fees charged to the municipality by the private agency shall be the fees for plumbing fixtures and stacks which are charged by the Department as set forth at N.J.A.C. 5:23-4.20.

iii. Electrical subcode: Where a private onsite agency performs electrical subcode services, the fees charged to the municipality by the private agency shall be the fees for electrical fixtures and devices which are charged by the Department as set forth at N.J.A.C. 5:23-4.20.

iv. Fire subcode: Where a private onsite agency performs fire subcode services, the fees charged to the municipality by the private agency shall be the 'sprinkler, standpipe, fire detector (smoke and heat), premanufactured fire suppression system, gas or oil fired appliances not connected to the plumbing system, kitchen exhaust system, incinerator and crematorium fees which are charged by the Department as set forth at N.J.A.C. 5:23-4.20.

v. Administrative surcharge: Municipalities using private onsite inspection and plan review agencies may add to the above fees an administrative surcharge of up to 15 percent of the relevant subcode(s) permit fee(s). The surcharge shall apply only to subcode areas for which the municipality has a contract with the onsite agency. In lieu of an administrative surcharge to fees charged by an onsite agency, a municipality may adjust its fee schedule up to 15 percent higher for this purpose.

2. Demolition and removal fees shall be charged as follows:

i. Where a private onsite agency performs one or more subcode services for demolitions or removals, the amount charged to the municipality by the private agency shall be a portion of the demolition or removal fees which are set forth at N.J.A.C. 5:23-4.20 as Departmental fees, and which shall be as follows:

- (1) Building subcode: 40 percent;
- (2) Fire subcode: 20 percent;
- (3) Plumbing subcode: 20 percent;
- (4) Electrical subcode: 20 percent;

3. Sign fees shall be charged as follows:

i. Where a private onsite agency performs one or more subcode services for signs or billboards, the amount charged to the municipality by the private agency shall be as follows:

(1) Building subcode: The sign fees set forth at N.J.A.C. 5:23-4.20 as Departmental fees.

(2) Electrical subcode: The fees for electrical fixtures and devices set forth at N.J.A.C. 5:23-4.20 as Departmental fees.

4. Fees for certificates of occupancy and certificates of continued occupancy charged to the municipality by the private agency shall be the following portions of the fees for a certificate of occupancy and certificate of continued occupancy set forth at N.J.A.C. 5:23-4.20 as Departmental fees:

- i. Building subcode: 40 percent;
  - ii. Fire subcode: 20 percent;
  - iii. Plumbing subcode: 20 percent; and
  - iv. Electrical subcode: 20 percent.
5. (No change in text.)

5:23-4.19 State of New Jersey training fees

(a) (No change.)

(b) Amount: This fee shall be in the amount of \$0.0014 per cubic foot volume of new construction. Volume shall be computed in accordance with N.J.A.C. 5:23-2.28.

1. (No change.)
- (c) (No change.)

5:23-4.20 Departmental fees

(a) General:

1.-4. (No change.)

5. Newly constructed residential units that are to be legally restricted to occupancy by households of low or moderate income shall be exempted from the fees set forth in (b) and (c) below and otherwise payable to the Department.

(b) Departmental plan review fee: The fees listed in (c) below shall be in addition to a Departmental plan review surcharge in the amount of 30 percent of each listed fee. Where the Department performs plan review only, the plan review fee shall be in the amount of 20 percent of the new construction permit fee which would be charged by the Department pursuant to these regulations. The minimum fee shall be \$33.00.

(c) Departmental (enforcing agency) fees:

1. (No change.)

2. The basic construction fee shall be the sum of the parts computed on the basis of the volume or cost of construction, the number of plumbing fixtures and pieces of equipment, the number of electrical fixtures and devices and the number of sprinklers, standpipes, and detectors (smoke and heat) at the unit rates provided herein plus any special fees. The minimum fee for a basic construction permit covering any or all of building, plumbing, electrical or fire protection work shall be \$33.00.

i. Building volume or cost: The fees for new construction or alteration are as follows:

(1) Fees for new construction shall be based upon the volume of the structure. Volume shall be computed in accordance with N.J.A.C. 5:23-2.28. The new construction fee shall be in the amount of \$0.019 per cubic foot of volume for buildings and structures of all use groups and types of construction as classified and defined in articles 3 and 4 of the building subcode; except that the fee shall be \$0.011 per cubic foot of volume for use groups A-1, A-2, A-3, A-4, F-1, F-2, S-1 and S-2, and the fee shall be \$0.0005 per cubic foot for structures on farms, including commercial farm buildings under N.J.A.C. 5:23-3.2(d), \*[used exclusively for the storage of food or grain, or the sheltering of livestock,]\* with the maximum fee for such structures on farms not to exceed \$815.00.

(2) Fees for renovations, alterations and repairs shall be based upon the estimated cost of the work. The fee shall be in the amount of \$17.00 per \$1,000. From \$50,001 to and including \$100,000, the

additional fee shall be in the amount of \$13.00 per \$1,000 of estimated cost above \$50,000. Above \$100,000, the additional fee shall be in the amount of \$11.00 per \$1,000 of estimated cost above \$100,000. For the purpose of determining estimated cost, the applicant shall submit to the Department such cost data as may be available produced by the architect or engineer of record, or by a recognized estimating firm, or by the contractor. A bona fide contractor's bid, if available, shall be submitted. The Department shall make the final decision regarding estimated cost.

(3)-(4) (No change.)

ii. Plumbing fixtures and equipment: The fees shall be as follows:

(1) The fee shall be \$7.00 per fixture connected to the plumbing system for all fixtures and appliances except as listed in (c)2ii(2) below.

(2) The fee shall be \$46.00 per special device for the following: grease traps, oil separators, water-cooled air conditioning units, refrigeration units, utility service connections, back flow preventers, steam boilers, hot water boilers (excluding those for domestic water heating), gas piping, gas service entrances, active solar systems, sewer pumps, interceptors and fuel oil piping.

iii. Electrical fixtures and devices: The fees shall be as follows:

(1) (No change.)

(2) For each motor or electrical device greater than one horsepower and less than or equal to 10 horsepower; and for transformers and generators greater than 1 kilowatt and less than or equal to 10 kilowatts, the fees shall be \$7.00.

(3) For each motor or electrical device greater than 10 horsepower and less than or equal to 50 horsepower; for each service panel, service entrance or sub panel less than or equal to 200 amperes; and for all transformers and generators greater than 10 kilowatts and less than or equal to 45 kilowatts, the fee shall be \$33.00.

(4) For each motor or electrical device greater than 50 horsepower and less than or equal to 100 horsepower; for each service panel, service entrance or sub panel greater than 200 amperes and less than or equal to 1,000 amperes; and for transformers and generators greater than 45 kilowatts and less than or equal to 112.5 kilowatts, the fee shall be \$65.00.

(5) For each motor or electrical device greater than 100 horsepower; for each service panel, service entrance or sub panel greater 1,000 amperes; and for each transformer or generator greater than 112.5 kilowatts, the fee shall be \$325.00.

(6) For the purpose of computing these fees, all motors except those in plug-in appliances shall be counted, including control equipment, generators, transformers and all heating, cooking or other devices consuming or generating electrical current.

iv. Fire protection and other hazardous equipment: sprinklers, standpipes, detectors (smoke and heat) pre-engineered suppression systems, gas and oil fired appliances not connected to the plumbing system, kitchen exhaust systems, incinerators and crematoriums:

(1) The fee for 20 or fewer heads or detectors shall be \$46.00; for 21 to and including 100 heads or detectors, the fee shall be \$85.00; for 101 to and including 200 heads or detectors, the fee shall be \$163.00; for 201 to and including 400 heads or detectors, the fee shall be \$423.00; for 401 to and including 1,000 heads or detectors, the fee shall be \$585.00; for over 1,000 heads or detectors, the fee shall be \$748.00. In computing fees for heads and detectors, the number of each shall be counted separately and two fees, one for heads and one for detectors, shall be charged.

(2) The fee for each standpipe shall be \$163.00.

(3) The fee for each independent pre-engineered system shall be \$65.00.

(4) The fee for each gas or oil fired appliance which is not connected to the plumbing system shall be \$33.00.

(5) The fee for each kitchen exhaust system will be \$33.00.

(6) The fee for each incinerator shall be \$260.00.

(7) The fee for each crematorium shall be \$260.00.

3. Elevators: The fee for a permit to install an elevator shall be \$260.00.

4. Certificates and other permits: The fees are as follows.

i. The fee for a demolition or removal permit shall be \$46.00 for a structure of less than 5,000 square feet in area and less than 30 feet in height, for one or two-family residences (use group R-3 of the building subcode), and structures on farms including commercial farm buildings under N.J.A.C. 5:23-3.2(d) \*[used exclusively for storage of food or grain, or sheltering of livestock,]\* and \$85.00 for all other use groups.

ii. The fee for a permit to construct a sign shall be in the amount of \$0.85 per square foot surface area of the sign, computed on one side only for double-faced signs. The minimum fee shall be \$33.00.

iii. The fee for a certificate of occupancy shall be in the amount of 10 percent of the new construction permit fee which would be charged by the Department pursuant to these regulations. The minimum fee shall be \$85.00, except for one or two-family (use group R-3 of the building subcode) structures of less than 5,000 square feet in area and less than 30 feet in height, and structures on farms, including commercial farm buildings subject to N.J.A.C. 5:23-3.2(d), \*[used exclusively for storage of food or grain, or sheltering or livestock,]\* for which the minimum fee shall be \$46.00.

iv. The fee for a certificate of occupancy granted pursuant to a change of use group shall be \$124.00.

v. The fee for certificate of continued occupancy shall be \$85.00.

vi. There shall be no fee for a temporary certificate of occupancy.

vii. The fee for a certificate of approval certifying that work done under a construction permit has been satisfactorily completed shall be \$20.00.

viii. The fee for plan review of a building for compliance under the alternate systems and non-depletable energy source provisions of the energy subcode shall be \$195.00 for one and two-family homes, and for light commercial structures having the indoor temperature controlled from a single point, and \$975.00 for all other structures.

ix. The fee for an application for a variation in accordance with N.J.A.C. 5:23-2.10 shall be \$423.00 for class I structures and \$85.00 for class II and class III structures. The fee for resubmission of an application for a variation shall be \$163.00 for class I structures and \$46.00 for class II and class III structures.

5. Periodic inspections: Fees for the periodic Departmental reinspection of equipment and facilities granted a certificate of approval for a specified duration in accordance with N.J.A.C. 5:23-2.23 shall be as follows:

i. For elevators, escalators and moving walks requiring reinspection every six months, the fee shall be \$65.00, except for each five-year inspection and witnessing of tests on elevators, for which the fee shall be \$208.00.

ii. For dumbwaiters requiring reinspection every 12 months, the fee shall be \$26.00.

iii. For cross connections and backflow preventers that are subject to testing, requiring reinspection every three months, the fee shall be \$33.00 for each device when they are tested (thrice annually) and \$85.00 for each device when they are broken down and tested (once annually).

6. Annual permits: The fee to be charged for an annual construction permit shall be charged annually. This fee shall be a flat fee based upon the number of maintenance workers who are employed by the facility, and who are primarily engaged in work that is governed by a subcode. Managers, engineers and clericals shall not be considered maintenance workers for the purpose of establishing the annual construction permit fee. Annual permits may be issued for building/fire protection, electrical and plumbing. Fees shall be as follows:

i. 1-25 workers (including foreman) \$425.00/worker; each additional worker over 25 \$165.00/worker.

ii. Prior to the issuance of the annual permit, a training registration fee of \$100.00 per subcode shall be submitted by the applicant to the Department of Community Affairs, Construction Code Element, Training Section along with a copy of the construction permit (Form F-170). Checks shall be made payable to "Treasurer, State of New Jersey".

5:26-2.3 Requests for exemptions

(a) Any person who believes that a planned real estate development or retirement community may be exempt from the provisions

of the Act, or who is contemplating a planned real estate development or retirement community which he believes may be exempt, may apply to the Director for a Letter of exemption. Such application shall be in writing and shall list the reasons why such planned real estate development or retirement community, or proposed planned real estate development or retirement community, may be exempt from the Act. An application for exemption pursuant to N.J.A.C. 5:26-2.2(a) shall be accompanied by a fee of \$104.00.

1. No fee shall be charged for any development consisting entirely of units legally restricted to occupancy by households of low or moderate income.

(b)-(e) (No change.)

5:26-2.4 Application for registration; submission and fees

(a) An application for registration shall consist of a statement containing the items set forth in N.J.A.C. 5:26-3 and shall be submitted in the manner and form as provided therein together with the filing fee in the amount of \$1,000.00 plus \$100.00 per lot, parcel, unit or interest, made payable to the Treasurer, State of New Jersey. In the event lots, parcels, units or interests are added during registration, an additional fee of \$100.00 per lot, parcel, unit or interest shall be paid. There shall be no refunds for deletions.

1. No fee shall be charged for units legally restricted to occupancy by households of low or moderate income.

(b) (No change.)

(a)

**NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY**

**Sale of Projects Owned by Nonprofit Corporations to Limited Partnerships**

**Adopted New Rule: N.J.A.C. 5:80-6.8**

**Adopted Amendments: N.J.A.C. 5:80-6.1, 6.5 and 6.6**

Proposed: June 5, 1989 at 21 N.J.R. 1509(b).

Adopted: August 31, 1989 by the Board of Directors of the New Jersey Housing and Mortgage Finance Agency,

Arthur J. Maurice, Executive Director/Secretary.

Filed: September 11, 1989 as R.1989 d.524, **without change.**

Authority: N.J.S.A. 55:14K-5g.

Effective Date: October 2, 1989.

Expiration Date: May 20, 1990.

**Summary of Public Comments and Agency Responses:**

Comments from three individuals/entities were received by the Agency. One comment expressed support for the amendments. The substance of the other two comments with the agency responses are as follows:

COMMENT: Commenter expressed general support for the expanded use of DCE/CDE funds but also expressed concern over their interpretation that the amendments would permit use of such funds by the Agency without the housing sponsor's approval.

RESPONSE: Agency staff believes the commenter has misinterpreted the intent of the amendments. The amendments expand the current permissible uses of DCE/CDE funds to include the development of additional housing. As with any use of DCE/CDE funds, the decision is that of the housing sponsor, subject to Agency approval. In no case can the Agency unilaterally use such funds without the consent of the housing sponsor. The Agency believes N.J.A.C. 5:80-6.8 clearly expresses those intentions and does not believe any changes to this section are warranted.

COMMENT: Commenter stated that the amendments "fail to consider the realities of today's world." However, the Commenter did not give any details or specificity as to how the amendments "failed" to do so.

RESPONSE: Agency staff undertook a study of all Agency projects with such accounts. It determined that many of those projects had DCE/CDE accounts with significant funds which were not being used. Agency staff believes it has considered the realities of today's world by permitting sponsors to make use of such funds for additional housing, at a time where funding sources for new housing are scarce. Accordingly, the Agency does not believe any changes to the rules are warranted.

Full text of the adoption follows.

## 5:80-6.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

...  
 "Multi-Family Rental Investment Program" means the program funded through the use of Agency administrative funds and through payments as provided by N.J.A.C. 5:80-6.4 for the purpose of providing loans to rental projects meeting low and moderate income housing needs.

...  
 "Portfolio Reserve Account" (PRA) means that fund established by the Agency for the primary purpose of funding debt service arrearages, and other operating deficits or capital improvements of any project financed by the Agency that cannot fund these items from normal project income. Funds deposited in the PRA and the investment income earned thereon will be available for use by the Agency for the aforesaid purposes.

...  
 "Surplus cash" means funds, including funds in the DCE and CDE accounts, available after payment of equity distributions, project expenses, operating deficits, including the full funding of all required reserve accounts and proposed capital improvements plus:

1. Two to six months of the annual budgeted project expense for senior citizen projects; or
2. Four to 12 months of the annual budgeted project expense for family projects.

## 5:80-6.5 Use of funds with regard to projects subsidized under Section 8.

(a) While the primary reason for permitting the sale and syndication of Section 8 projects is to insure financial viability of the project, a large portion of the proceeds will be available to the nonprofit to finance community activities. Accordingly, after payment of the amounts required under N.J.A.C. 5:80-6.4, the proceeds of the transaction shall be disbursed in the following manner:

1. There shall be deposited into a Development Cost Escrow (DCE) for the project those funds remaining after transaction costs are deducted from 60 percent of the cash proceeds or the stated equity amount whichever is greater. With the approval of the Agency, the DCE shall be used to fund debt service arrearages and other operating deficits at the project including appropriate funding of required reserve accounts, as determined by the Agency, and for such other purposes as may be approved by the Agency as will improve the financial viability or physical structure of the project, or increase tenant safety and comfort.
2. (No change.)

## 5:80-6.6 Use of funds with regard to projects subsidized under Section 236 Interest Reduction Program

(a) (No change.)  
 (b) All cash proceeds received on the sale of a development subsidized under Section 236 shall, after payments required by N.J.A.C. 5:80-6.4, be deposited into a Project Subsidy Reserve (PSR). The income and principal on the PSR may be utilized in the following manner:

- 1.-3. (No change.)
4. After the nonprofit has demonstrated, based on information required under N.J.A.C. 5:80-6.4(a)6, that the funds in the PSR are not required for any of the purposes listed in (b)1-3 above and will not be required for the foreseeable future, it may request that a portion of these funds or the investment income on these funds be deposited into a CDE as described in N.J.A.C. 5:80-6.5.

## 5:80-6.8 Use of DCE and CDE for development of housing

(a) In addition to uses permitted under N.J.A.C. 5:80-6.5, 6.6, and 6.7, housing sponsors, or the authorized entity with the housing sponsor's organizational structure with financial control over the DCE/CDE accounts, may, with Agency approval, use DCE and CDE funds, and interest thereon, for the development, operation, maintenance, construction, rehabilitation or improvement of or investment in additional housing within the community or in other

communities. DCE and CDE funds may only be used for such purposes if the Agency determines that DCE and CDE funds are not needed to insure the financial viability or physical structure of the project. This includes, but is not limited to, a finding by the Agency that the project has surplus cash and that DCE and CDE funds are not needed for providing an additional source of operating revenue to assist in financing any other aspect of the current or future operations of the project.

(b) Housing sponsor's, or the authorized entity within the housing sponsor's organizational structure with financial control over the DCE/CDE accounts, may use DCE and CDE funds as specified in (a) above or may deposit DCE and CDE funds with the Agency to be used by the Agency or by the Agency in conjunction with other developers for the purposes and under the conditions outlined in (a) above.

5:80-6.9 to 6.12 (No change in text.)

## (a)

**NEW JERSEY COUNCIL ON AFFORDABLE HOUSING****Substantive Rules****Controls on Affordability: Uniform Deed Restrictions and Liens****Adopted New Rule: N.J.A.C. 5:92-12 Appendix**

Proposed: July 17, 1989 at 21 N.J.R. 1988(a).

Adopted: September 6, 1989 by the New Jersey Council on Affordable Housing, Arthur J. Maurice, Chairman.

Filed: September 14, 1989 as R.1989 d.527, **with a substantive change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 52:27D-301 et seq.

Effective Date: October 2, 1989.

Expiration Date: June 16, 1991.

**Summary of Public Comments and Agency Responses:**

COMMENT: At what point does N.J.A.C. 5:92-12, the deed restriction and lien become effective?

RESPONSE: It becomes effective immediately upon publication of the adoption (October 2, 1989). It applies to all newly constructed sales units immediately unless PRED has already issued an order of registration of a public offering statement. This exception is being made so that developers do not have to modify their public offering statements and because households that have entered into agreements for affordable and market units have done so under conditions that preceded this regulation. For those affordable housing units not immediately impacted, the Council's deed restriction and lien shall become effective (replace the previous deed restriction) upon a change in title, if that change occurs during the period of controls as defined in the original deed restrictions.

COMMENT: Does the requirement of a notice of intent to sell apply to the original developers of low or moderate income units?

RESPONSE: No. The requirement applies to subsequent sales (resales).

COMMENT: Does Section VIII-M of the Affordable Housing Agreement apply to the original developer of low and moderate income units?

RESPONSE: No. Section VIII-M, like the remainder of Section VIII, refers to the responsibilities of people who have purchased affordable housing units from the original owner or from a previous income qualified owner.

COMMENT: The language following the first sentence in Paragraph 3 under Borrower's promises of the Second Repayment Mortgage is confusing. The Council should clarify its meaning or delete the language.

RESPONSE: A change is being made by the deletion of the second sentence in paragraph 3 under the Section entitled "Borrower's Promises". The substantive intention behind this paragraph is to have the Borrower agree to pay all liens, taxes, assessments and other governmental charges on the mortgaged property. That obligation is clearly stated in the first sentence.

The second sentence was meant to clarify one aspect of the Borrower's obligations, as stated in the first sentence. When a Borrower secures a

mortgage on a property, their equity in the property may be less than the assessed value of the property for real estate tax purposes. In such cases the Borrower may not claim any deduction from the tax assessed value of the property, due to the amount of the mortgage. Although the second sentence was intended to cover this one aspect, that intention is not clear on its face. The sentence is somewhat confusing and is therefore being deleted. Its deletion will not enable Borrowers to now claim a deduction from the tax assessed value by the mortgage amount, as Borrowers are precluded under general tax laws from claiming any such deduction. Accordingly, its deletion will not affect the substantive intention behind paragraph 3 (that is, the Borrower's obligation to pay taxes and other government charges), as that obligation is still clearly expressed in the first sentence.

Full text of the adoption follows (deletion from proposal indicated in brackets with asterisks \*[thus]\*):

STATE OF NEW JERSEY  
COUNCIL ON AFFORDABLE HOUSING  
AFFORDABLE HOUSING AGREEMENT

Prepared by:  
\_\_\_\_\_

A DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS

This AGREEMENT is entered into on this \_\_\_\_ day of \_\_\_\_\_, between \_\_\_\_\_ owner of the properties designated in Section II PROPERTY DESCRIPTION, hereafter "OWNER", and \_\_\_\_\_ hereafter "AUTHORITY", both parties having agreed that the covenants, conditions and restrictions contained herein shall be imposed on the Affordable Housing unit described in Section II PROPERTY DESCRIPTION for a period of at least \_\_\_\_\_ years beginning on \_\_\_\_\_ and ending at the first non-exempt transfer of title after \_\_\_\_\_ unless extended by municipal resolution as described in Section III TERM OF RESTRICTION.

WHEREAS, municipalities within the State of New Jersey are required by the Fair Housing Act (P.L. 1985, c.222) hereinafter "Act", to provide for their fair share of housing that is affordable to households with low or moderate incomes in accordance with provisions of the Act; and

WHEREAS, the Act requires that municipalities ensure that such designated housing remains affordable to low and moderate income households for a minimum period of at least 6 years; and

WHEREAS, the Act establishes the Council on Affordable Housing (hereinafter "Council") to assist municipalities in determining a realistic opportunity for the planning and development of such affordable housing; and

WHEREAS, pursuant to the Act, the housing unit (units) described in Section II PROPERTY DESCRIPTION hereafter and/or an attached Exhibit A of this Agreement has (have) been designated as low and moderate income housing as defined by the Act; and

WHEREAS, the purpose of this Agreement is to ensure that the described housing units (unit) remain(s) affordable to low and moderate income-eligible households for that period of time described in Section III TERM OF RESTRICTIONS.

NOW, THEREFORE, it is the intent of this Agreement to ensure that the affordability controls are contained directly in the property deed for the premises and incorporated into and recorded with the property deed so as to bind the owner of the described premises and notify all future purchasers of the housing unit that the housing unit is encumbered with affordability controls; and by entering into this Agreement, the Owner of the described premises agrees to restrict the sale of the housing unit to low and moderate income-eligible households at a maximum resale price determined by the Authority for the specified period of time.

## I. DEFINITIONS

For purposes of this Agreement, the following terms shall be defined as follows:

"Affordable Housing" shall mean residential units that have been restricted for occupancy by Households whose total Gross Annual Income is measured at less than 80% of the median income level established by an authorized income guideline for geographic region and family size.

"Agency" shall mean the New Jersey Housing and Mortgage Finance Agency established by L. 1983, c.530 (C. 55:14K-1 et seq.).

"Agreement" shall mean this written Affordable Housing Agreement between the Authority and the owner of an Affordable Housing unit which places restrictions on Affordable Housing units so that they remain affordable to and occupied by Low and Moderate Income-Eligible Households for the period of time specified in this agreement.

"Assessments" shall mean all taxes, levies or charges, both public and private, including those charges by any condominium, cooperative or homeowner's association as the applicable case may be, imposed upon the Affordable Housing unit.

"Authority" shall mean the administrative organization designated by municipal ordinance for the purpose of monitoring the occupancy and resale restrictions contained in this Affordable Housing Agreement. The Authority shall serve as an instrument of the municipality in exercising the municipal rights to the collection of funds as contained in this Agreement.

"Base Price" shall mean the initial sales price of a unit produced for or designated as owner-occupied Affordable Housing.

"Council" shall mean the Council on Affordable Housing (COAH) established pursuant to the Fair Housing Act, N.J.S.A. 52:27D-301 et seq.

"Certified Household" shall mean any eligible Household whose estimated total Gross Annual Income has been verified, whose financial references have been approved and who has received written certification as a Low or Moderate Income-Eligible Household from the Authority.

"Department" shall mean the New Jersey State Department of Community Affairs.

"Exempt Transaction" shall mean the following "non-sales" title transactions: (1) Transfer of ownership between husband and wife; (2) Transfer of ownership between former spouses ordered as a result of a judicial decree of divorce or judicial separation (but not including sales to third parties); (3) Transfer of ownership through an Executor's deed to a Class A Beneficiary; and, (4) Transfer of ownership by court order. All other title transfers shall be deemed non-exempt.

"Fair Market Price" shall mean the unrestricted price of a low or moderate income housing unit if sold at a current real estate market rate.

"First Purchase Money Mortgage" shall mean the most senior mortgage lien to secure repayment of funds for the purchase of an Affordable Housing unit providing that such mortgage is not in excess of the applicable maximum allowable resale price and is payable to a valid First Purchase Money Mortgagee.

"First Purchase Money Mortgagee" shall mean an institutional lender or investor, licensed or regulated by the Federal or a State government or any agency thereof, which is the holder and/or assigns of the First Money Mortgage.

"Foreclosure" shall mean the termination through legal processes of all rights of the mortgagor or the mortgagor's heirs, successors, assigns or grantees in a restricted Affordable Housing unit covered by a recorded mortgage.

"Gross Annual Income" shall mean the total amount of all sources of a Household's income including, but not limited to salary, wages, interest, tips, dividends, alimony, pensions, social security, business and capital gains, tips and welfare benefits. Generally, gross annual income will be based on those sources of income reported to the Internal Revenue Service (IRS) and/or that can be utilized for the purpose of mortgage approval.

"Hardship Waiver" shall mean an approval by the Authority at a non-exempt transfer of title to sell an affordable unit to a household that exceeds the income eligibility criteria after the Owner has demonstrated that no Certified Household has signed an agreement to

purchase the unit. The Owner shall have marketed the unit for 90 days after a Notice of Intent to Sell has been received by the Authority and the Authority shall have 30 days thereafter to approve a Hardship Waiver. The Hardship Waiver shall permit a low income unit to be sold to a moderate income household or a moderate income unit to be sold to a household whose income is at 80% or above the applicable median income guide. The Hardship Waiver is only valid for a single sale.

"Household" shall mean the person or persons occupying a housing unit.

"Index" shall mean the measured percentage of change in the median income for a Household of four by geographic region using the income guideline approved for use by Council.

"Low Income Household" shall mean a Household whose total Gross Annual Income is equal to 50% or less of the median gross income figure established by geographic region and household size using the income guideline approved for use by Council.

"Moderate Income Household" shall mean a Household whose total Gross Annual Income is equal to more than 50% but less than 80% of the median gross income established by geographic region and household size using the income guideline approved for use by Council.

"Owner" shall mean the title holder of record as same is reflected in the most recently dated and recorded deed for the particular Affordable Housing unit. For purposes of the initial sales or rentals of any Affordable Housing unit, Owner shall include the developer/owner of such Affordable Housing units. Owner shall not include any co-signer or co-borrower on any First Purchase Money Mortgage unless such co-signer or co-borrower is also a named title holder of record of such Affordable Housing unit.

"Price Differential" shall mean the total amount of the restricted sales price that exceeds the maximum restricted resale price as calculated by the Index after reasonable real estate broker fees have been deducted. The unrestricted sales price shall be no less than a comparable fair market price as determined by the Authority at the time a Notice of Intent to Sell has been received from the Owner.

"Primary Residence" shall mean the unit wherein a Certified Household maintains continuing residence for no less than nine months of each calendar year.

"Purchaser" shall mean a Certified Household who has signed an agreement to purchase an Affordable Housing unit subject to a mortgage commitment and closing.

"Repayment" shall mean the Owner's obligation to the municipality for payment of 95% of the price differential between the maximum allowable resale price and the fair market selling price which has accrued to the Affordable unit during the restricted period of resale at the first non-exempt sale of the property after restrictions have ended as specified in the Affordable Housing Agreement.

"Repayment Mortgage" shall mean the second mortgage document signed by the Owner that is given to the municipality as security for the payment due under the Repayment Note.

"Repayment Note" shall mean the second mortgage note signed by the owner that requires the repayment to the municipality of 95% of the price differential which has accrued to the low or moderate income unit during the period of resale controls at the first non-exempt sale of the property after restrictions have ended as specified in the Affordable Housing Agreement.

"Resale Price" shall mean the Base Price of a unit designated as owner-occupied affordable housing as adjusted by the Index. The resale price may also be adjusted to accommodate an approved home improvement.

"Total Monthly Housing Costs" shall mean the total of the following monthly payments associated with the cost of an owner-occupied Affordable Housing unit including the mortgage payment (principal, interest, private mortgage insurance), applicable assessments by any homeowners, condominium, or cooperative associations, real estate taxes, and fire, theft and liability insurance.

II. PROPERTY DESCRIPTION

This agreement applies to the Owner's interest in the real property commonly known as:

Block \_\_\_\_\_ Lot \_\_\_\_\_ Municipality \_\_\_\_\_  
County \_\_\_\_\_ # of Bedrooms \_\_\_\_\_  
Complete Street Address & Unit # \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

If additional Affordable Housing units are to be covered by this Agreement, a description of each additional unit is attached as Exhibit A and is incorporated herein.

III. TERM OF RESTRICTIONS

A. The terms, restrictions and covenants of this Affordable Housing Agreement shall begin on the later of the date a Certificate of Occupancy is issued or the date on which closing and transfer of title takes place for initial ownership.

B. The terms, restrictions and covenants of this Affordable Housing Agreement shall terminate upon the occurrence of either of the following events:

1. At the first non-exempt sale after 10 (ten) years from the beginning date established pursuant to Paragraph A above for units located in municipalities receiving State Aid pursuant to P.L. 1978, L.14 (N.J.S.A. 52:27D-178 et seq.) that exhibit one of the characteristics delineated in N.J.A.C. 5:92-5.3(b); or at the first non-exempt sale after 20 (twenty) years from the beginning date established pursuant to Paragraph A above for units located in all other municipalities; or

2. The date upon which the event set forth in Section IX FORECLOSURE herein shall occur.

C. The terms, restrictions and covenants of this Affordable Housing Agreement may be extended by municipal resolution as provided for in N.J.A.C. 5:92.1 et seq. Such municipal resolution shall provide for a period of extended restrictions and shall be effective upon filing with the Council and the Authority. The municipal resolution shall specify the extended time period by providing for a revised ending date. An amendment to the Affordable Housing Agreement shall be filed with the recording office of the county in which the Affordable Housing unit or units is/are located.

D. At the first non-exempt title transaction after the established ending date, the Authority shall execute a document in recordable form evidencing that the Affordable Housing unit has been released from the restrictions of this Affordable Housing Agreement.

IV. RESTRICTIONS

A. The Owner of an owner-occupied Affordable Housing unit for sale shall not sell the unit at a Resale Price greater than an established Base Price plus the allowable percentage of increase as determined by the Index applicable to the municipality in which the unit is located.

B. The Owner shall not sell the Affordable Housing unit to anyone other than a Purchaser who has been certified utilizing the income verification procedures established by the Authority to determine qualified Low and Moderate Income-Eligible Households.

C. An Owner wishing to enter a transaction that will terminate controls as specified heretofore in Section III TERM OF RESTRICTIONS shall be obligated to provide a Notice of Intent to Sell to the Authority and the Council. An option to buy the unit at the maximum restricted sales price as calculated by the Index shall be made available to the Municipality, the Department, the Agency, or a qualified non-profit organization as determined by the Council for a period of ninety (90) days from the date of delivery of the Notice of Intent to Sell. The option to buy shall be by certified mail and shall be effective on the date of mailing to the Owner.

1. If the option to buy is not exercised within ninety (90) days pursuant to Paragraph C above, the Owner may elect to sell the unit to a certified income-eligible household at the maximum restricted sales price as calculated by the Index provided the unit continues to be restricted by an Affordable Housing Agreement and a Repayment Lien for a period of up to twenty (20) years.

2. Alternately, the Owner may also elect to sell to any purchaser at a fair market price. In this event, the Owner shall be obligated

to pay the municipality 95% of the Price Differential generated at the time of closing and transfer of title of the Affordable Housing unit after restrictions have ended as specified heretofore in Section III TERM OF RESTRICTIONS.

3. If the Owner does not sell the unit within one (1) year of the date of delivery of the Notice of Intent to Sell, the option to buy shall be restored to the municipality and subsequently to the Department, the Agency or a Non-Profit approved by the Council. The Owner shall then be required to submit a new Notice of Intent to Sell the affordable unit to the Authority.

D. The Affordable Housing unit shall be sold in accordance with all rules, regulations, and requirements duly promulgated by the Council (N.J.A.C. 5:92-1 et seq.), the intent of which is to ensure that the Affordable Housing unit remains affordable to and occupied by Low and Moderate Income-Eligible Households throughout the duration of this Agreement.

#### V. REQUIREMENTS

A. This Agreement shall be recorded with the recording office of the county in which the Affordable Housing unit or units are located. The Agreement shall be filed no earlier than the recording of an applicable Master Deed and no later than the closing date of the initial sale.

B. When a single Agreement is used to govern more than one Affordable Housing unit, the Agreement shall contain a description of each Affordable Housing unit governed by the Agreement as described in Section II PROPERTY DESCRIPTION and/or Exhibit A of the Agreement and an ending date to be imposed on the unit as described in Section III TERM OF RESTRICTIONS of the Agreement.

C. A Repayment Mortgage and a Repayment Note shall be executed between the Owner and the municipality wherein the unit(s) is(are) located at the time of closing and transfer of title to any purchaser of an Affordable Housing Unit. The Repayment Mortgage shall provide for the repayment of 95% of the Price Differential at the first non-exempt transfer of title after the ending date of restrictions as specified in Section III TERM OF RESTRICTIONS. The Repayment Mortgage shall be recorded with the records office of the County in which the unit is located.

#### VI. DEEDS OF CONVEYANCE AND LEASE PROVISIONS

All Deeds of Conveyance and Contracts to Purchase from all Owners to Certified Purchasers of Affordable Housing units shall include the following clause in a conspicuous place.

"The Owner's right, title and interest in this unit and the use, sale, resale and rental of this property are subject to the terms, conditions, restrictions, limitations and provisions as set forth in the AFFORDABLE HOUSING AGREEMENT dated \_\_\_\_\_ which was filed in the Office of the Clerk of \_\_\_\_\_ County in Misc. Book \_\_\_\_\_ at Page \_\_\_\_\_ on \_\_\_\_\_ and is also on file with the Authority".

Any Master Deed that includes an Affordable Housing unit shall also reference the affordable unit and the Affordable Housing Agreement and any variation in services, fees, or other terms of the Master Deed that differentiates the affordable unit from all other units covered in the Master Deed.

#### VII. COVENANTS RUNNING WITH LAND

The provisions of this Affordable Housing Agreement shall constitute covenants running with the land with respect to each Affordable Housing unit affected hereby, and shall bind all Purchasers and Owners of each Affordable Housing unit, their heirs, assigns and all persons claiming by, through or under their heirs, executors, administrators and assigns for the duration of this Agreement as set forth herein.

#### VIII. OWNER RESPONSIBILITIES

In addition to fully complying with the terms and provisions of this Affordable Housing Agreement, the Owner acknowledges the following responsibilities:

A. Affordable Housing units shall at all times remain the Primary Residence of the Owner. The Owner shall not rent any Affordable

Housing unit to any party whether or not that party qualifies as a Low or Moderate income household without prior written approval from the Authority.

B. All home improvements made to an Affordable Housing Unit shall be at the Owner's expense except that expenditures for any alteration that allows a unit to be resold to a larger household size because of increased capacity for occupancy shall be considered for a recalculation of Base Price. Owners must obtain prior approval for such alteration from the Authority to qualify for this recalculation.

C. The Owner of an Affordable Housing unit shall keep the Affordable Housing unit in good repair.

D. Owners of Affordable Housing units shall pay all taxes, charges, assessments or levies, both public and private, assessed against such unit, or any part thereof, as and when the same become due.

E. Owners of Affordable Housing units shall notify the Authority in writing no less than ninety (90) days prior to any proposed sale of an intent to sell the property. Owners shall not execute any purchase agreement, convey title or otherwise deliver possession of the Affordable Housing unit without the prior written approval of the Authority.

F. An Owner shall request referrals of eligible households from pre-established referral lists maintained by the Authority.

G. If the Authority does not refer an eligible household within sixty (60) days of the Notice of Intent to Sell the unit or no Agreement to Purchase the unit has been executed, the Owner may propose a Contract to Purchase the unit to an eligible household not referred through the Authority. The proposed Purchaser must complete all required Household Eligibility forms and submit Gross Annual Income Information for verification to the Authority for written certification as an eligible sales transaction.

H. At resale, all items of property which are permanently affixed to the unit and/or were included when the unit was originally purchased (e.g. refrigerator, range, washer, dryer, dishwasher, wall to wall carpeting) shall be included in the maximum allowable Resale Price. The Owner must personally certify that all other items of unaffixed personal property to be included in the resale are also included in the maximum allowable Resale Price or sold to the Purchaser at a reasonable price that has been approved by the Authority at the time of signing the Agreement to Purchase. Such transfer of funds shall also be certified by the Purchaser at the time of closing. In no event shall the purchase of any personal property be made a condition of unit resale.

I. The Owner shall not permit any lien, other than the First Purchase Money Mortgage, second mortgages approved by the Authority and liens of the Authority to attach and remain on the property for more than sixty (60) days.

J. If an Affordable Housing unit is part of a condominium, homeowner's or cooperative association, the Owner, in addition to paying any assessments required by the Master Deed of the Condominium or By-laws of an Association, shall further fully comply with all of the terms, covenants or conditions of said Master Deed or By-Laws, as well as fully comply with all terms, conditions and restrictions of this Affordable Housing Agreement.

K. The Owner shall have responsibility for fulfilling all requirements in accordance with and subject to any rules and regulations duly promulgated by the Council (N.J.A.C. 5:92-1 et seq.), for determining that a resale transaction is qualified for a Certificate of Exemption. The Owner shall notify the Authority in writing of any proposed Exempt Transaction and supply the necessary documentation to qualify for a Certificate of Exemption. An Exempt Transaction does not terminate the resale restrictions or existing liens and is not considered a certified sales transaction in calculating subsequent resale prices. A Certificate of Exemption shall be filed with the deed at the time of title transfer.

L. The Owner shall have responsibility for fulfilling all requirements in accordance with and subject to any rules and regulations duly promulgated by the Council (N.J.A.C. 5:92-1 et seq.), for determining that a resale transaction is qualified for a Hardship Waiver. The Owner may submit a written request for a Hardship Waiver if no Certified Household has executed an agreement to purchase within ninety (90) days of notification of an approved resale price

and referral of potential purchasers. Prior to issuing a Hardship Waiver, the Municipality shall have 30 days in which to sign an agreement to purchase the unit at the approved resale price and subsequently rent or convey it to a Certified Household. The Municipality may transfer this option to the Department, the Agency, or a qualified non-profit organization as determined by the Council. For approval of a Hardship Waiver, an Owner must document efforts to sell the unit to an income eligible household. If the waiver is granted, the Owner may offer a low income unit to a moderate income household or a moderate income unit to a household whose income exceeds 80% of the applicable median income guide. The Hardship Waiver shall be filed with the deed at the time of closing and is only valid for the designated resale transaction. It does not affect the resale price. All future resales are subject to all restrictions stated herein.

M. The Owner shall be obligated to pay a reasonable service fee to the Authority at the time of closing and transfer of title in the amount specified by the Authority at the time a restricted resale price has been determined after receipt of a Notice of Intent to Sell. Such fee shall not be included in the calculation of the maximum resale price.

#### IX. FORECLOSURE

The terms and restrictions of this Agreement shall be subordinated only to the first Purchase Money Mortgage lien on the Affordable Housing property and in no way shall impair the First Purchase Money Mortgagee's ability to exercise the contract remedies available to it in the event of any default of such mortgage as such remedies are set forth in the First Purchase Money Mortgage documents for the Affordable Housing unit.

Any Affordable Housing owner-occupied property that is acquired by a First Purchase Money Mortgagee by Deed in lieu of Foreclosure, or by a Purchaser at a Foreclosure sale conducted by the holder of the First Purchase Money Mortgagee shall be permanently released from the restrictions and covenants of this Affordable Housing Agreement. All resale restrictions shall cease to be effective as of the date of transfer of title pursuant to Foreclosure with regard to the First Purchase Money Mortgagee, a lender in the secondary mortgage market including but not limited to the FNMA, Federal Home Loan Mortgage Corporation, GNMA, or an entity acting on their behalf and all subsequent purchasers. Owners and mortgagees of that particular Affordable Housing unit (except for the defaulting mortgagor, who shall be forever subject to the resale restrictions of this Agreement with respect to the Affordable Housing unit owned by such defaulting mortgagor at time of the Foreclosure sale).

Upon a judgment of Foreclosure, the Authority shall execute a document to be recorded in the county recording office as evidence that such Affordable Housing unit has been forever released from the restrictions of this Agreement. Execution of foreclosure sales by any other class of creditor or mortgagee shall not result in a release of the Affordable Housing unit from the provisions and restrictions of this Agreement.

In the event of a Foreclosure sale by the First Purchase Mortgagee, the defaulting mortgagor shall be personally obligated to pay to the Authority any excess funds generated from such Foreclosure sale. For purposes of this agreement, excess funds shall be the total amount paid to the sheriff by reason of the Foreclosure sale in excess of the greater of (1) the maximum permissible Resale Price of the Affordable Housing unit as of the date of the Foreclosure sale pursuant to the rules and guidelines of the Authority and (2) the amount required to pay and satisfy the First Money mortgage, including the costs of Foreclosure plus any second mortgages approved by the Authority in accordance with this Agreement. The amount of excess funds shall also include all payments to any junior creditors out of the Foreclosure sale proceeds even if such were to the exclusion of the defaulting mortgagor.

The Authority is hereby given a first priority lien, second only to the First Purchase Money Mortgagee and any taxes or public assessments by a duly authorized governmental body, equal to the full amount of such excess funds. This obligation of the defaulting mortgagor to pay the full amount of excess funds to the Authority shall be deemed to be a personal obligation of the Owner of record

at time of the Foreclosure sale surviving such sale. The Authority shall be empowered to enforce the obligation of the defaulting mortgagor in any appropriate court of law or equity as though same were a personal contractual obligation of the defaulting mortgagor. Neither the First Purchase Money Mortgagee nor the purchaser at the Foreclosure sale shall be responsible or liable to the Authority for any portion of this excess.

No part of the excess funds, however, shall be part of the defaulting mortgagor's equity.

The defaulting mortgagor's equity shall be determined to be the difference between the maximum permitted Resale Price of the Affordable Housing unit as of the date of the Foreclosure sale as calculated in accordance with this Agreement and the total of the following sums. First Purchase Money Mortgage, prior liens, costs of Foreclosure, assessments, property taxes, and other liens which may have been attached against the unit prior to Foreclosure, provided such total is less than the maximum permitted Resale Price.

If there are Owner's equity sums to which the defaulting mortgagor is properly entitled, such sums shall be turned over to the defaulting mortgagor or placed in an escrow account for the defaulting mortgagor if the defaulting mortgagor cannot be located. The First Purchase Money Mortgagee shall hold such funds in escrow for a period of two years or until such earlier time as the defaulting mortgagor shall make a claim for such. At the end of two years, if unclaimed, such funds, including any accrued interest, shall become the property of the Authority to the exclusion of any other creditors who may have claims against the defaulting mortgagor.

Nothing shall preclude the municipality wherein the Affordable Housing unit is located from acquiring an affordable property prior to foreclosure sale at the approved maximum Resale price and holding, renting or conveying it to a Certified Household if such right is exercised within 90 days after the property is listed for sale and all outstanding obligations to the First Purchase Money Mortgagee are satisfied.

#### X. VIOLATION, DEFAULTS AND REMEDIES

In the event of a threatened breach of any of the terms of this agreement by an Owner, the Authority shall have all remedies provided at law or equity, including the right to seek injunctive relief or specific performance, it being recognized by both parties to this Agreement that a breach will cause irreparable harm to the Authority, in light of the public policies set forth in the Fair Housing Act and the obligation for the provision of low and moderate income housing. Upon the occurrence of a breach of any of the terms of the Agreement by an Owner, the Authority shall have all remedies provided at law or equity, including but not limited to foreclosure, acceleration of all sums due under the mortgage, recoupment of any funds from a sale in violation of the Agreement, injunctive relief to prevent further violation of the Agreement, ethics on the premises, and specific performance.

#### XI. RIGHT TO ASSIGN

The Authority may assign from time to time its rights, and delegate its obligations hereunder without the consent of the Owner. Upon such assignment, the Authority, its successors or assigns shall provide written notice to the Owner.

#### XII. INTERPRETATION OF THIS AGREEMENT

The terms of this Agreement shall be interpreted so as to avoid financial speculation or circumvention of the purposes of the Fair Housing Act for the duration of this Agreement and to ensure, to the greatest extent possible, that the purchase price, mortgage payments and rents of designated Affordable Housing units remain affordable to Low and Moderate Income-Eligible Households as defined herein.

#### XIII. NOTICES

All notices required herein shall be sent by certified mail, return receipt requested as follows:

To the Owner:

At the address of the property stated in SECTION II PROPERTY DESCRIPTION hereof.

To the Authority:
At the address stated below:
Attention:
Or such other address that the Authority, Owner, or municipality may subsequently designate in writing and mail to the other parties.

XIV. SUPERIORITY OF AGREEMENT

Owner warrants that no other Agreement with provisions contradictory of, or in opposition to, the provisions hereof has been or will be executed, and that, in any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations between and among the Owner, the Authority, and their respective successors.

XV. SEVERABILITY

It is the intention of all parties that the provisions of this instrument are severable so that if any provisions, conditions, covenants or restrictions thereof shall be invalid or void under any applicable federal, state or local law, the remainder shall be unaffected thereby.

In the event that any provision, condition, covenant or restriction hereof, is at the time of recording of this instrument, void, voidable or unenforceable as being contrary to any applicable federal, state or local law, both parties, their successors and assigns, and all persons claiming by, through or under them covenant and agree that any future amendments or supplements to the said laws having the effect of removing said invalidity, voidability or unenforceability, shall be deemed to apply retrospectively to this instrument thereby operating to validate the provisions of this instrument which otherwise might be invalid and it is covenanted and agreed that any such amendments and supplements to the said laws shall have the effect herein described as fully as if they had been in effect at the time of the execution of this instrument.

XVI. CONTROLLING LAW

The terms of this Agreement shall be interpreted under the laws of the State of New Jersey.

XVII. OWNER'S CERTIFICATION

The Owner certifies that all information provided in order to qualify as the owner of the property or to purchase the property is true and correct as of the date of the signing of this Agreement.

XVIII. AGREEMENT

A. The Owner and the Authority hereby agree that all Affordable Housing units described herein shall be marketed, sold, and occupied in accordance with the provisions of this Agreement. Neither the Owner nor the Authority shall amend or alter the provisions of this Agreement without first obtaining the approval of the other party except as described in Section III, Paragraph C, TERM OF RESTRICTION. Any such approved amendments or modifications of this Agreement shall be in writing and shall contain proof of approval from the other parties and shall not be effective unless and until recorded with the County Clerk for the County in which the Affordable Housing units are situated.

Dated: \_\_\_\_\_

ATTEST: \_\_\_\_\_
By: \_\_\_\_\_
Signature (Owner)
Signature (Co-Owner)

Dated: \_\_\_\_\_

ATTEST: \_\_\_\_\_
By: \_\_\_\_\_
Signature (Authority)

STATE OF NEW JERSEY )
\_\_\_\_\_ )ss
COUNTY OF \_\_\_\_\_ )

BE IT REMEMBERED, that on this \_\_\_\_ day of \_\_\_\_\_, 198\_\_\_\_, before me, the subscriber, \_\_\_\_\_ personally appeared \_\_\_\_\_ who, being by me duly sworn on his/her oath, deposes and makes proof to my satisfaction, that he/she is the Owner (Co-Owner) named in the within instrument; that is the Affordable Housing Agreement of the described Property; that the execution, as well as the making of this instrument, has been duly authorized and is the voluntary act and deed of said Owner.

Sworn to and subscribed before me,
the date aforesaid.

EXHIBIT A
AFFORDABLE HOUSING AGREEMENT

This Affordable Housing Agreement also applies to the owner's interest in the real properties as further described below:

PROPERTY DESCRIPTION

Block \_\_\_\_\_ Lot \_\_\_\_\_ Municipality \_\_\_\_\_
County \_\_\_\_\_ # of Bedrooms \_\_\_\_\_
Complete Street Address & Unit # \_\_\_\_\_
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

The restrictions contained herein shall be imposed on this Affordable Housing unit for a period of at least \_\_\_\_\_ years beginning on \_\_\_\_\_ and ending at the first non-exempt transfer of title after \_\_\_\_\_ unless extended by municipal resolution as described in Section III TERM OF RESTRICTION.

Please add additional property descriptions as required including individual building or unit numbers for condominiums or townhouse complexes indicating a TERM OF RESTRICTION as applicable.

STATE OF NEW JERSEY
COUNCIL ON AFFORDABLE HOUSING

SECOND REPAYMENT MORTGAGE

Prepared by: \_\_\_\_\_

This Mortgage made on \_\_\_\_\_, 19\_\_\_\_ between \_\_\_\_\_ (referred to as "Borrower" and \_\_\_\_\_ (referred to as the "Authority"), which Authority is an instrumentality of \_\_\_\_\_ (referred to as the "Municipality")

REPAYMENT MORTGAGE NOTE

In consideration of value received by the Borrower in connection with the Property (described below) purchased by the Borrower, the Borrower has signed a note dated \_\_\_\_\_. The Borrower promises to pay the amounts due under the Note and to abide by all promises contained in the Note.

MORTGAGE AS SECURITY

This Mortgage is given to the Authority as security for the payment due and the performance of all promises under the Note. The Borrower mortgages the real estate owned by the Borrower described as follows (referred to as the "Property"):

**ADOPTIONS**

**COMMUNITY AFFAIRS**

All of the land located in the \_\_\_\_\_ of \_\_\_\_\_ County of \_\_\_\_\_ and State of New Jersey, specifically described as follows:

Street Address: \_\_\_\_\_

Lot No.: \_\_\_\_\_ Block No.: \_\_\_\_\_

Also more particularly described as:

Together with:

1. All buildings and other improvement that now are or will be located on the Property.
2. All fixtures, equipment and personal property that now are or will be attached to or used with the land, buildings and improvements of or on the Property.
3. All rights which the Borrower now has or will acquire with regard to the Property.

**BORROWER'S ACKNOWLEDGEMENTS**

1. The Borrower acknowledges and understands that:
  - a) Municipalities within the State of New Jersey are required under the Fair Housing Act and regulations adopted under the authority of the Act to provide for their fair share of housing that is affordable to households of low and moderate income; and
  - b) The Property which is subject to this Mortgage has been designated as housing which must remain affordable to low and moderate income households for at least twenty years unless a shorter time period is authorized in accordance with rules established by any agency having jurisdiction (the "restricted period"); and
  - c) To ensure that such housing, including this Property, remains affordable to low and moderate income households during the restricted period, an Affordable Housing Agreement has been executed by the Borrower that constitutes covenants running with the land with respect to the Property and the Municipality has adopted procedures and restrictions governing the resale of the Property; and
  - d) The Authority to which the Property is mortgaged has been designated by the Municipality to administer the procedures and restrictions governing such housing.

2. The Borrower also acknowledges and understands that the Property has been purchased at a restricted sales price that is less than the fair market value of the Property.

**BORROWER'S PROMISES**

In consideration for the value received in connection with the purchase of the Property at a restricted sales price, the Borrower agrees as follows:

1. The Borrower will comply with all of the terms of the Note and this Mortgage which includes:
  - a) Within the restricted period starting with the date the Borrower obtained title to the Property, the Borrower shall not sell or transfer title to the Property for an amount that exceeds the maximum allowable resale price as established by the Authority. In the event of breach of this promise, Borrower hereby assigns all proceeds in excess of the maximum allowable resale price to the Authority, said assignment to be in addition to any and all rights and remedies the Authority has upon default.
  - b) At the first non-exempt transfer of title of the Property after the ending date of the restricted period, the Borrower agrees to repay 95% of the incremental amount between the maximum allowable resale price and the fair market selling price which has accrued to the Property during the restricted period to the Authority.
2. The Borrower warrants title to the premises (N.J.S.A. 46:9-2). This means the Borrower owns the Property and will defend its ownership against all claims.
3. The Borrower shall pay all liens, taxes, assessments and other governmental charges made against the Property when due. \*[The Borrower will not claim any deduction from the taxable value of the Property because of this Mortgage.]\* The Borrower will not claim any credit against the principal and interest payable under the Note and this Mortgage for any taxes paid on the Property.

4. The Borrower shall keep the Property in good repair, neither damaging nor abandoning it. The Borrower will allow the Authority to inspect the Property upon reasonable notice.

5. The Borrower shall use the Property in compliance with all laws, ordinances and other requirements of any governmental authority.

**CONTROLS ON AFFORDABILITY**

The procedures and restrictions governing resale of the Property have been established pursuant to the Fair Housing Act and the regulations adopted under the authority of the Act, (all collectively referred to as "Controls on Affordability"). Reference is made to the Controls on Affordability for the procedure in calculating the maximum allowable resale price, the method of repayment described in item 1(b) of the section entitled "Borrower's Promises", and the definition of a "restricted sale" for purposes of determining when the Affordability Controls are applicable, and the determination of the restricted period of time.

**RIGHTS GIVEN TO LENDER**

The Borrower, by mortgaging the Property to the Authority, gives the Authority those rights stated in this Mortgage, all rights the law gives to lenders, who hold mortgages, and also all rights the law gives to the Authority and/or Municipality under the Affordability Controls. The rights given to the Authority and the restrictions upon the Property are covenants running with the land. The rights, terms and restrictions in this Mortgage shall bind the Borrower and all subsequent purchasers and owners of the Property, and the heirs and assigns of all of them. Upon performance of the promises contained in the Note and Mortgage, the Authority will cancel this Mortgage at its expense.

**DEFAULT**

The Authority may declare the Borrower in default on the Note and this Mortgage if:

1. The Borrower fails to comply with the provisions of the Affordable Housing Agreement;
2. The Borrower fails to make any payment required by the Note and this Mortgage;
3. The Borrower fails to keep any other promise made in this Mortgage;
4. The ownership of the Property is changed for any reason without compliance with the terms of the Note and Mortgage;
5. The holder of any lien on the Property starts foreclosure proceedings; or
6. Bankruptcy, insolvency or receivership are started by or against any of the Borrowers.

**AUTHORITY'S RIGHTS UPON DEFAULT**

If the Authority declares that the Note and this Mortgage are in default, the Authority shall have, subject to the rights of the First Mortgage, all rights given by law or set forth in this Mortgage.

**NOTICES**

All notices must be in writing and personally delivered or sent by certified mail, return receipt requested, to the addresses given in this Mortgage. Address changes may be made upon notice to the other party.

**NO WAIVER BY AUTHORITY**

The Authority may exercise any right under this Mortgage or under any law, even if the Authority has delayed in exercising that right or has agreed in an earlier instance not to exercise that right. The Authority does not waive its right to declare the Borrower in default by making payments or incurring expense on behalf of the Borrower.

**EACH PERSON LIABLE**

This Mortgage is legally binding upon each Borrower and all who succeed to their responsibilities (such as heirs and executors). The Authority may enforce any of the provisions of the Note and this Mortgage against any one or more of the Borrowers who sign this Mortgage.

SECOND MORTGAGE

The lien on this Mortgage is inferior to and subject to the terms and provisions of the First Mortgage executed contemporaneously herewith.

NO ORAL CHANGES

This Mortgage can only be changed by an agreement in writing signed by both the Borrower and the Authority.

SIGNATURES

The Borrower agrees to the terms of this Mortgage by signing below.

WITNESS: \_\_\_\_\_

TO THE REGISTER OR CLERK, Record and return to:

County: \_\_\_\_\_

This mortgage is fully paid and satisfied. I authorize you to cancel it of Record.

Lender: \_\_\_\_\_

I certify that the Lender's signature is genuine. \_\_\_\_\_

STATE OF NEW JERSEY
COUNCIL ON AFFORDABLE HOUSING
SECOND MORTGAGE REPAYMENT NOTE

\_\_\_\_\_, 1989 \_\_\_\_\_, New Jersey

FOR VALUE RECEIVED \_\_\_\_\_ (referred to as the "Borrower") promises to pay to \_\_\_\_\_ (referred to as the "Authority") an instrumentality of \_\_\_\_\_ (the "Municipality") the amounts specified in this Note and promises to abide by the terms contained below. This mortgage is subordinate to the first mortgage executed contemporaneously herewith.

REPAYMENT MORTGAGE

As security for the payment of amounts due under this Note and the performance of all promises contained in this Note, the Borrower is giving the Authority a Mortgage, dated \_\_\_\_\_. The Mortgage covers real estate (the "Property") owned by the Borrower, the legal description of such real estate being contained in the Mortgage.

BORROWER'S PROMISE TO PAY AND OTHER TERMS

1. The Property is subject to terms, restrictions and conditions that prohibit its sale at a fair market price for an established period of time. Within the restricted period, starting with the date the Borrower obtains title to the Property, the Borrower shall not sell or transfer title to the Property for an amount that exceeds a maximum allowable resale price established by the Authority.

a. All proceeds received during the restricted period in excess of the restricted amount shall be paid to the Authority.

b. At the first non-exempt sale of the Property after restrictions have ended, the Borrower agrees to repay 95% of the incremental amount between the maximum allowable resale price and the fair market selling price which has accrued to the Property during the restricted period of resale (the "Price Differential") to the Authority.

2. The amount due and payable to the Authority shall be calculated as follows:

FAIR MARKET PRICE less
MAXIMUM ALLOWABLE RESALE PRICE
equals
PRICE DIFFERENTIAL
BORROWER'S PROCEEDS
equals
MAXIMUM ALLOWABLE RESALE PRICE
plus 5% of PRICE DIFFERENTIAL
AMOUNT OF NOTE
equals
FAIR MARKET PRICE less
BORROWER'S PROCEEDS

WAIVER OF FORMAL ACTS

The Borrower waives its right to require the Authority to do any of the following before enforcing its rights under this Note:

- 1. To demand payment of amount due (known as Presentment).
2. To give notice that amounts due have not been paid (known as Notice of Dishonor).
3. To obtain an official certificate of non-payment (known as Protest).

RESPONSIBILITY UNDER NOTE

All Borrowers signing this Note are jointly and individually obligated to pay the amounts due and to abide by the terms under this Note. The Authority may enforce this Note against any one or more of the Borrowers or against all Borrowers together.

SIGNATURES

The Borrower agrees to the terms of this Note by signing below.

WITNESSED:

\_\_\_\_\_ L.S.

\_\_\_\_\_ L.S.

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF WATER RESOURCES

Safe Drinking Water Act Rules

Readoption: N.J.A.C. 7:10

Proposed: July 17, 1989 at 21 N.J.R. 1945(a).
Adopted: September 1, 1989 by Christopher J. Daggett,
Commissioner, Department of Environmental Protection.
Filed: September 1, 1989 as R.1989 d.514, without change.
Authority: N.J.S.A. 13:1D-1 et seq., 58:12A-1 et seq., 58:11-64
et seq., 58:11-23 et seq., 58:11-9.1 et seq., and 58:10A-1 et seq.
DEP Docket Number: 030-89-06.
Effective Date: September 1, 1989.
Expiration Date: September 1, 1994.

Summary of Public Comments and Agency Responses:

The proposed readoption without change was published in the July 17, 1989 New Jersey Register. The comment period closed on August 16, 1989. Comments were received from one commenter. A public hearing was held at the Department of Environmental Protection on August 8, 1989. No oral testimony was presented.

COMMENT: N.J.A.C. 7:10-12.13, Distances, Table 2 relating to suction lines, needs to be revised. An example is the distance between a building sewer and a suction line which must be 50 feet apart. If the sewer line and suction line enter on opposite sides of a residential structure, (with a basement), this distance cannot be met as most houses are not 50 feet wide. N.J.A.C. 7:10-12.13(a)2 is in conflict with N.J.A.C. 7:9A-4.3 which uses different language. N.J.A.C. 7:9A-4.3 reads, "... well is provided with a casing to a depth of 50 feet or more, or where said casing extends to. . ." The difference in N.J.A.C. 7:10-12.13(a)2 is the wording, "and where said casing". The two should be consistent.

**RESPONSE:** N.J.A.C. 7:10-12.6, Deviations from standards, provides for regulatory discretion on the part of the administrative authority. When the 50 foot separation is impractical and when suitable adequate protection such as an intervening residential structure with a basement is provided, the administrative authority may allow a deviation from the standard. This comment will be taken under consideration when the rules undergo major revisions in 1990. The discrepancy between these rules and N.J.A.C. 7:9A with respect to separation of a well from disposal fields and seepage pits has been corrected in the wording contained in the newly adopted Standards for Individual Subsurface Sewage Disposal Systems, N.J.A.C. 7:9A, which became effective August 21, 1989. The wording "or" has been changed to "and" (see N.J.A.C. 7:9A-4.3).

**COMMENT:** N.J.A.C. 7:10-12.20(b) and (c) are confusing. Do you grout the total depth of the casing or only to 10 feet. This requires clarification.

**RESPONSE:** N.J.A.C. 7:10-12.20(b) is a general statement pertaining to grouting methods while N.J.A.C. 7:10-12.20(c) refers to grouting requirements specific to artesian wells. The intent of N.J.A.C. 7:10-12.20 is to require that the entire annular space from the top of the well screen or top of the gravel pack shall be grouted completely, under pressure through a tremie pipe from that point upwards to the base of the pitless adapter or sanitary well seal.

**COMMENT:** Extended water testing should be required in N.J.A.C. 7:10-12.31. Similar testing currently exists for public water supplies, and should be added to this subchapter. The rules as they stand, allow local boards of health to expand the current list of compounds, but it is the commenter's opinion that this should be mandatory.

**RESPONSE:** Whether or not local boards of health will be permitted to expand the list of compounds will be considered during the updating of the rules in 1990.

**COMMENT:** N.J.A.C. 7:10-12.32, Chemical handling and feeding, specifies treatment units. The Department of Environmental Protection (Department) should give specific directions for treatment devices for organics. The Department has been recommending the use of point of entry or point of use devices where organic contamination is found. Since most local health departments do not have the expertise, it is only reasonable that the Department define the type of units, their size, installation, and frequency of monitoring. Additionally, the party responsible for monitoring should be identified.

**RESPONSE:** The intent of N.J.A.C. 7:10-12.32, Chemical handling and feeding, is to provide regulation of situations involving the addition of chemical feed to water being treated. N.J.A.C. 7:10-12.34, Chemical and Physical Treatment, pertains to point of entry or point of use devices. The latter section provides for the administrative authority to review any and all such devices on an individual basis. The Department has recently published guidance documents pertaining to such devices for use by local administrative authorities. These documents consist of technical information provided by consultants outside of the Department. It is not necessary to include these guidance documents in the rules as they were intended for informational purposes only. The Department will consider expanding the rules in 1990 to consider various aspects of home treatment devices.

**COMMENT:** Regarding N.J.A.C. 7:10-12.26, Required storage capacity, no one is utilizing hydropneumatic tanks. The rules should be updated to reflect state of the art storage units. Additionally, formulas for design capacities should be revised or updated. N.J.A.C. 7:10-12.36(c) should be changed to define actual storage capacities.

**RESPONSE:** N.J.A.C. 7:10-12.36 needs considerable updating. The comments made will be addressed in a series of technical meetings which will be held during 1990. At that time, considerable input is expected from local administrative authorities. The immediate need, however, is to facilitate the readoption of these rules in their current format, since there is inadequate time to accomplish major changes prior to the expiration date of the existing rules on September 4, 1989.

**COMMENT:** N.J.A.C. 7:10-12 should address replacement well requirements as well as individual irrigation water supply systems. In Ocean County, many residential retirement communities have a separate irrigation well for each dwelling.

**RESPONSE:** N.J.A.C. 7:10-12 pertains to drinking water systems and is not intended to address systems which derive water for other purposes such as irrigation. Replacement wells should be treated as new wells and the construction and use thereof should be in accordance with N.J.A.C. 7:10-12.

**COMMENT:** In the adoption of Safe Drinking Water Act Maximum Contaminant Levels for Hazardous Contaminants, N.J.A.C. 7:10-16, (21 N.J.R. 46(a)), the following commitments were made by the Department:

1. Public Notification: "The Department recognized the concern for more timely notification of initial discovery of contamination. The Department is considering proposing new notification procedures."

2. In response to a commenter's request for check samples to be conducted in 15 days, instead of the 30 days as approved, the Department stated, "in more urgent situations, the Department is considering proposing, in early 1989, a mechanism for evaluating test results that may reveal a threat to public health in a shorter period".

3. One question relating to "quicker resampling when excessive levels of contamination are found" was addressed by "The concept of more prompt resampling when higher levels of contamination are found is being addressed in the Department's forthcoming proposal on Short Term Action Levels. The Department agrees that quicker resampling is needed in certain instances."

What is the status of these commitments?

**RESPONSE:** The issue of more timely notification of initial discovery of contamination is currently under consideration by the Department and will be addressed in the 1990 revisions to the rules. Comprehensive input will be sought from all parties so that the most appropriate approach can be adopted. The Summary of Public Comments and Agency Responses contained in the January 3, 1989, New Jersey Register did not specify a deadline by which this would be accomplished.

With respect to the collection of check sample, in 15 days as opposed to 30 days, the response made at the time was that the 30 day check sampling period had proven acceptable, and that the Department was not going to change that rule. Department policy originating in early 1989 did provide a better mechanism for evaluating test results in a shorter period of time. This was an internal change of procedure which has proven highly successful in minimizing response time. This involves manual tracking of incoming data and immediate flagging of unacceptable results. Previously, Department staff would rely on computer print-outs for this information, but because of the need for key punching the data into the computer, etc., the turn around time was unacceptably long.

The Department intends to propose Short Term Action Levels (STALs) for Hazardous Contaminants as part of the 1990 revisions to the rules. At the present time, the Department is using the preproposal in evaluating data when giving guidance to water systems and local health officials. The Department has also asked for and received comments on the STALs from the United States Environmental Protection Agency. The Department's Division of Science and Research is presently evaluating those comments. The Department intends to share recommended STALs with water systems and local health officials as soon as practicable.

All of the comments received have merit and will be considered in detail during revisions to the Safe Drinking Water Act rules in 1990.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 7:10.

(a)

## DIVISION OF WATER RESOURCES

### Statewide Water Quality Management Planning New Jersey Pollutant Discharge Elimination System

#### Adopted New Rules: N.J.A.C. 7:15

#### Adopted Amendments: N.J.A.C. 7:14A-1.9 and 2.1

Proposed: September 6, 1988 at 20 N.J.R. 2198(a).

Adopted: September 6, 1989 by Christopher J. Daggett,

Commissioner, Department of Environmental Protection.

Filed: September 6, 1989 as R.1989, d.517, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 13:1D-1 et seq., 58:10A-1 et seq., and 58:11A-1 et seq.

DEP Docket Number: 033-88-08.

Effective Date: October 2, 1989.

Expiration Date: October 2, 1994, N.J.A.C. 7:15; June 2, 1994, N.J.A.C. 7:14A.

#### Summary of Public Comments and Agency Responses:

The New Jersey Department of Environmental Protection ("Department") is adopting N.J.A.C. 7:15, which was proposed on September 6, 1988 at 20 N.J.R. 2198(a). A notice of correction was published on

October 3, 1988 at 20 N.J.R. 2478(a). The notice of correction set forth language at N.J.A.C. 7:15-3.4(b)3 which had been inadvertently omitted from the published proposal. The rules which were formerly codified at N.J.A.C. 7:15, and which were proposed for repeal on September 6, 1988 at 20 N.J.R. 2198(a), have expired pursuant to Executive Order No. 66(1978).

The rule which the Department is adopting at N.J.A.C. 7:15-4.1 (Permittees for new or expanded domestic treatment works) is also being codified at N.J.A.C. 7:14A-2.1(l) through (o), because of the close relationship of that rule to applications for permits under N.J.A.C. 7:14A. In addition, several definitions which the Department is adopting at N.J.A.C. 7:15-1.5 are also being codified at N.J.A.C. 7:14A-1.9, because of the close relationship between those definitions and the rule being codified at N.J.A.C. 7:14A-2.1(l) through (o). Both N.J.A.C. 7:14A and N.J.A.C. 7:15 are adopted under the authority of N.J.S.A. 13:1D-1 et seq., 58:10A-1 et seq., and 58:11A-1 et seq.

Public hearings were held on October 20 and 24, 1988 to provide interested persons the opportunity to present testimony on the proposed rules, and the comment period was open until November 10, 1988. The Department received written comments from 24 persons, and 11 persons presented comments at the public hearings.

The following is a summary of the comments received and the Department's responses. In this summary, general comments and responses are followed by other comments and responses which, for the reader's convenience, are listed under specific sections of the rules. Some of these latter comments and responses, however, pertain not only to the sections under which these comments and responses are listed, but also to one or more other sections. In those instances where commenters did not specify the sections to which their comments pertained, the listing of comments and responses under specific sections is based on the subject matter of the comments.

#### GENERAL COMMENTS

##### Adequacy of rulemaking procedure

1. COMMENT: Two commenters said the proposed rules are complicated and are not conducive to evaluation through public hearings. A briefing session would have been preferred. The Division of Water Resources should have established a Task Force, as it has done with other complex programs, to work with staff. In that manner, the concerned public can remain informed as to the intent of the rules, have legitimate input early in the process, and exchange ideas with the Department.

RESPONSE: Requirements concerning opportunity for public comment on proposed rules are set forth in the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. (the "Administrative Procedure Act"), and in the rules for agency rulemaking, N.J.A.C. 1:30. The Department has complied with those requirements.

2. COMMENT: One commenter cited the public notice for the proposed amendment to the Statewide Water Quality Management Program Plan ("Statewide WQM Plan") which was published in the September 6, 1988 issue of the New Jersey Register at 20 N.J.R. 2327(a). The public notice is unspecific about the content of the proposed rules, does not indicate whether the proposed rules are more relaxed or stringent than the expired rules, and is arbitrarily vague as to the ways in which four of the wastewater policies in Chapter III of the present Statewide WQM Plan are modified in the proposed rules. Because taxpayers must absorb the liability for wastewater facilities, it is arbitrary not to define how these policies were modified, so that the public may understand their responsibility. The "Right to Know" is severely hampered, and interested persons cannot make informed comments.

RESPONSE: The public notice published at 20 N.J.R. 2327(a) expressly stated that "simultaneously, in this issue of the New Jersey Register, the Department is proposing to repeal the present planning rules, N.J.A.C. 7:15, and is proposing new Statewide Water Quality Management Planning rules at N.J.A.C. 7:15". The full text of the proposed new rules, together with a summary of the same, was published in the September 6, 1988 issue of the New Jersey Register at 20 N.J.R. 2198(a). The public notice published at 20 N.J.R. 2198(a) provided adequate notice concerning the content of the proposed new rules.

##### Rule clarity and format

3. COMMENT: The Department should be congratulated for preparing rules which are readable, understandable, comprehensive, and cohesive.

RESPONSE: The Department appreciates the commenter's commendation.

4. COMMENT: Two commenters said the rules are rather complicated and very difficult to deal with; they refer backward and forward. A third commenter and a fourth commenter said the rules are indeed comprehensive, but that it is difficult to understand how the entire process interrelates. The fourth commenter said that the water quality management ("WQM") planning process should be made as clear as possible for the user and not limited to the interpretation of specialists. Many of the rules should be rewritten to clarify the statements and reduce the need for interpretation. At the risk of making the rules longer, the many numerical references to other sections should include the section titles. Also, some references cite other rules which were not included in the package.

RESPONSE: The Department acknowledges that the rules are complex. Due to this complexity, the Department provided an extended public comment period of 65 days in order to provide adequate time for review and comment. The complexity of the rules generally reflects the complexity of the subject matter and the Department's desire to accomplish specific policy objectives. For example, the complexity of N.J.A.C. 7:15-5 ("Wastewater Management Planning Requirements") reflects New Jersey's complex structure for wastewater management, the fact that many sewer systems cross political boundaries, and the Department's desire to allow some flexibility in the establishment of wastewater management planning responsibility. As stated in N.J.A.C. 7:15-1.1, the rules address a wide range of subject matter; this inevitably produces some complexity. Another source of complexity is the Department's desire to be consistent with terminology in the Federal Clean Water Act, 33 U.S.C. §1251 et seq., (the "Clean Water Act"), the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq. (the "Water Pollution Control Act") and the New Jersey Pollutant Discharge Elimination System ("NJPDES") rules (N.J.A.C. 7:14A), which include specialized definitions for such terms as "treatment works" (33 U.S.C. §1292, N.J.S.A. 58:10A-3s, N.J.A.C. 7:14A-1.9) and "domestic treatment works" (N.J.A.C. 7:14A-1.9).

Where commenters have questioned the meaning of specific provisions in N.J.A.C. 7:15 (see comments summarized separately below), the Department has explained their meaning in the Department response, or has revised the provision to clarify its meaning. The Department has also clarified some provisions on its own initiative. It is necessary in some N.J.A.C. 7:15 provisions to refer to other N.J.A.C. 7:15 provisions in order to prevent excessive repetition. As users become more familiar with N.J.A.C. 7:15, these references will become less disruptive and the relationships between provisions will become more clear. The Department also intends to prepare informational materials to help explain N.J.A.C. 7:15 provisions. Because all Department permits are required to be consistent with WQM plans but are subject to different consistency review procedures, and because of the relationships between WQM planning and several other Department programs, it is necessary for N.J.A.C. 7:15 to refer to many other Department rules. The Department distributed over 1,100 copies of proposed N.J.A.C. 7:15 to interested persons, and the associated printing and mailing expense would have increased greatly had each copy been accompanied by a copy of every Department rule cited in proposed N.J.A.C. 7:15. Department rules are published in the New Jersey Administrative Code, an official publication of the State of New Jersey, and the Department presumes that interested persons have access or can obtain access to that Code.

##### Policy consolidation

5. COMMENT: One commenter commended the Department for comprehensively uniting various regulatory provisions to lend coherence to WQM planning requirements. A second commenter said that any attempt to reorder the admittedly difficult rules is laudable. A third commenter commends the Department for its efforts to codify its Statewide WQM planning process. A fourth commenter commends the Department for simplifying the legal structure of the Statewide WQM Plan.

A fifth commenter said the consolidated rules provide additional structure for the water quality planning process, and are an important step towards a clearly defined water quality planning program and the integration of the complex water quality planning rules. It is helpful to have the rules in a convenient written format because, as water quality planning has evolved, it was sometimes unclear which requirements applied to which projects. A sixth commenter is pleased that a previously "informal rule" is now promulgated as a rule (N.J.A.C. 7:15-4.1) subject to the administrative procedure process, and not as an informal Department policy.

RESPONSE: The Department appreciates the commenters' commendations. With reference to the statement made by the sixth commenter, the subject matter of N.J.A.C. 7:15-4.1 (discussed below as the "co-

permittee requirement") was not an "informal rule". Rather, it was previously proposed and adopted as a policy in Chapter III of the State-wide WQM Plan, and was the subject of public comment and a public hearing. See 17 N.J.R. 842(c), April 1, 1985, and 18 N.J.R. 110(b), January 6, 1986.

#### Public participation

6. COMMENT: The following paragraphs summarize general criticisms made by seven commenters regarding public participation. (Additional comments about specific issues, such as public participation in consistency determination reviews, WQM plan amendments, and wastewater management plans, are summarized separately below.) Five commenters said that while a stated purpose of the rules is to "provide opportunities for public participation" (see N.J.A.C. 7:15-1.3(a)10), the rules reduce public participation. Another commenter said the rules do not provide such opportunities. Notice of rule amendments in the New Jersey Register was eliminated and not replaced by a notice requirement in a more practical publication such as the DEP Bulletin. Publishing in newspapers alone is not adequate for promoting meaningful public participation. Two commenters said that while N.J.A.C. 7:15-2.1(a)5 states that the Department shall provide opportunities for meaningful public participation in the WQM planning process, the rules do not specify how the Department will do this.

One commenter said that for many years the Department, as areawide planner for the Northeast New Jersey WQM planning area, has disregarded requirements for public participation. The proposed rules confirm this practice. In light of Commissioner Daggett's policy to involve the public before decisions are made, the proposed rules should be amended to include strong public participation and outreach. A second commenter said its specific comments regarding wastewater management planning, discussed below at comment number 235, illustrate its concern about the current lack of public participation requirements. The proposed rules do not improve these requirements, and should be changed to place emphasis on public involvement.

A third commenter said the rules should have a section which sets forth components for meaningful public participation. This commenter was very active in the WQM planning process in the 1970's, when the public was led to believe that a continuing planning process would take place. It has not. While the Department has made decisions, the public has not been included.

A fourth commenter questioned how public participation can be eliminated when there are Federal laws and regulations governing water quality planning under Sections 201 and 208 of the Clean Water Act (33 U.S.C. §§1281 and 1288). There are the February 1979 "Municipal Wastewater Management Public Involvement Activities Guide", the September 1980 United States Environmental Protection Agency ("USEPA") Region II "Guide to Public Participation in Wastewater Facility Planning Design and Construction", and Department Policy 1.31 entitled "Public Participation in NJDEP Activities" (April 9, 1979, revised April 22, 1988). Public participation is vitally needed in all aspects of planning, especially in planning concerning permanent sewer lines. The commenter questions the Department's authority to eliminate public participation in these proposed rules.

RESPONSE: The Department actively encourages public participation through many forums. The Department regularly holds meetings and hearings of the Clean Water Council where input is sought on many water quality issues. Recently the Department held a series of public meetings throughout the State on the draft Nonpoint Source Assessment and Management Program. The Department sponsors a number of public meetings and hearings that include water quality-related issues. The results of these discussions are incorporated into the WQM policy decision-making process.

With the WQM planning process there are further opportunities for public input through the WQM plan amendment process and the wastewater management planning process. The Department agrees that there is a need for additional public notice in the WQM plan amendment process, and has changed N.J.A.C. 7:15-3.4 to require that public notice of proposed WQM plan amendments be published in the New Jersey Register. This notification should increase public awareness of proposed WQM plan amendments. The Department has not disregarded requirements for public participation anywhere in New Jersey. No amendment to a WQM plan has ever been adopted without public notice and opportunity for public comment. The public hearings and public comment period on these rules, and the resulting rule changes, are another example of the Department's responsiveness to public comments.

The Department encourages public participation in the development of wastewater management plans. This can be accomplished by indirect means in the formulation of zoning ordinances and master plans, or directly through the WQM plan amendment process. By requiring expanded notification of proposed WQM plan amendments, the Department expects that public concerns will be adequately addressed in the wastewater management plan development process.

It is the Department's position that all of the above activities satisfy the intent of the State and Federal requirements for public participation. Most activities under N.J.A.C. 7:15 do not pertain to the 201 facilities planning process (a wastewater management plan is not a 201 Facilities Plan), and USEPA no longer has its own special public participation requirements for that process; see 49 FR 6228, February 17, 1984.

7. COMMENT: The way N.J.A.C. 7:15 is implemented will have a significant impact on land use management. Wastewater facility is extremely important and has a greater effect on the environmental impact of land use than does any other Department program. Virtually every proposal coming before local planning and zoning boards requires Department wastewater program approval for sewer extension, wastewater facility expansion, 201/208 plan modification, or a wastewater management plan. Because of the program's environmental impact, full public participation must occur before decisions are made. Instead the opposite is true. The proposed rules eliminate the already scant public notice and allow the Department to make significant decisions affecting regional wastewater planning with almost no opportunity for meaningful public review. Municipalities are not now required to have public involvement when they prepare wastewater management plans. Public interests are thus excluded, and the plans are narrowly focused and do not consider cumulative impacts or regional values.

The Great Swamp watershed is an example. Two sewage treatment plants discharge into the Refuge's major streams. Yet wastewater management plans now being prepared by basin communities have little or no opportunity for public involvement or concern for the Swamp's ecological integrity. The same is true for NJPDES permit decisions for these two facilities. Public involvement, greater environmental protection, and a more efficient and consistent WQM planning process could be achieved by making local environmental commissions an integral part of the review process for development of wastewater management plans, amendment and modification of WQM (201 or 208) plans, and consistency determinations for those plans. By requiring environmental commission review, the Department will gain significant local knowledge. Commissions are already involved in site plan and subdivision review and often grapple with wastewater facility questions. Also, they are used to thinking in regional terms and considering the cumulative impacts of proposals. The Freshwater Wetlands Protection Act rules (N.J.A.C. 7:7A) offer a model for environmental commission involvement in the review process.

RESPONSE: The general issue of public participation is addressed in the Department response to comment number 6. As noted in that response, the Department has changed N.J.A.C. 7:15-3.4 to require that public notice of proposed WQM plan amendments be published in the New Jersey Register. As discussed in the Department response to comment number 93, the requested addition of a requirement of direct notice of such amendments to municipal environmental commissions was deemed too onerous, and so was not adopted. The endorsement requirements in N.J.A.C. 7:15-3.4(d)3 and (g)4, coupled with the requirements in N.J.A.C. 7:15-3.4(d)4 and (g)3 for public notice in a newspaper and the New Jersey Register, provide adequate notice to municipal governments of proposed WQM plan amendments. Because wastewater management plans are valid only upon their adoption as amendments to WQM plans, these requirements also provide adequate notice to municipal governments of proposed wastewater management plans.

As discussed in the Department response to comment number 11, the consistency determination review program should be treated as an integral part of the Department permit process, and public participation in the consistency determination review program should be accomplished through the permit process. Environmental commissions may participate in the consistency determination review program by submitting comments through the Department permit process, to the extent allowed by the various Department rules governing that process. Environmental commissions already receive notice of many Department permits under such rule provisions as N.J.A.C. 7:1C-1.3(b), 7:14A-7.3(b)4, and 7:14A-8.1(e)1vi.

The Freshwater Wetlands Protection Act rules (N.J.A.C. 7:7A) implement the Freshwater Wetlands Protection Act, which expressly requires

that direct notice of proposed activities be sent to municipal environmental commissions (N.J.S.A. 13:9B-9(a)(2), N.J.S.A. 13:19B-17(b)(2)). The Statewide Water Quality Management Planning rules (N.J.A.C. 7:15) are adopted under the authority of other statutes (N.J.S.A. 13:1D-1 et seq., 58:10A-1 et seq., and 58:11A-1 et seq.), which do not include such express requirements.

#### List of designated planning agencies

8. COMMENT: The rules refer to the designated planning agencies. The Department should list those planning agencies which will be the primary planning agencies unless they have another entity assume that responsibility. When reading these rules, the reader is unsure whether it is the person affected by the rules. Specifically, is the Western Monmouth Utilities Authority a designated agency, and for what geographic area was it designated?

RESPONSE: The term "designated planning agency" is defined in the rules at N.J.A.C. 7:15-1.5, and refers only to an agency designated by the Governor to conduct areawide WQM planning pursuant to N.J.S.A. 58:11A-4. At present, there are only seven designated planning agencies in New Jersey. These designated planning agencies and their planning areas are as follows: Atlantic County Board of Chosen Freeholders for all of Atlantic County, Cape May County Board of Chosen Freeholders for all of Cape May County, Delaware Valley Regional Planning Commission for all of the Tri-County WQM planning area (Burlington, Camden and Gloucester Counties), Mercer County Board of Chosen Freeholders for all of Mercer County, Middlesex County Board of Chosen Freeholders for all of Middlesex County and portions of Somerset and Union Counties, Ocean County Board of Chosen Freeholders for all of Ocean County and a portion of Monmouth County, and Sussex County Board of Chosen Freeholders for all of Sussex County and a portion of Morris County.

The rest of the State is divided into five non-designated planning areas for which the Department has WQM plan responsibility: Lower Delaware (Cumberland and Salem Counties), Monmouth County (most of that county), Northeast New Jersey (Bergen, Essex, Hudson, Passaic, most of Union and portions of Morris and Somerset Counties), Upper Delaware (Warren and portions of Hunterdon and Morris Counties), and Upper Raritan (portions of Hunterdon, Morris, Somerset, and Union Counties).

The Western Monmouth Utilities Authority is not a "designated planning agency" as defined in N.J.A.C. 7:15-1.5. A municipal authority may become a "wastewater management planning agency" as defined in N.J.A.C. 7:15-1.5 without becoming a "designated planning agency".

#### Role of designated planning agencies

9. COMMENT: Five commenters are concerned that the proposed rules diminish the designated planning agencies' authority and role in WQM planning and consolidate the power in the Department. By discouraging and minimizing the involvement of such agencies and therefore drastically reducing the vital input of sub-state planning efforts and data bases, the rules do not adequately reflect the philosophy of the Clean Water Act. While one of the stated purposes of the proposed rules is to "encourage, direct, supervise, and aid areawide WQM planning" (see N.J.A.C. 7:15-1.3(a)5), these proposed rules reduce the role of the designated planning agency. This erosion is shown in such areas as delegation of the consistency determination review process, projects subject to consistency determination review, unilateral Department amendments to areawide WQM plans, Department preemption of areawide WQM plans, and an inappropriate approach to areawide WQM planning. (Specific comments about these issues are summarized separately below.) A substate entity is needed in a key position to ensure that the intent of State rules are properly understood and carried out. The designated planning agency's role is to supplement Department activities and address, on the local level, many issues that might be overlooked by the Department's broader focus. The designated planning agency remains the most effective, accurate and accountable entity for WQM planning, consistency determinations, plan amendments and updates, and decision making, and must continue to play a vital role in the planning process.

The Sussex County Board of Chosen Freeholders has been a designated planning agency since 1976. Sussex County has taken a lead in implementing State rules and policy on water quality. It has successfully addressed regional issues and obtained municipal cooperation and public participation. The County has been actively involved in consistency determinations, the sewer extension permit process, NJPDES, wetlands protection and updating the WQM plan, and has addressed critical issues overlooked by State planning.

Areawide planning is an effective and necessary tool to achieve clean water objectives. Such planning can succeed only through an involved public and a dynamic program. Unfortunately, many local concerns and the public's willingness to participate are lost when planning is centralized Statewide through fixed approaches. The rules should reflect a shared responsibility between the Department and those designated planning agencies that have proven their intent and commitment. Criteria should be established to determine if designated planning agencies are meeting the responsibilities designated to them through the 208 process. Where performance is acceptable, delegation of certain responsibilities should continue. Sussex County has clearly demonstrated its ability to carry out its responsibilities and should not be penalized because other designated planning agencies may not have fulfilled their responsibilities.

One commenter also said that the staff of the Cape May County Planning Board, another designated planning agency, developed that agency's WQM plan, wrote much of the plan under the County Environmental Health Act, N.J.S.A. 26:3A2-21 et seq. (the "County Environmental Health Act"), and submitted two municipal wastewater management plans. Another commenter also urges the Department to encourage, not discourage, involvement of designated planning agencies.

RESPONSE: The Department disagrees with much of this comment. The "philosophy" of the Clean Water Act is much more complex than the comment implies. Section 101(a)(4) declares that "it is the national policy that areawide waste treatment management planning processes be developed and implemented to assure adequate control of sources of pollutants in each State" (33 U.S.C. §1251(a)(4)), and Section 208 requires the Governor to designate agencies to prepare "areawide waste treatment management plans" (33 U.S.C. §1288). However, Section 101(b) declares that "it is the policy of the Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution" and to "plan the development and use . . . of land and water resources" (33 U.S.C. §1251(b)). Also, Section 510 declares that "except as expressly provided in this Act, nothing in this Act shall (1) preclude or deny the right of any State or political subdivision thereof to adopt or enforce (A) any standard or limitation respecting discharges of pollutants, or (B) any requirement respecting control or abatement of pollution . . ." (33 U.S.C. §1370). Moreover, Section 303(e) expressly requires each State to have a "continuing planning process . . . which will result in plans for all navigable waters within such State . . ." (33 U.S.C. §1313(e)).

The term "water quality management plan" was created by the USEPA in 1975 to consolidate the requirements of Section 208 and 303(e) (40 FR 55335; November 28, 1975). Present USEPA regulations (40 CFR 130.6) require WQM plans to satisfy requirements of Section 303(e) as well as Section 208, and Section 303(e) is a State responsibility. An areawide WQM plan is broader in scope than an "areawide waste treatment management plan" under Section 208. Since 1977, amendments to the Clean Water Act (Sections 205(j), 319, 320; 33 U.S.C. §1285(j), 1329, and 1330) have emphasized the need for WQM planning and program development by States working in cooperation with other public and private entities that are not limited to designated planning agencies. In short, the Clean Water Act requires and authorizes extensive State WQM planning activities, and preserves extensive State powers over water pollution control and water resources. Therefore, the proposed rules do not contravene the "philosophy" of that Act. That "philosophy" does not require the Department to delegate the consistency determination review program or other Department programs to designated planning agencies. (Section 208 does not declare or imply that designated planning agencies should do anything more than prepare areawide plans under that Section.) Nor does that "philosophy" prohibit the Department from amending or preempting areawide WQM plans in order to perform State functions under Section 303(e) or other Clean Water Act provisions, or to exercise other State powers over water pollution control and water resources.

N.J.A.C. 7:15-1.3(a)5 provides that part of the purpose of the rules is to "encourage, direct, supervise, and aid" areawide WQM planning. This provision, copied from the Water Quality Planning Act at N.J.S.A. 58:11A-2b, means principally that the Department shall encourage, direct, supervise, and aid designated planning agencies in the preparation of areawide WQM plans under N.J.S.A. 58:11A-5. This provision does not require the Department to delegate the consistency determination review program or other Department programs to designated planning agencies. (Delegation of aspects of the continuing planning process under N.J.S.A. 58:11A-7 is clearly at Department discretion.) Nor does that provision prohibit the Department from amending or preempting areawide WQM

plans in order to carry out Department responsibilities under the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq. (the "Water Quality Planning Act"). The words "direct" and "supervise" support this Department position.

The commenters have a basic misunderstanding of the various components of the WQM planning process. As indicated in the Department response to several comments, it is the Department's position that the most important role of designated planning agencies and the public in that process is in the initiation and review of proposed WQM plan amendments. The Department encourages the designated planning agencies to conduct original planning for their respective WQM plans, consistent with the planning conducted in the Statewide WQM Plan. The Department agrees that such agencies are critical to the areawide WQM planning process and can offer a perspective that is "closer" to the particular region than can be offered by the Department. Conversely, it must be understood that this perspective must be consistent with State-wide policies on issues that affect the State as a whole.

As discussed in the Department response to comment number 11, the consistency determination review program is simply a component of the various Department permit programs, and is not a comprehensive planning program. Designated planning agencies are responsible as the lead agency for reviewing most proposed amendments to their areawide WQM plans. As such their role is very critical to the overall WQM planning process. The agencies also have the ability, as well as the responsibility, to initiate amendments to their areawide WQM plans. These two components are far more important to the WQM planning process than the consistency determination review program which only serves as a check on consistency for Department permits. The Department can amend the areawide WQM plan for a designated area under N.J.A.C. 7:15-3.4(c) only in certain specified instances, as explained in the Department response to comment number 83. As noted in that response, the Department has changed N.J.A.C. 7:15-3.4 to require the designated planning agency to be notified of such proposed amendments. Preemption of areawide WQM plans is discussed in the Department response to comment number 10. As explained in the Department response to comment number 81, the proposed rules do not establish an inappropriate approach to areawide planning.

With regard to "delegation", the commenters do not make the proper distinction between the powers of the Department and the powers of the Governor, or between areawide WQM planning responsibilities expressly assigned to designated planning agencies by the Clean Water Act and the Water Quality Planning Act (statutory responsibilities that are not "delegated" by the Department), and additional secondary responsibilities that may be "delegated" to such agencies by the Department (see the Department response to comments numbered 33 and 40). The commenters have also erroneously concluded that the rules make designated planning agencies ineligible for such delegation (see the response to comment number 35).

The Department is committed to the support of the designated planning agencies and will continue to encourage their involvement in the WQM planning process.

Preemption of areawide WQM plans

10. COMMENT: Five commenters are concerned that the proposed rules specifically incorporate many Department prepared documents into the areawide WQM plans and provide that areawide WQM plans inconsistent with the same shall have no legal force or effect. This broad preemption could have the effect of invalidating provisions of areawide WQM plans specifically tailored to local conditions and requirements.

N.J.A.C. 7:15-2.2(c) contains a clear preemption provision by the Statewide WQM Plan of the areawide WQM plans. While there is need for this provision in some areas, the current language is overly broad and could result in unnecessary litigation. Specifically, the word "element" is undefined and if read broadly could invalidate large segments of the areawide WQM plans. (An effect which is not believed to be intended.) Further, the words "of no legal effect" are extremely broad and confusing. The provision should be modified to require consistency by the areawide WQM plan or include a process whereby if the language of any areawide WQM plan is challenged under this section that the Department will utilize a set conflict resolution procedure to determine the extent of the inconsistency or preemption.

RESPONSE: The Department disagrees with the assertion that the word "element" is overbroad. Only those individual statements in areawide WQM plans that conflict with the Statewide WQM Plan, as identified under N.J.A.C. 7:15-3.1(f) or this chapter, are preempted. It

is the Department's position that large sections of areawide WQM plans do not conflict with the Statewide WQM Plan. The words "of no legal effect" are clear, and convey that preempted provisions have no force. Finally, a special conflict resolution procedure is unnecessary, as the issue of whether an element of an areawide WQM plan is preempted is resolved when the alleged conflict becomes a case or controversy, to be resolved in an administrative or judicial forum.

Delegation of the consistency determination program to designated planning agencies

11. COMMENT: Five commenters said that expired N.J.A.C. 7:15-1.5, 2.3, 2.4, 3.1, and 3.2 included specific provisions for delegation of the consistency determination program to designated planning agencies. These provisions were eliminated in the proposed rules and should be restored. A specific mechanism must be provided for potential delegation and input from the designated planning agency. At a minimum, Department referral of consistency determination applications to the designated planning agency should be required.

Experience has shown that the designated planning agency can provide a much needed level of accuracy pertaining to local conditions. The earlier in the permit process that various issues are identified, the easier they would be to resolve. Designated planning agency involvement in the consistency determination process would provide this information. The proposed rules state that public input occurs through public review of the draft permit; that is too late.

One of the five commenters also said that designated planning agencies would certainly act responsibly and should have the chance to administer certain consistency processes. The Department would retain some oversight function but could be relieved of a significant workload on smaller, subregional projects. Since 1980, this commenter has requested the authority to make consistency determinations. The commenter has implemented its WQM plan and has an approval process in place under which all subdivisions and site plans are reviewed to determine consistency with the septic management program of the WQM plan. Also, three municipalities modified their zoning ordinances to meet or exceed WQM plan lot size requirements.

RESPONSE: The consistency determination review program is very closely related to the Department permit process. The sole purpose of the consistency determination review program is to review certain projects and activities that require Department permits (or other Department approvals referred to here as permits for convenience) for consistency with WQM plans and this chapter. Under proposed N.J.A.C. 7:15-3.1 and 3.2, consistency determination review does not commence until the Department receives a complete permit application, and the Department cannot issue the permit without a favorable consistency determination review. At this time, the Department believes the consistency determination review program should be treated as an integral part of the Department permit process, and that the responsibilities for performing consistency determination reviews and for issuing Department permits should not be divided among separate agencies.

Department performance of the consistency determination review program benefits the Department permit process and the public by reducing duplication, promoting efficiency, increasing speed in the processing of paperwork, and centralizing the procedure for permit acquisition. These are major objectives of public policy, as evident in the legislation which created the State Commission on Regulatory Efficiency (L. 1987, c.130). The more governmental agencies that administer a permit process, the greater the potential for inconvenience to the applicant, duplication of effort, mistakes or wasted effort due to imperfect inter-agency coordination, and delays in the processing of paperwork and the issuance of permits.

This potential is further increased when the agencies are geographically remote (which inconveniences the applicant, reduces opportunities for in-person discussion, and increases reliance on the mails), and when the agencies are in different levels of government, responsible to different executives (thereby increasing the opportunities for policy conflicts and decreasing the likelihood of their prompt resolution). Most designated planning agencies are remote from Department headquarters, and all of them are county or interstate agencies responsible to their own executives.

As the agency which issues Department permits, the Department is in a better position than are the designated planning agencies to coordinate the consistency determination review program with the rest of the Department permit process. The Department is more knowledgeable about the status of individual permit applications, Department permitting schedules and priorities, coordination between Department permit programs, and changes in the way Department permit programs are administered.

The objectives of efficiency, speed, and centralization are maximized when the consistency determination review process for a Department permit is performed by the Department bureau that issues the permit. The Department favors this approach wherever such bureaus have been properly trained in this process. For example, in 1986 the consistency determination review process for sewer extension permits was internally delegated to the Department bureau that issues those permits. As a result, the administrative process for those permits dramatically improved. Delegating the consistency determination review program to designated planning agencies, or referring consistency determination applications to those agencies, would eliminate those improvements and prevent similar improvements in other Department permit programs.

N.J.S.A. 13:1D-29 et seq. (the "90 Day Act"), and various other statutes require the Department to act promptly on many permit applications. As noted above, the Department cannot issue certain permits without a completed consistency determination review. Delegating the consistency determination review program to designated planning agencies, or referring consistency determination applications to such agencies, would diminish Department control of permit processing schedules and impair the Department's ability to comply with statutory permitting deadlines. Because it is the Department, not the designated planning agency, that is held accountable for complying with such deadlines, the Department has greater incentives to administer the consistency determination review program in a manner which promotes such compliance. For certain minor projects that are eligible for "over-the-counter" processing under N.J.A.C. 7:1C-1.13, delegating that program to designated planning agencies, or referring consistency determination applications to such agencies, would prevent the expedited permit review intended under N.J.A.C. 7:1C-1.13.

Department performance of the consistency determination review program promotes Statewide consistency in that program. In reviewing projects and activities for consistency with the 12 areawide WQM plans, there are Statewide policy issues common to most or all of these plans. Moreover, the consistency determination review program evaluates not only consistency with areawide WQM plans, but consistency with this chapter. Delegation of this program to designated planning agencies would likely result in conflicting policies.

Many projects require two or more Department permits, only some of which require consistency determination review under N.J.A.C. 7:15-3.2. Even if the Department delegated the consistency determination review program to designated planning agencies, the Department would still be responsible, in issuing permits not subject to N.J.A.C. 7:15-3.2, for ensuring that such projects do not conflict with WQM plans and this chapter. Both the Department and the designated planning agency would be evaluating the same project for consistency (a duplication of effort), and conflicting decisions by the Department and the designated planning agency could lead to considerable confusion and delay. Uniform decisions about such projects are more likely if consistency determination reviews are performed by the Department.

The Department has performed over 1,000 consistency determination reviews since 1984, and the consistency determination review program functions well at this time. The provisions in the expired rules for delegation of this program to designated planning agencies were never implemented, and none of these agencies are now performing consistency determination reviews. Delegation of this program to these agencies would be disruptive, and continued Department performance of this program would not remove from these agencies any responsibility which they presently exercise.

The commenters contend that designated planning agency involvement in the consistency determination review process would provide public input, and that public input through review of a draft permit is too late. One of the Department permit programs most closely related to WQM planning is the permit program under the Water Pollution Control Act, which expressly states at N.J.S.A. 58:10A-9b that "the commissioner shall give public notice of every complete application for a permit in a manner designed to inform interested and potentially interested persons, affected states and appropriate governmental agencies of his proposed determination to issue or deny a permit". Thus, the Water Pollution Control Act clearly contemplates that public input concerning a permit under that Act will occur through review of a draft permit. In light of this statutory language, the Department does not agree that public input through review of a draft permit is too late.

Even if it were agreed that such input is too late, designated planning agency involvement in the consistency determination review process would be at best a very partial solution to the problem. First, such involvement would provide no public input from the large areas of New

Jersey which have no designated planning agency. Second, such involvement would be limited to the subject matter of consistency determination review (consistency with WQM plans and this chapter), and would not address the numerous other issues which arise in the Department permit process. Third, the public input would be limited to comments from the designated planning agency, unless that agency required public notice and distribution of the consistency determination application to other governmental agencies. In many instances, such public notice and distribution would be in addition to notice and distribution required by the Department (under, for example, N.J.A.C. 7:1C-1.3 and 1.6, or N.J.A.C. 7:14A-2.1(k), 7.3(b)4, and 8.1). This would create confusion about how governmental agencies and the public should submit comments in the Department permit process.

As stated above, the Department believes the consistency determination review program should be treated as an integral part of the Department permit process. That process should not contain two separate procedures for public input, one being a general procedure through which all permit issues may be addressed, and the other being a narrow procedure limited to the issue of consistency with WQM plans and this chapter. Such dual procedures would produce duplication and confusion and are not necessary. If statutes and Department rules that govern individual permit programs do not provide adequate opportunity for timely public comment on all issues related to the permit (including but not limited to consistency with WQM plans and this chapter), then the proper remedy is to amend those statutes or rules, not to establish an independent public input procedure limited to the consistency determination review program.

A uniform public input procedure for all Department permit programs may not be desirable or even possible under present statutes. Greater opportunities for public input may be warranted for some kinds of Department permits than for others, depending on the significance of the permit. Some kinds of Department permits are subject to statutory permit processing requirements that vary from statute to statute. Compare, for example, the various requirements established by the 90-Day Act, the Water Pollution Control Act, the Coastal Area Facility Review Act (N.J.S.A. 13:19-1 et seq.), and the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq. (the "Freshwater Wetlands Protection Act"). The public input procedure for each Department permit program needs to be evaluated individually, and persons who want those procedures changed should submit comments on the Department rules directly governing the permit process (for example, N.J.A.C. 7:1C and 7:14A).

The Department agrees that designated planning agencies have knowledge about their areawide WQM plans and local conditions, and that these agencies can provide useful comments in the Department permit process. The Department may investigate the feasibility of amending Department permit process rules to provide greater notice to these agencies. For example, N.J.A.C. 7:1C-1.3(b) and 7:14A-7.3(b)4 and 8.1(e)1 could be amended to require notice to these agencies. In the meantime, interested designated planning agencies should use the opportunities available under present Department rules by, for example, requesting to be on a mailing list under N.J.A.C. 7:14A-8.1(e)1vii, and requesting the DEP Bulletin under N.J.A.C. 7:1C-1.6(a).

Neither the Water Quality Planning Act nor the Clean Water Act require the Department to delegate the consistency determination review program to designated planning agencies, or to refer consistency determination applications to such agencies. The only duty which these Acts expressly assign to these agencies is the preparation of areawide WQM plans. The designated planning agencies can prepare such plans without performing consistency determination reviews or reviewing consistency determination applications referred by the Department. Indeed, performing such duties could divert resources that such agencies would otherwise use for improving areawide WQM plans. The Department can delegate additional duties to designated planning agencies under N.J.S.A. 58:11A-7, but such delegation is at the Department's discretion and is not required by the Water Quality Planning Act.

In conclusion, for the reasons stated above, the Department has not changed N.J.A.C. 7:15 in response to this comment. This decision is based on the benefits of integrating the consistency determination review program with the rest of the Department permit process, and should not be construed as criticism of the designated planning agencies.

#### Board of Public Utilities

12. COMMENT: The Board of Public Utilities ("BPU") should be included in any decisions that might affect the BPU directly or might financially impact the sewer or solid waste (landfill) utilities that the BPU and the Department jointly regulate. (Additional comments about specific BPU concerns are summarized separately below.)

**RESPONSE:** There are mechanisms in N.J.A.C. 7:15 and other Department rules for submission of BPU comments on many decisions that may affect BPU-regulated utilities. For example, the BPU, as an "interested party," may submit comments on proposed WQM plan amendments pursuant to N.J.A.C. 7:15-3.4, and may submit comments on the consistency of Department permits with WQM plans pursuant to N.J.A.C. 7:15-3.1(g). Under N.J.A.C. 7:14A-8, the BPU may submit comments on draft effluent limitations and compliance schedules prior to their adoption in areawide WQM plans under N.J.A.C. 7:15-3.4(i).

#### Soundly based plans

13. **COMMENT:** The rules should require that all items in WQM plans be soundly based in fact and law.

**RESPONSE:** Some components of WQM plans are not intended to have regulatory force. (For example, Chapter II of the Statewide WQM Plan consists of 20 "strategies" that outline suggested future actions, but that are not binding on the Department or other persons.) For such components, the commenter's proposed requirement is unnecessary and inappropriate. (For example, some WQM plan provisions may do nothing more than recommend the collection of additional facts or the changing of existing law.)

For WQM plan components that are intended to have legal force, a requirement in N.J.A.C. 7:15 that such components "be soundly based in fact and law" would be superfluous and confusing. The general purpose of such a requirement is already accomplished by basic principles of constitutional and statutory law which should not be summarized (and oversimplified) by brief statements in Department rules.

#### Environmentally sensitive areas

14. **COMMENT:** One commenter said that "environmentally sensitive areas" should be specifically listed and defined in N.J.A.C. 7:15-1.5. Five commenters said that the current definition of "environmentally sensitive areas" includes sensitive areas mapped as part of the 201 planning process, and that this should continue in N.J.A.C. 7:15-1.5. Seven commenters said that N.J.A.C. 7:15-3.2(c)lviii should specify the environmentally sensitive areas of concern. Five commenters cited "slopes" as an example.

One commenter on N.J.A.C. 7:15-3.2(c)lviii said that, historically, environmentally sensitive areas were freshwater wetlands. With the passage of the Freshwater Wetlands Protection Act, this provision is not necessary. What other areas are included here? Another commenter said that in the past, this provision dealt almost exclusively with wetlands. Since the Freshwater Wetlands Protection Act is now law, this provision may no longer be appropriate. If this provision is retained, then examples of other types of environmentally sensitive areas should be included. This would give guidance to local government and regulated citizens as to those types of areas the Department expects to see included in water quality management plans.

**RESPONSE:** Environmentally sensitive areas (including "slopes", by which the commenters probably meant "steep slopes") are not specified in N.J.A.C. 7:15-1.5 and 3.2(c)lviii for a number of reasons. Because of topographical, hydrological, geological, ecological, and other factors that vary across the different regions of New Jersey, areawide WQM plans should be allowed to express some regional differences in the specification of environmentally sensitive areas. The designated planning agencies should also have some flexibility to specify environmentally sensitive areas in a manner consistent with environmental, social, and economic objectives in their planning areas. The present areawide WQM plans do not specify such areas in a uniform manner. In addition, the Statewide WQM Plan incorporates, under N.J.A.C. 7:15-3.4(a), Department rules which take somewhat varying approaches to the specification of environmentally sensitive areas. Compare, for example, the listing of "environmentally sensitive areas" in the New Jersey Pollutant Discharge Elimination System rules (see N.J.A.C. 7:14A-10.4(c)lvii), the definitions of "environmentally constrained area" and "environmentally critical area" in the Environmental Assessment Requirements for State Assisted Wastewater Treatment Facilities (see N.J.A.C. 7:22-10.2), and the Environmental and Health Impact Statement requirements in solid waste management rules (see especially N.J.A.C. 7:26-2.9(c)5ii). Identification of environmentally sensitive areas in WQM plans is a technically and institutionally complex subject, and it is not practical at this time for N.J.A.C. 7:15-1.5 and 3.2(c)lviii to specify these areas. This does not prevent such areas from being specified in other Department rules (for purposes of those rules), or in areawide WQM plans.

The revised definition of "environmentally sensitive areas" in N.J.A.C. 7:15 does not prevent WQM plans from identifying environmentally

sensitive areas mapped as part of the 201 planning process. Indeed, N.J.A.C. 7:15-3.4(k) specifically identifies "environmental constraints mapping" in most approved 201 Facilities Plans as part of the areawide WQM plans. Thus, there is no need to mention 201 Facilities Plans in the definition of environmentally sensitive areas under N.J.A.C. 7:15-1.5.

Freshwater wetlands protection requirements contained in areawide WQM plans remain in effect under N.J.A.C. 7:15-3.2(c)lviii for projects exempted under the Freshwater Wetlands Protection Act and related Department rules (see N.J.A.C. 7:7A-1.6(e)). The Water Quality Planning Act does not require N.J.A.C. 7:15 to specify in advance the types of environmentally sensitive areas which may be specified in future amendments to N.J.A.C. 7:15 or in areawide WQM plans adopted by the Governor or his designee. By way of general information, however, the Department notes that Chapter IV.C.2 of the five areawide WQM plans prepared by the Department discuss several types of environmentally sensitive areas. Also, as noted above, N.J.A.C. 7:14A-10.4(c)lvii and 7:22-10.2 list several environmentally "sensitive", "constrained", or "critical" areas for purposes of those particular Department programs. N.J.A.C. 7:15-5.17 and 5.20 provide detailed guidance to local governments and others concerning the depiction of environmental features in wastewater management plans.

For the reasons stated above, no change has been made to the rules.

15. **COMMENT:** One commenter said the definition of "environmentally sensitive areas" in N.J.A.C. 7:15-1.5 is overly broad and subjective. It should be revised to reflect areas which manifest specific characteristics as defined in New Jersey statutes which designate environmentally sensitive lands (that is, the Freshwater Wetlands Protection Act). Another commenter said this definition must be amended to delete the last phrase "or to the conservation of the natural resources of the state" since the Water Quality Planning Act and Water Pollution Control Act do not authorize such a rule. Additionally, N.J.A.C. 7:15-1.5, 2.1, and 3.2(c)lviii should clarify that the protection and identification of environmentally sensitive areas must be in accordance with the appropriate statutes.

One commenter stated that N.J.A.C. 7:15-3.2(c)lviii should provide that "identification of areas suitable or unsuitable for development with consideration of environmentally sensitive areas" be made in a manner consistent with current law and based upon competent and reasonable technology. If such an area is not properly defined from a technical viewpoint or is not properly subject to some form of land use exclusion or prohibition, it would be inappropriate and unconstitutional for the Department or local government to use the WQM planning process to deprive a citizen of reasonable and appropriate use of property without a proper mechanism to predict the due process rights of that citizen.

**RESPONSE:** The definition of "environmentally sensitive areas" in N.J.A.C. 7:15-1.5 is not overly broad and subjective. The sole purpose of this definition is to provide a general framework for the identification of specific environmentally sensitive areas in WQM plans. Substantive issues concerning the definition of specific environmentally sensitive areas should be explored through WQM plan amendment proceedings (including rulemaking proceedings where applicable) that directly address those specific areas.

For a number of reasons, the definition of "environmentally sensitive areas" should not be limited to "areas which manifest specific characteristics as defined in New Jersey statutes which designate environmentally sensitive areas". First, one legitimate function of WQM plans is to recommend changes to New Jersey statutes. Second, WQM plans may recommend the protection of environmentally sensitive areas through land acquisition, financial assistance, or non-regulatory programs not addressed by New Jersey statutes that define specific natural resource areas for regulatory purposes. Third, New Jersey statutes that define specific natural resource areas do not necessarily preempt the authority to define environmentally sensitive areas under the Water Quality Planning Act, the Water Pollution Control Act, and N.J.S.A. 13:1D-1 et seq., which are cited as authority for these rules and which provide substantial authority for the identification of environmentally sensitive areas. Whether such preemption exists requires a detailed analysis of the particular statutes; it is not practical for a general definition in N.J.A.C. 7:15 to resolve these issues. Fourth, some New Jersey statutes identify specific natural resource areas without providing corresponding statutory definitions. For example, the State Planning Act refers to "stream corridors" and "steep slopes" (see N.J.S.A. 52:18A-200), terms not defined in that Act or any other New Jersey statute. Another example is the reference to "forests" in the Municipal Land Use Law (see N.J.S.A. 55D-28.a(8)) and the county planning statute (see N.J.S.A. 40:27-2). Finally, the Department has a broad responsibility under the Water Quality Planning Act, the Water Pollution Control Act, and N.J.S.A. 13:1D-1 et seq. to

maintain and improve water quality and to conserve the natural resources of the State. The Department cannot adequately meet this statutory responsibility if the definition of "environmentally sensitive areas" is restricted to natural resource areas that are expressly defined or mentioned in other New Jersey statutes.

The phrase "or to the conservation of the natural resources of the State" was derived directly from N.J.S.A. 13:1D-9, which expressly declares that "the Department shall formulate comprehensive policies for the conservation of the natural resources of the State". The Department cited N.J.S.A. 13:1D-1 et seq. as part of the statutory authority for these rules. As discussed in *Society for Environmental Economic Development v. New Jersey Department of Environmental Protection*, 208 N.J. Super. 1 (1985), N.J.S.A. 13:1D-1 et seq. accords the Department broad powers of conservation and ecological control. Through the identification and protection of environmentally sensitive areas, the adverse effects of treatment works and water pollution control measures on a wide variety of natural resources can be prevented or reduced, and comprehensive programs can be established to protect areas that are important not only to the maintenance and protection of water quality, but also to the conservation of other natural resources.

N.J.A.C. 7:15-1.5, 2.1, and 3.2(c)lviii should not require that the protection and identification of environmentally sensitive areas be "in accordance with the appropriate statutes". WQM plans may recommend changes to existing statutes, or may recommend voluntary protection programs that could not conflict with any statute. Where WQM plans include regulatory protection programs for protection of environmentally sensitive areas, the relevant statutory framework is quite complex, as discussed in the preceding paragraphs of this response. A brief reference to "the appropriate statutes" would provide no practical guidance as to what the "appropriate statutes" are.

Similarly, a requirement in N.J.A.C. 7:15-3.2(c)viii that identifications be made "in a manner consistent with current law and based upon competent and reasonable technology" would be superfluous and confusing, as discussed in the Department response to comment number 13. Provisions for the identification and protection of specific environmentally sensitive areas are contained in areawide WQM plans and Department rules. Issues of legal authority and technical justification concerning specific environmentally sensitive areas can be raised in applicable proceedings under N.J.A.C. 7:15-3.4, 7:15-3.9, or the Administrative Procedure Act. Therefore, N.J.A.C. 7:15-3.2(c)viii does not violate the due process rights of citizens.

The Department recognizes that some environmentally sensitive areas are already subject to detailed regulation under existing statutes and Department rules, and that WQM plans should not necessarily duplicate or conflict with such regulation. Department sensitivity to this issue is illustrated in N.J.A.C. 7:15-5.20(b)3 and the Department response to comment number 229. In some instances, the most appropriate means of protecting an environmentally sensitive area is to retain or amend existing Department rules rather than to create a new WQM plan provision. The Department also recognizes, however, that areawide WQM plans can provide valuable supplemental protection, warranted by local or regional conditions, of environmentally sensitive areas.

#### Site-specific pollution control plan

16. COMMENT: In N.J.A.C. 7:15-1.5, the definition of "site-specific pollution control plan" is exceptionally broad and should be revised to restrict subsequent consistency reviews under N.J.A.C. 7:15-3.2(b). The definition should restrict the review to the proposed activity for which a permit is sought. In N.J.A.C. 7:15-3.2(b), consistency determination review must be limited to the elements of a project for which a Department permit is being sought. The language of this subsection may lead a review officer to believe his or her obligation extends to reviewing an entire project, thus needlessly slowing the permit process and reducing permit administration efficiency.

RESPONSE: The Water Quality Planning Act does not limit the scope of areawide WQM plans to project elements that require Department permits. On the contrary, that Act expressly requires such plans to include "the establishment of a regulatory program . . . to provide control or treatment of all point and nonpoint sources of pollution" (see N.J.S.A. 58:11A-5.c), and expressly requires that "all projects and activities affecting water quality in any planning area shall be developed and conducted in a manner consistent with the adopted areawide plan" (see N.J.S.A. 58:11A-10). It would therefore be inappropriate for the Department to revise N.J.A.C. 7:15-3.2(b) to limit the scope of consistency determination review to project elements that require Department permits, or to make

corresponding revisions to the definition of "site-specific pollution control plan".

17. COMMENT: The terminology in N.J.A.C. 7:15-3.2(b) is confusing and requires further clarification. What types of pollutants are the Department referring to in "site-specific pollution control plan"? What is meant by "such inclusion of specific categories of projects in specific geographic areas"? A provision should be added that limits the information that the Department can request only to what is authorized by statute and is necessary to issue a permit for a discharge to waters of the State.

RESPONSE: The definition of "pollutant" in the Water Pollution Control Act (N.J.S.A. 58:10A-3(n)) lists numerous types of pollutants. It is not necessary to repeat this definition in N.J.A.C. 7:15-3.2(b). Because of the wide variety of projects that are subject to N.J.A.C. 7:15-3.2 and the wide variety of existing and potential pollution problems in New Jersey, site-specific pollution control plans may be required to address a wide variety of pollutants and sources of pollution. The specific pollutants or sources of pollution that must be addressed by a particular site-specific pollution control plan should be allowed to vary depending on such factors as water body characteristics, topography, and project type and scale.

The Department has revised N.J.A.C. 7:15-3.2(b) by deleting the sentence that stated "Amendments to areawide WQM plans may also expressly require such inclusion for specific categories of projects in specific geographic areas". In place of that sentence, the Department has added two new sentences that clarify the relationship between site-specific pollution control plans and areawide WQM plans. The first new sentence states that "In most cases, the Department intends that requirements for such inclusion shall be established through amendments to areawide WQM plans." In this sentence, the phrase "such inclusion" refers back to the word "include" in the opening sentence of N.J.A.C. 7:15-3.2(b), and means the inclusion of potential water quality impacts and a site-specific pollution control plan in the narrative description required under N.J.A.C. 7:15-3.2(a)1. Phrased another way, the first new sentence means that the Department does not intend in most cases to require impact descriptions or site-specific pollution control plans unless the applicable areawide WQM plan expressly requires impact descriptions or site-specific pollution control plans. (At present, none of the areawide WQM plans contain such requirements.) The sentence does not mean that areawide WQM plans must be amended to require site-specific pollution control plans, or that projects cannot be approved before the areawide WQM plans are amended.

The second new sentence states that "Any areawide WQM plan that establishes such requirements shall specify the categories of projects that are subject to the requirements, the pollutants or sources of pollutants that shall be addressed, and the geographic region in which the requirements apply, if that region is less than the entire designated area or non-designated area." In this sentence, the word "requirements" refers back to the phrase "requirements for such inclusion" in the first new sentence.

Together with the definition in N.J.A.C. 7:15-1.5 of "site-specific pollution control plan", N.J.A.C. 7:15-3.2(b) creates a general framework for the establishment in areawide WQM plans of specific requirements concerning site-specific pollution control plans. These requirements are established through WQM plan amendment proceedings under N.J.A.C. 7:15-3.4. Substantive issues concerning the specification of pollutants, categories of projects, and geographic regions should be explored through those proceedings. The Water Quality Planning Act does not require N.J.A.C. 7:15 to specify in advance what requirements concerning site-specific pollution control plans may be included in areawide WQM plans adopted by the Governor or his designee. Because of differences in water body characteristics, topography, project type and scale, and other factors, these requirements should be allowed to vary.

Although the Department reserves the power under N.J.A.C. 7:15-3.2(b) to require identification of water quality impacts and site-specific pollution control plans even if the areawide WQM plan has not been amended to establish such requirements, the Department will not impose such requirements in most cases before the areawide WQM plan is amended. The WQM plan amendment process provides opportunities for public participation in formulating such requirements, and also makes specific information about such requirements available to applicants in advance of their applications.

The Department does not agree that N.J.A.C. 7:15-3.2(b) should be revised to limit the information required in site-specific pollution control plans to "what is authorized by statute". Because N.J.A.C. 7:15 is adopted under the authority of the Water Quality Planning Act, the

Water Pollution Control Act, and N.J.S.A. 13:1D-1 et seq., a separate reference to statutory authority in N.J.A.C. 7:15-3.2(b) is unnecessary. These statutes provide ample authority for the kinds of information requirements that may be established under N.J.A.C. 7:15-3.2(b).

The Department also does not agree that N.J.A.C. 7:15-3.2(b) should be revised to limit the information required in site-specific pollution control plans to what is "necessary to issue a permit for a discharge to waters of the State". The scope of the above-mentioned statutes, like the scope of N.J.A.C. 7:15-3.2 itself, is not limited to the issuance of discharge permits. For example, the Water Pollution Control Act empowers the Department to adopt "reasonable codes, rules and regulations to prevent, control or abate water pollution" (see N.J.S.A. 58:10A-4). The Water Quality Planning Act expressly requires areawide WQM plans to include "the establishment of a regulatory program . . . to provide control or treatment of all point and nonpoint sources of pollution" (see N.J.S.A. 58:11A-5.c), and expressly requires that "all projects and activities affecting water quality in any planning area shall be developed and conducted in a manner consistent with the adopted areawide plan" (see N.J.S.A. 58:11A-10). Even in the last sentence of N.J.S.A. 58:11A-10, which states that "the commissioner shall not grant any permit which is in conflict with an adopted areawide WQM plan", the term "permit" is not limited to discharge permits.

As N.J.A.C. 7:15-3.1(b) clearly sets forth, consistency determination review under N.J.A.C. 7:15-3.2 is required for many Department permits besides discharge permits. Indeed, the intent of N.J.A.C. 7:15-3.2(b) is not to duplicate requirements for discharge permits under the NJPDES rules, but to address water pollution control needs not met by the discharge permit program. Limiting N.J.A.C. 7:15-3.2(b) to information necessary to issue discharge permits would be inconsistent with the broader scope of N.J.A.C. 7:15-3.2 and with the intent of N.J.A.C. 7:15-3.2(b).

#### Stormwater management

18. COMMENT: Five commenters expressed concern about the elimination in the proposal of most references to stormwater management. Proposed N.J.A.C. 7:15-1.5 eliminates the previous definition of "storm water control plan", and proposed N.J.A.C. 7:15-3.2(a)1 and (c)1vii eliminate the previous references to storm water control. N.J.A.C. 7:15-1.5 still needs to define "storm water control plan", and storm water should continue to be the subject of WQM plan concern and attention. In the Sussex County WQM planning area, studies indicate that stormwater may account for over 45 percent of incoming pollutants to surface water bodies. Sections 208 and 402 of the Clean Water Act (33 U.S.C. §§1288 and 1342) are applicable to stormwater. Consequently, stormwater discharges must continue to be addressed in a WQM plan.

Another commenter said that N.J.A.C. 7:15-1.5 should list and define the term "stormwater management", and that the definition of "non-point source" in that section should be clearly related to stormwater.

RESPONSE: The Department agrees that stormwater is a significant source of pollutants that should be addressed in WQM plans. The proposed rules do not conflict with this Department position. Rather, the proposed rules recognize that there are pollution sources besides stormwater, and that WQM plans may address these sources as well as stormwater. Thus, in proposed N.J.A.C. 7:15-1.5 and 3.2, the term "storm water control plan" was replaced by the broader term "site-specific pollution control plan", and the phrase "Best Management Practices for storm water" was replaced by the broader phrase, "Best Management Practices for pollution control". Any storm water pollution control requirement that was possible under the expired rules continues to be possible under the proposed rules. The "site-specific pollution control plan" and "Best Management Practices for pollution control" can be used to control pollution from stormwater as well as other pollution sources.

Although the Department agrees that stormwater should be addressed in WQM plans, this does not mean that WQM plans should be the sole administrative vehicle for stormwater control. The stormwater management program may also use other programs, such as the New Jersey Pollutant Discharge Elimination System (see N.J.A.C. 7:14A), the Storm Water Management Plan article of the Municipal Land Use Law (see N.J.S.A. 40:55D-93 et seq.), and the County Environmental Health Act. Stormwater management is a complex subject which requires much additional public discussion, as many technical and institutional decisions remain to be made. The draft Nonpoint Source Assessment and Management Program (December, 1988) includes a general strategy for stormwater management. Pending further consideration and implementation of that strategy, it would be premature and inappropriate to define the term "stormwater management" in N.J.A.C. 7:15-1.5. The term "stormwater management" is not used in the proposed rule, and the commenter

who asked that this term be defined did not discuss what such a definition should include or accomplish.

Although stormwater and non-point sources are often discussed together, there is no clear relationship between the term "non-point source" and stormwater. Some non-point sources (many hydrologic modifications, for example) are not stormwater, and stormwater is frequently a "point source" rather than a "non-point source" under applicable statutes. The draft Nonpoint Source Assessment and Management Program notes (p. I-1) that urban stormwater runoff is frequently discharged through conveyances that constitute "point sources" under the Federal Clean Water Act and State law. The USEPA stated in the December 7, 1988 Federal Register that "legally, most urban runoff is discharged through conveyances such as separate storm sewers or other conveyances which are point sources under the CWA" (53 FR 49417). Such conveyances are also "point sources" as defined in the Water Pollution Control Act (N.J.S.A. 58:10A-3.m).

The definition of "non-point source" in N.J.A.C. 7:15-1.5 is based on a proper distinction between a "non-point source" and a "point source" as defined in the Water Pollution Control Act, and is similar to the definition of "non-point source" in N.J.A.C. 7:14A-1.9. The definition of "non-point source" should not be revised to acknowledge a relationship to stormwater that does not exist. Stormwater is sometimes a "non-point source" and sometimes a "point source", depending on the physical facts at the location of interest. The absence of specific references to stormwater in the definition of "non-point source" does not prevent stormwater from being addressed in WQM plans.

#### SUBCHAPTER 1. GENERAL PROVISIONS

##### 7:15-1.3 Purpose

19. COMMENT: The purposes as stated are laudable but do not always clearly relate to the proposed rule changes. For example, N.J.A.C. 7:15-1.3(a)10 states that the rules "provide opportunities for public participation in the WQM planning process." The rules do not bear this out. Publication of rule amendments in the New Jersey Register has been eliminated and not replaced by a requirement for publication in a more practical publication such as the DEP Bulletin. Publishing in newspapers alone is not adequate for promoting meaningful public participation.

RESPONSE: The general issue of public participation is addressed in the Department response to comment number 6. As noted in that response, the Department agrees that there is a need for additional public notice in the WQM plan amendment process, and has changed N.J.A.C. 7:15-3.4 to require that notice of proposed WQM plan amendments be published in the New Jersey Register. This notification should increase public awareness of proposed WQM plan amendments. Apart from the single example of public participation, the comment alleges no specific instance where N.J.A.C. 7:15-1.3 does not clearly relate to the remainder of N.J.A.C. 7:15. The Department does not know what other examples the commenter may have had in mind.

##### 7:15-1.5 Definitions

20. COMMENT: Five commenters said that the proposal eliminates some existing definitions, and that while the meanings of some of these deleted definitions are replaced with new definitions, there is still a need for the term "certification" to be defined.

RESPONSE: The term "certification" is used in five different senses in the proposed rules. In N.J.A.C. 7:15-1.1(a)5 and 3.5(f), "certification" refers to certification of WQM plans. In N.J.A.C. 7:15-3.1(a), "certification" is a synonym for "permit". In N.J.A.C. 7:15-3.1(c)13, "certification" refers to water quality certification under Section 401 of the Clean Water Act (33 U.S.C. §1341). In N.J.A.C. 7:15-5.10, "certification" refers to certification of financial assistance for wastewater facilities (under, for example, Section 219 of the Clean Water Act, 33 U.S.C. §1299). In N.J.A.C. 7:15-5.19(c), "certification" refers to certification of sewerage facilities under the Realty Improvement Sewerage and Facilities Act, N.J.S.A. 58:11-23 et seq. These diverse uses make it impractical to define this term in N.J.A.C. 7:15-1.5.

The definition of "certification" in expired N.J.A.C. 7:15-1.5 addresses only the certification of WQM plans, and does not address the other references to "certification" in the proposed rules. Moreover, that definition is inconsistent with the present USEPA criteria for certifying WQM plans (40 CFR 130.6(e)). Because the USEPA has changed those criteria whenever that agency has adopted new WQM planning regulations, the Department should not codify specific criteria for WQM plan certification in N.J.A.C. 7:15. The statement in N.J.A.C. 7:15-3.5(f) that WQM plans shall be certified "in accordance with United States Environmental

Protection Agency regulations" adequately identifies the criteria for WQM plan certification.

21. COMMENT: The term "General Permit Area" should be included in the definitions and referred to in the text. Some regions, such as the Great Swamp watershed area, are so critical to regional water resources that the possibility of their designation as a "General Permit Area" is important.

RESPONSE: This comment does not explain how the term "General Permit Area" should be defined, or what policies should be implemented in a designated "General Permit Area".

## SUBCHAPTER 2. PLANNING REQUIREMENTS

### 7:15-2.1 Continuing Planning Process (CPP)

22. COMMENT: The Board of Public Utilities ("BPU") should be consulted if it is to be delegated any aspects of the continuing planning process ("CPP") as identified by the Department.

RESPONSE: Except in very unusual circumstances which the Department does not expect to occur, the BPU would be consulted if the BPU is to be delegated any aspects of the CPP.

23. COMMENT: After the "identification of water quality limited segments" has been made, what is the next step?

RESPONSE: Under the present United States Environmental Protection Agency ("USEPA") water quality planning and management regulation (40 CFR 130.7), the identification of water quality limited segments is to be followed by the establishment of a priority ranking for water quality limited segments still requiring total maximum daily loads, wasteload allocations, and load allocations, all of which are mentioned in N.J.A.C. 7:15-2.1(a)8iii.

24. COMMENT: Were not total maximum daily loads, wasteload allocations, and load allocations for pollutants determined in the WQM plans? Does the State have an accurate record of what has been happening at these treatment facilities? When the commenter attempted to ascertain what the current use was at one sewage treatment plant in a community undergoing extensive growth, the commenter gave up for lack of proper identification of developments in the towns served. Much better communication is needed with the concerned citizens in these areas and a much better process with the local officials responsible to report to the Department.

RESPONSE: Section 303(d) and (e) of the Clean Water Act (33 U.S.C. §§1313(d) and (e)), as well as the Water Quality Planning Act at N.J.S.A. 58:11A-7, expressly require the Department's CPP to address the determination of total maximum daily loads. In addition, the present USEPA water quality planning and management regulation expressly requires the CPP to address the determination of total maximum daily loads, wasteload allocations, and load allocations (40 CFR 130.7). Therefore, N.J.A.C. 7:15-2.1(a)8iii properly identifies these determinations as a required component of the CPP, regardless of whether these determinations were already adopted in WQM plans.

Moreover, as discussed in Chapter IV of the Department document entitled "The New Jersey Continuing Planning Process for Water Quality Management—Descriptions of Selected Management Processes" (March 1987), although the Department has established procedures to ensure that effluent limitations will meet the Department's Surface Water Quality Standards, the Department has never formally established a total maximum daily load. As illustrated by the Department's Toxics Action Plan (September 28, 1988) and draft Nonpoint Source Assessment and Management Program (December 1988, p. V-9), the Department intends to develop total maximum daily loads and wasteload allocations.

Even after total maximum daily loads, wasteload allocations, and load allocations are determined and adopted in WQM plans, these determinations may need to be amended for various reasons, including changes in water quality standards; changes in effluent flows, discharge locations, or hydrologic conditions; and the availability of new data and improved methodologies. Making these determinations is a continuing process, not an event that occurs only once for each waterway.

The rest of this comment is too vague to warrant any changes to the proposed rules. The comment does not explain what the commenter specifically means by "an accurate record of what has been happening at these treatment facilities" (what types of events?), by "communication with concerned citizens" (what types of information, communicated by what means and how frequently?), or by a "process with the local officials" (what type of process?). ("Current use" at a sewage treatment plant might refer to the volume of sewage, the sewer service area, or a list of customers, and it is unclear whether the above-quoted phrases are concerned only with "current use".)

25. COMMENT: The inventory and ranking of needs for the construction of wastewater facilities has always used a point system, which the commenter has annually criticized because of its lack of recognition for receiving waters. Will this be changed? The Passaic River Basin has been short-changed in the award of construction grants because of that point system, and nothing has been done to bring the program into a more scientifically related decision-making base. Is it known, for example, what kinds of improvements to water quality occur once an inconsistent facility is brought into compliance?

RESPONSE: This comment was referred to the Municipal Wastewater Assistance Element in the Department's Division of Water Resources, which administers the New Jersey Municipal Wastewater Assistance Program, for review and appropriate action. In its August 2, 1989 letter to the commenter, the Municipal Wastewater Assistance Element replied to the commenter's criticism of the Department's priority system.

The function of N.J.A.C. 7:15-2.1(a)8vi is to identify the inventory and ranking of needs for the construction of wastewater facilities as a component of the Department's CPP, not to set forth or modify the ranking system methodology. Each year, under N.J.A.C. 7:22-3.7, 7:22-4.7, and USEPA regulations (40 CFR 35.2105), the Department develops a priority system for this ranking, and holds public hearings (including a public comment period) on the priority system. To prevent duplication of this public participation process and confusion about how the public may comment on the priority system methodology, those public hearings (and public comment period) are the sole forum for the formal submission of public comments on the priority system methodology. (Preventing such duplication and confusion is also a major objective of the related provision in N.J.A.C. 7:15-3.4(b)2 concerning the priority system.)

The Department's response to the commenter's past criticisms of the priority system methodology is contained in the responsiveness summary prepared by the Department for each priority system. The Department cannot predict how it will respond to future criticisms of the priority system methodology.

26. COMMENT: The commenter, a watershed association, reviews discharge permits on occasion; however, it seems that the "general" permits are most problematic. A major concern is that through this permit system limited pollutants are by law permitted to be discharged. Under "general" permits, small increments are being added in some areas to an already stressed system.

RESPONSE: This comment apparently refers to N.J.A.C. 7:15-2.1(a)8vii, which identifies the "determination of priorities for the issuance of discharge permits" as a component of the Department's CPP. The function of N.J.A.C. 7:15-2.1(a)8vii is to identify the determination of these priorities as a component of the Department's CPP, not to establish discharge permit policies that directly conflict with discharge permit policies set forth in detail in other Department rules such as the New Jersey Pollutant Discharge Elimination System ("NJPDES") rules (see N.J.A.C. 7:14A) and the Surface Water Quality Standards (see N.J.A.C. 7:9-4). The NJPDES rules define the term "general permit" as "a NJPDES 'permit' authorizing a category of discharges within a geographic area" (see N.J.A.C. 7:14A-1.9). The NJPDES rules expressly provide that in specified circumstances the Department may issue a general permit for discharges to surface water (see N.J.A.C. 7:14A-3.9). Persons who want to submit comments on the issuance of such general permits on a Statewide basis should submit comments on N.J.A.C. 7:14A-3.9.

USEPA regulations for the National Pollutant Discharge Elimination System expressly authorize state programs to implement a general permit program (40 CFR 122.28, 123.25). General permits are a well-established device for accomplishing program objectives while mitigating the heavy or intolerable administrative burden of processing large numbers of individual permits. For example, in the 1970s the Natural Resources Defense Council (NRDC) and the Federal courts suggested the use of general permits to regulate vast numbers of separate storm sewer discharges under Section 402 of the Clean Water Act, 33 U.S.C. §1342 (*NRDC v. Costle*, 568 F.2d 1369, 1381 (1977)). The 1987 amendments to that section provide that permits for such discharges may be issued on a system-wide or jurisdiction-wide basis.

General permits can improve water quality by allowing the Department to transfer resources from individual permit processing to more productive water quality management activities. General permits and individual permits are subject to the same Surface Water Quality Standards (including antidegradation policies) in N.J.A.C. 7:9-4. Also, particular dischargers can be required to obtain individual permits under N.J.A.C. 7:14A-3.9(b)2i. Any interested person may petition the Department to

take action under that provision, or may submit objections to particular general permits through the public comment procedures under N.J.A.C. 7:14A-8. The comment does not disclose whether the commenter has expressed its concerns about general permits in such petitions or comments.

27. COMMENT: There should be a system whereby discharge permits are eliminated for everything except non-contact cooling water or a thoroughly pretreated discharge so that certain elements are no longer discharged into our waters. Surface waters will never be improved if pollution is continued to be allowed through a permit system.

RESPONSE: Like comment number 26, this comment also apparently refers to N.J.A.C. 7:15-2.1(a)8vii. The function of N.J.A.C. 7:15-2.1(a)8vii is to identify the "determination of priorities for the issuance of discharge permits" as a component of the Department's CPP, not to establish discharge permit policies substantially different from discharge permit policies set forth in detail in other Department rules. Various Department rules, such as the NJPDES rules (see N.J.A.C. 7:14A), the Surface Water Quality Standards (see N.J.A.C. 7:9-4), and the Wastewater Discharge Requirements (see N.J.A.C. 7:9-5), set forth specific Department policies concerning the allowable amounts of various specific substances in discharges to surface waters. Persons who want to restrict the discharge of "certain elements" Statewide should submit comments on those rules.

The comment is also too vague to warrant any changes to the proposed rules. The comment does not explain what the commenter specifically means by "certain elements". The Department certainly cannot propose or adopt a rule prohibiting the discharge of "certain elements" without identifying those "elements". Depending on which "elements" are prohibited, there may also be massive practical obstacles to a zero discharge policy, including the availability, expense, and energy demands of treatment technology (for discharges of stormwater as well as wastewater), and the potential for increased pollutant discharges to ground water or other environmental media as discharges to surface water are prohibited. It may also be unreasonable to require extraordinary measures to eliminate the discharge of certain substances that would still enter surface waters from unregulated or natural sources. Surface water quality has been improved, and will continue to be improved, by effluent limitations that substantially restrict, but do not fully eliminate, the discharge of pollutants to surface waters.

28. COMMENT: Department planners should stop changing terminology. "Methods for controlling all residual wastes from any water treatment processing" used to be called the pretreatment program, which has not met the goals originally established for it. The public participation program was not implemented, and limited, if any, progress has been made. Dealing with those residuals should not be difficult if a clear message is presented: control these residuals at the place of origin, create a waste exchange, and make the disposal a proper cost of doing business.

RESPONSE: The Water Quality Planning Act, at N.J.S.A. 58:11A-7, expressly requires the Department's CPP to address "methods for controlling all residual wastes for any water treatment processing". Section 303(e) of the Clean Water Act (33 U.S.C. §1313(e)) likewise requires the CPP to address "controls over the disposition of all residual waste from any water treatment processing". Therefore, N.J.A.C. 7:15-2.1(a)8viii properly identifies "methods for controlling all residual wastes from any water treatment processing" as a required component of the CPP. The phrase is not a recent invention of Department planners, and is not a synonym for the pretreatment program. Rather, the phrase addresses the subject of sludge management. Although the subjects of pretreatment and sludge management are related in some respects, these subjects are not identical. The function of N.J.A.C. 7:15-2.1(a)8viii is to identify the control of residual waste as a component of the Department's CPP, not to set forth the specific contents of the pretreatment program. Public participation and other requirements in that program are contained in the NJPDES rules at N.J.A.C. 7:14A-13.

29. COMMENT: In the CPP, the Department will evaluate water pollution control factors such as cost-effectiveness, economic impact and financial capability. Because the BPU has the expertise to evaluate financial needs and impacts, the BPU should have input into the process when a utility's costs (and its customers' rates) may be seriously affected.

RESPONSE: As discussed in the Department response to comment number 12, there are mechanisms in N.J.A.C. 7:15 and other Department rules for submission of BPU comments on many decisions that affect BPU-regulated utilities.

#### 7:15-2.2 Relationship between the Statewide, areawide, and county Water Quality Management Plans

30. COMMENT: Three commenters objected to provisions in N.J.A.C. 7:15-2.2(a) which adopt the Statewide WQM Plan and subsequent amendments and revisions thereto into the chapter by reference. One of these commenters had related objections to provisions in N.J.A.C. 7:15-3.4(b) and 3.5(d), which address how the Statewide WQM Plan may be amended and revised.

The first commenter recommended that a separate filing should be made under the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., to adopt the Statewide WQM Plan as a regulatory document and that such filing should be accorded the status of a new proposal and be appropriately codified and published within the New Jersey Register. This commenter also questions whether providing the public the opportunity to inspect the Statewide WQM Plan in only two locations within the State is adequate under the Act.

The second commenter requested that the last two sentences before the NOTE in N.J.A.C. 7:15-2.2(a) be deleted, as it is unfair to adopt the lengthy Statewide WQM Plan without public notice in the New Jersey Register; it is also a violation of the Administrative Procedure Act. Furthermore, the Department proposes to adopt all subsequent amendments and revisions thereto without public notice; that would create extreme confusion for the regulated community. Also, without public notice, the regulated public would not know whether an element of an areawide WQM Plan is in conflict with the Statewide WQM Plan under N.J.A.C. 7:15-2.2(c).

The third commenter asserted that N.J.A.C. 7:15-2.2(a) and 3.4(b) operate in tandem to indicate Departmental intent to maintain a separate document known as the Statewide WQM Plan and these proposed regulations as separate regulatory tools. Adoption by reference through N.J.A.C. 7:15-2.2(a) violates the Administrative Procedure Act. Any amendments or revisions which have not been published, aired for public comment and subsequently adopted in accordance with that Act are void. The Department should codify any document it intends to use in the New Jersey Administrative Code. Much of the difficulty associated with wastewater permitting has directly resulted from inclusion of numerous requirements exclusively in the Statewide WQM Plan and not in the Administrative Code.

While the most obvious problems have now been identified and the Department is codifying those requirements as regulations, other requirements may well remain, or be added into, the Statewide WQM Plan and be enforced by Department permit review. It would be much clearer and simpler for the Department to adopt all requirements through the New Jersey Administrative Code.

This same comment applies to N.J.A.C. 7:15-3.5(d), which also continues the current process criticized above and should be amended to clarify that the procedures set forth in the Administrative Procedure Act modify the direction in the Water Quality Planning Act to adopt general regulatory requirements in water quality management plans, precisely as the Act amends all laws which authorize the adoption of regulations or other policies of statewide and general applicability by specifying the procedure which an agency must follow in the adoption process.

RESPONSE: The Statewide WQM Plan was properly adopted under N.J.A.C. 7:15, and was the subject of public comment and a public hearing (see 17 N.J.R. 842(c), April 1, 1985, and 18 N.J.R. 111(b), January 6, 1986). Moreover, incorporation by reference is a proper regulatory mechanism under the Administrative Procedure Act and its implementing rules (see N.J.S.A. 52:14B-1 et seq. and N.J.A.C. 1:30-2.2). Providing two locations at which the Statewide WQM Plan is available was done in conformity with the Administrative Procedure Act. Moreover, the Department provided a copy of the Plan to any person who requested it.

Amendments to the Statewide WQM Plan will be adopted subject to the public notice provisions of N.J.A.C. 7:15-3.4(b). The Department notes that plan "revisions" (as distinguished from "amendments") are of limited effect, and therefore that the plan revision provisions at N.J.A.C. 7:15-3.5(d) do not require public notice and comment prior to adoption of such revisions. For example, the Statewide WQM Plan may be revised in order to delete outdated technical data and to supply more current data. With reference to whether elements of an areawide WQM plan conflict with the Statewide WQM Plan, the contents of the Statewide WQM Plan are a matter of public record and are thus available for inspection.

Although N.J.A.C. 7:15-2.2(a) provides that the entire Statewide WQM Plan is incorporated by reference into this chapter, it was evident in

proposed N.J.A.C. 7:15-3.1(f) that much of the Statewide WQM Plan is not intended to be used in the performance of consistency reviews (see also the Department response to comment number 62). To prevent any possible conflict between N.J.A.C. 7:15-3.1(f) and 2.2(a), the Department has changed N.J.A.C. 7:15-3.1(f) to make it clear that N.J.A.C. 7:15-3.1(f) does not provide for the use in consistency reviews of sources incorporated into this chapter by reference.

31. COMMENT: In N.J.A.C. 7:15-2.2(b) and (e)1 one commenter objects to the language change from the previous regulation. The proposed language suggests that the Department seeks a regulatory mechanism to implement the State Development and Redevelopment Plan. A major determinant utilized in delineating between Tier Four and Tier Five in the State Planning Commission's planning process was the presence of sewers or plans to provide sewers in a particular area. The language could be construed to provide a regulatory mechanism to stop all significant development in broad areas by simply adopting an amendment to the Statewide WQM Plan prohibiting wastewater treatment facilities in areas designated below certain Tier thresholds in the State Plan.

The Statewide WQM Plan must be compatible with local and regional economic and social needs. Thus, the plan must integrate areawide plans through a cooperative effort, as opposed to the proposed regulatory scheme whereby the Department supersedes all plans in conflict with the Department plan.

RESPONSE: The regulatory scheme criticized by the commenter is entirely in accord with and necessary to implement the Water Quality Planning Act, which expressly requires the Department to establish a CPP which will "encourage, direct, supervise and aid" areawide WQM planning (see N.J.S.A. 58:11A-2.b), and expressly requires areawide WQM plans to conform with Department rules promulgated pursuant to N.J.S.A. 58:11A-9, and to be consistent with the Department's CPP (see N.J.S.A. 58:11A-5). As stated in N.J.A.C. 7:15-2.1(a) and 2.2(a), the Statewide WQM Plan and N.J.A.C. 7:15 contain the written provisions of the Department's CPP. Areawide WQM plans that conflict with the Statewide WQM Plan and this chapter therefore conflict with the CPP and with Department rules promulgated pursuant to N.J.S.A. 58:11A-9. Such conflict is clearly prohibited by the Water Quality Planning Act, which expressly states that "the areawide plan shall be consistent with the Statewide continuing planning process and shall be in conformance with the rules and regulations promulgated by the commissioner pursuant to section 9 of this act" (N.J.S.A. 58:11A-5, which also requires county WQM plans to be consistent with areawide WQM plans). The Water Quality Planning Act also states that the CPP shall "incorporate water quality management plans into a comprehensive and cohesive Statewide program" and "integrate and unify the statewide and areawide water quality management planning processes" (see N.J.S.A. 58:11A-2.b and N.J.S.A. 58:11A-7). Also, the Commissioner may "adopt rules and regulations for the preparation and adoption of areawide plans by the areawide planning agencies and in order to effectuate the purposes of this act" (see N.J.S.A. 58:11A-9).

N.J.A.C. 7:15-2.2 is part of the Department's program to implement the above-cited Water Quality Planning Act provisions, which do not require the Department to obtain the consent of WQM planning agencies directed and supervised by the Department. The Department did not have the State Development and Redevelopment Plan expressly in mind when it proposed N.J.A.C. 7:15-2.2, and the Department would retain N.J.A.C. 7:15-2.2(b) and (c) even if the State Planning Act (N.J.S.A. 52:18A-196 et seq.) did not exist. The State Development and Redevelopment Plan is nowhere mentioned in N.J.A.C. 7:15. (In contrast, municipal and county master plans are expressly mentioned in N.J.A.C. 7:15-5.18(b)). However, the Water Quality Planning Act does expressly direct the Department to coordinate and integrate the CPP with related State as well as local planning activities, programs, and policies (see N.J.S.A. 58:11A-2b and N.J.S.A. 58:11A-7). A final State Development and Redevelopment Plan has not yet been adopted under the State Planning Act. Municipal and county cross-acceptance of the Preliminary State Development and Redevelopment Plan is now being negotiated pursuant to N.J.A.C. 17:32-3. It is premature at this time for the Department to discuss what specific actions the Department may take in the future to coordinate and integrate WQM planning with the final, adopted State Development and Redevelopment Plan.

32. COMMENT: In N.J.A.C. 7:15-2.2(e), what is the purpose of allowing county planning boards to also prepare a county WQM plan if an areawide WQM plan already exists; this arrangement invites unnecessary confusion for the regulated community. Under what authority could such a plan be enforced?

RESPONSE: The Water Quality Planning Act expressly states at N.J.S.A. 58:11A-5 that "every county planning board may also conduct a countywide waste treatment management planning process and prepare a county water quality management plan, which plan shall be consistent with the areawide plan or plans provided for herein". The Department thus has no authority to prevent any county planning board from preparing a county WQM plan. The objective of N.J.A.C. 7:15-2.2(e)1 and 2 is to ensure that the Department and the designated planning agencies receive notice of such plans, and that such plans do not conflict with the Statewide or areawide WQM plans.

The Water Quality Planning Act specifically requires that projects, activities and Department permits be consistent with areawide WQM plans, but does not specifically require that projects, activities, and Department permits be consistent with county WQM plans (see N.J.S.A. 58:11A-10). Because of this distinction, and because the entire Water Quality Planning Act addresses areawide WQM planning in much more detail than it addresses county WQM planning, N.J.A.C. 7:15 emphasizes the areawide WQM plan as the substate WQM plan that has primary significance. County WQM plans can acquire the same significance only by being adopted into areawide WQM plans. Accordingly, N.J.A.C. 7:15-2.2(e)3 provides that county WQM plans are not used in the performance of consistency reviews under N.J.A.C. 7:15-3.1 or 3.2, except to the extent that county WQM plans are adopted into areawide WQM plans (which can be enforced under N.J.S.A. 58:11A-10 and other statutory provisions). Such adoption is not automatic, but must follow the procedures in N.J.A.C. 7:15-3.4. Through N.J.A.C. 7:15-2.2(e)3, the Department has substantially limited the confusion which county WQM plans might create for the regulated community.

#### 7:15-2.3 Role of the Department

33. COMMENT: Five commenters said the expired rule in N.J.A.C. 7:15-2.3(a)1 provided for a reversion of responsibilities from the designated planning agency to the Department in the event the agency was unable to fulfill its responsibilities. The elimination of this provision is a clear indication of the Department's intent to eliminate the designated planning agency from the review process. In the event that the proposal is modified to include, once again, a meaningful role for the designated planning agency, a similar "reversion" clause for designated planning agencies not fulfilling their role would be supported.

RESPONSE: The comment did not explain what the commenters specifically mean by the "review process". The Department assumes that the comment is referring to the consistency determination review program under N.J.A.C. 7:15-3.1 and 3.2. The expired rule in N.J.A.C. 7:15-2.3(a)1 does not pertain to responsibility for the consistency determination review program. Rather, that expired rule pertains solely to the responsibility for "areawide planning". By "areawide planning", the Department means the preparation of areawide WQM plans, not the review of projects, activities, and Department permits for consistency with WQM plans. (Department policy concerning the role of designated planning agencies in the consistency determination review program is discussed in the Department response to comment number 11.)

The Department also assumes that although the comment states that the commenters support a "revision" clause, what the commenters actually support is a "reversion" clause. The expired rule is confusing as regards the "reversion" of areawide planning responsibility. Once the Governor designates a planning agency under N.J.S.A. 58:11A-4, the areawide planning responsibility of that planning agency is defined by N.J.S.A. 58:11A-5. The Department may supervise and direct the designated planning agency's exercise of this responsibility, but the only way this responsibility can "revert back to the State" is by action of the Governor. The Governor's designation powers have never been delegated to the Department. Because the Governor, not the Department, decides whether to rescind the designation of planning agencies, it is not appropriate for N.J.A.C. 7:15-2.3(a) to set forth the circumstances that may result in such rescission. Moreover, the Water Quality Planning Act does not provide for "partial" reversion of areawide planning responsibility. An organization is either a "designated planning agency" with areawide planning responsibility, or it is not. Based on these considerations, the Department deleted the statement in expired N.J.A.C. 7:15-2.3(a) that "the Department shall conduct areawide planning . . . for those designated areas where the responsibility for planning has reverted back to the State". Instead, N.J.A.C. 7:15-2.4(c) provides that if a previously designated area becomes a non-designated area as a result of action by the Governor, the Department shall conduct areawide WQM planning for that area.

34. COMMENT: Under N.J.A.C. 7:15-2.3(a)13 the Department will delegate "aspects and responsibilities of the CPP to other State . . . agencies, and also withdraw and transfer such delegations as necessary." The BPU seriously questions the Department's authority to delegate regulatory responsibilities to a sister State agency. The BPU would like to discuss this issue with the Department at greater length.

RESPONSE: Statutory authority for N.J.A.C. 7:15-2.3(a)13 is provided by the Water Quality Planning Act, which expressly states at N.J.S.A. 58:11A-7 that "the commissioner may delegate aspects of the continuing planning process to other State . . . agencies". Therefore, further discussion of this comment is not necessary, and no change has been made to the rules.

35. COMMENT: Five commenters said N.J.A.C. 7:15-2.3(a)13 should be modified to include the potential for delegation to the designated planning agency. Also, the provision in this paragraph for negotiation of agreements with potential delegation is too vague and does not specify the proper procedure which could be used for delegation.

RESPONSE: N.J.A.C. 7:15-2.3(a)13 provides that the Department may delegate aspects and responsibilities of the CPP to "other State, Federal, interstate, county, or local agencies". New Jersey presently has seven designated planning agencies, six of which are "county" agencies and one of which is an "interstate" agency. Because all seven designated planning agencies may receive delegations under N.J.A.C. 7:15-2.3(a)13, it is not necessary for that paragraph to expressly mention those agencies.

Delegation under N.J.A.C. 7:15-2.3(a)13 could potentially address such a broad range of CPP responsibilities and such a broad range of agencies that it is not practical for N.J.A.C. 7:15-2.3(a)13 to specify a delegation procedure. The appropriate delegation procedure may vary considerably depending on the scope and subject matter of the delegation, the type of agency, and whether the agency will receive financial or other compensation.

36. COMMENT: The Landis Sewerage Authority is the designated 201 Agency for its service area which includes the City of Vineland. The Landis Sewerage Authority should be designated as the Water Quality Management Planning Agency for this area.

RESPONSE: As defined in N.J.A.C. 7:15-1.5, the term "designated planning agency" means an agency designated by the Governor to conduct areawide WQM planning pursuant to Section 4 of the Water Quality Planning Act (see N.J.S.A. 58:11A-4). While the Landis Sewerage Authority was designated as a 201 Facilities Planning Agency (as depicted in the Lower Delaware WQM Plan), the Governor has not designated the Landis Sewerage Authority as the designated planning agency for the Lower Delaware WQM Planning Area. Although N.J.A.C. 7:15-2.3(a)14 provides that the Department shall make recommendations to the Governor regarding designation of planning agencies, the recommendations themselves are not "rules" as defined in the Administrative Procedure Act. The Department notes that a sewerage authority may become a "wastewater management planning agency" as defined in N.J.A.C. 7:15-1.5 without becoming a "designated planning agency".

37. COMMENT: The management of the Northeast New Jersey WQM planning area should be turned over to regional agencies, who are more familiar with local water quality problems and thus are better able to arrive at solutions than the overburdened Department.

RESPONSE: Because this comment was preceded in the commenter's letter by a statement that the Department should encourage involvement of designated planning agencies (see comment number 9), the Department interprets this comment as a request for the designation of planning agencies pursuant to Section 4 of the Water Quality Planning Act (N.J.S.A. 58:11A-4). The Governor has the power to designate planning agencies under N.J.S.A. 58:11A-4. Although N.J.A.C. 7:15-2.3(a)14 provides that the Department shall make recommendations to the Governor regarding designation of planning agencies, the recommendations themselves are not "rules" under the Administrative Procedure Act.

#### 7:15-2.4 Role of designated planning agencies

38. COMMENT: Since areawide CPP activities are funded by government appropriations, N.J.A.C. 7:15-2.4(a)3 should be applied carefully so activities are "agreed" to and not arbitrarily "assigned" to the designated planning agency when staff and funding may not have been considered. When the budget and work program are prepared on a calendar year basis and county funds obligated in the adopted budget document and spent on a contractual basis, significant unexpected activities can be difficult to accommodate without time consuming budget and contract amendments and approval.

RESPONSE: The Water Quality Planning Act provides at N.J.S.A. 58:11A-2 and 58:11A-7 that the Department shall "direct" and "super-

vised" areawide planning, and that the Department may delegate aspects of the continuing planning process to other interstate or local agencies (including designated planning agencies). Except in very unusual circumstances which the Department does not expect to occur, the Department would consult with the designated planning agency before making assignments under N.J.A.C. 7:15-2.4(a)3. However, the Water Quality Planning Act does not require that agency's consent before such assignments are made.

39. COMMENT: Five commenters said N.J.A.C. 7:15-2.4(a) eliminates the current provision for review of environmental health ordinances adopted pursuant to the County Environmental Health Act. What is the logical basis for this elimination?

RESPONSE: The Department has not eliminated the substantive requirement that environmental health ordinances be reviewed for consistency with WQM plans. Rather, the Department has relocated this requirement from expired N.J.A.C. 7:15-2.4, where such review is a responsibility of designated planning agencies, to proposed N.J.A.C. 7:15-3.1(b)10, where such review is part of the consistency review program administered by the Department. (Department policy concerning the role of designated planning agencies in the consistency determination review program is discussed in the Department response to comment number 11.) Because such ordinances are subject to Department disapproval under the County Environmental Health Act at N.J.S.A. 26:3A2-27, it is logical to group such ordinances with projects and activities in N.J.A.C. 7:15-3.1 that require Department approval. N.J.S.A. 26:3A2-27 expressly requires that such ordinances shall be mailed to the Department and shall take effect within 30 days unless disapproved by the Department. In light of these express statutory references to the Department and the brief, 30 day period allowed for Department action, it is logical for the Department to perform the consistency review function for these ordinances.

40. COMMENT: Five commenters said N.J.A.C. 7:15-2.4(c) provides for Departmental assumption of areawide responsibilities. The regulation should be clarified to indicate the exact scenario and procedure for Department assumption.

RESPONSE: N.J.A.C. 7:15-2.4(c) states that "if a previously designated area becomes a non-designated area as a result of action by the Governor, the Department shall conduct areawide water quality management planning for that area". The Governor performs such action by rescinding the designation of planning agencies under Section 4 of the Water Quality Planning Act (N.J.S.A. 58:11A-4). Because it is the Governor, not the Department, that may rescind the designation of planning agencies, it is not appropriate for N.J.A.C. 7:15-2.4(c) to set forth the scenario and procedure for such rescission. USEPA regulations at 40 CFR 130.9(b) set forth requirements concerning the de-designation of planning agencies, but it is not necessary to repeat those requirements in N.J.A.C. 7:15-2.4(c).

The Water Quality Planning Act at N.J.S.A. 58:11A-5 expressly requires the Department to conduct areawide WQM planning for "all areas of the state without a designated planning agency". Non-designated areas, by definition, have no designated planning agency. Therefore, the Department's responsibility for areawide WQM planning for non-designated areas, as provided in N.J.A.C. 7:15-2.4(c), is the direct and unavoidable consequence of the Water Quality Planning Act. When a previously designated area becomes a non-designated area, the Water Quality Planning Act automatically transfers the areawide WQM planning responsibility for that area to the Department. No other "scenario and procedure" is required.

### SUBCHAPTER 3. PLAN ASSESSMENT, AMENDMENT AND ADOPTION

#### 7:15-3.1 Water quality management plan consistency requirements

41. COMMENT: The commenter commends the Department for establishing systematic procedures for evaluating projects and activities for consistency with WQM plans.

RESPONSE: The Department appreciates the commenter's commendation of N.J.A.C. 7:15-3.1 and 3.2.

42. COMMENT: N.J.A.C. 7:15-3.1(a) should clarify that a WQM plan has to be "legally adopted". In the last sentence, delete the phrase "and similar actions"; this term is too vague and expands the statutory base from permits to other unauthorized actions.

RESPONSE: The Department agrees with part of this comment, and has inserted the word "adopted" before "WQM plan" in this subsection. Because the term "adoption" is defined in N.J.A.C. 7:15-1.5, it is unnecessary to use the phrase "legally adopted" in N.J.A.C. 7:15-3.1(a).

The Department does not agree that the phrase "and similar actions", as used in N.J.A.C. 7:15-3.1(a), is vague. The phrase refers to Department regulatory actions that are not expressly referred to as "permits" in individual Department regulatory programs, but that are functionally equivalent to permits. Such actions are called various different names in such programs. For example, in the present (July 1987) version of the Department's Standard Application Form CP #1, the term "permits" is applied to "permits, approvals, certifications, registrations, etc." The term "permit" in N.J.A.C. 7:15-3.1(a) is intended to have the same meaning that the term "permit" has in N.J.S.A. 58:11A-10. In accordance with N.J.S.A. 58:11A-11, the term "permit" in N.J.S.A. 58:11A-10 should be liberally construed.

43. COMMENT: Because of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., the rules provide that all Department permits must be consistent with the WQM plan. If a municipality has not complied with the municipal wastewater management planning process, does that mean that any activity which might need a State permit (well permits, for example, or minor stream encroachment permits) is inconsistent with the WQM plan? The rules are not clear in this respect.

RESPONSE: As provided in N.J.A.C. 7:15-3.1, "the Department shall review the appropriate WQM plan and this chapter to determine whether the project or activity is consistent. . ." Whether the activity is inconsistent or not depends on the contents of the appropriate WQM plan at the time the consistency review is conducted. If an activity is consistent with the appropriate WQM plan at the time of permit application, then the status of any wastewater management plans for the area has no bearing on the issuance of the permit. However, if an activity is inconsistent with the appropriate WQM plan and requires the preparation of a wastewater management plan as part of a WQM plan amendment for the activity (see N.J.A.C. 7:15-5.1), then a permit for that activity could not be issued until the wastewater management plan area in which the activity is to take place is adopted in accordance with N.J.A.C. 7:15-3.4.

44. COMMENT: N.J.A.C. 7:15-3.1(b)4 and (c)6 need to explain Type "B" and Type "A" Wetlands permits without referring to N.J.A.C. 7:7-2.2. Wetlands areas impact most development in the Tri-County WQM planning area; explanation will aid interpretation for the user. Alternatively, Type "B" and Type "A" wetlands could be defined in N.J.A.C. 7:15-1.5.

RESPONSE: Type "A" and Type "B" Wetlands permits are limited to coastal wetlands regulated under N.J.A.C. 7:7-2.2. In order to minimize the length of N.J.A.C. 7:15 and prevent conflict between N.J.A.C. 7:15 and N.J.A.C. 7:7-2.2 if those rules are amended in the future, the explanation of these permits in N.J.A.C. 7:7-2.2 is not duplicated in N.J.A.C. 7:15. The contents of N.J.A.C. 7:7A-2.2 are readily available to the public.

45. COMMENT: One commenter concurs with the requirement in N.J.A.C. 7:15-3.1(b)5 that certain new solid waste facilities undergo formal consistency determination review.

RESPONSE: The Department appreciates the commenter's support.

46. COMMENT: Five commenters said that compared to the expired N.J.A.C. 7:15-3.1(a)3i(8), the proposed N.J.A.C. 7:15-3.1(b)5 seriously limits the number of solid waste facility projects which are subject to consistency determination review. What is the logic for this modification? Such matters should continue to be subject to consistency review.

A sixth commenter said that the exemptions under N.J.A.C. 7:15-3.1(c)14ii, vi, and viii are too broad. Some solid waste operations may have important water quality impacts; all solid waste operations should not be eliminated from consistency determinations. Construction of new leaf composting facilities may have important water quality impacts if located near surface waters. Disruption of sanitary landfills may have important water quality impacts and should be subject to consistency determination.

RESPONSE: The Department in N.J.A.C. 7:15-3.1(c) specifically attempted to distinguish activities that do not warrant formal consistency determination review because the activities are generally not addressed by the areawide WQM plans, or by the Statewide WQM Plan components identified in N.J.A.C. 7:15-3.1(f). Many solid waste activities are not addressed by these provisions or components; to subject such activities to formal consistency determination review would therefore be inappropriate.

The Department agrees that solid waste activities often have at least an indirect impact on water quality; however, the purpose of the consistency determination review process is to determine consistency with the WQM plans and this chapter, not to identify water quality impacts. The Department, through the permit review process, does examine the water quality impacts of solid waste activities, and may require design

changes accordingly. For the most part, the WQM plan provisions and components identified above only address the wastewater disposal aspects of solid waste activities. Therefore, consistency determination reviews have been limited to solid waste activities requiring wastewater discharge. If the WQM plans are revised in the future to address other water quality impacts related from solid waste activities, N.J.A.C. 7:15-3.1 may be changed at that time to include these activities in the formal consistency determination review process.

47. COMMENT: N.J.A.C. 7:15-3.1(b)5 should not require consistency determinations for solid waste transfer stations. There is no relationship between these stations and water quality planning unless these stations will produce effluent which would, perhaps, affect the treatment plant. If solid waste is merely taken from one package and put into another, there should be no cause for any Department concern.

RESPONSE: The Department agrees with this comment and has moved solid waste transfer stations into N.J.A.C. 7:15-3.1(c)14. Any solid waste transfer station that requires one of the permits identified in N.J.A.C. 7:15-3.1(b) will require a consistency determination review for that permit.

48. COMMENT: N.J.A.C. 7:15-3.1(b)5 refers to "new solid waste facilities, other than hazardous waste facilities", but N.J.A.C. 7:15-3.1(b)7 refers to "new hazardous waste facilities". These paragraphs appear to conflict.

RESPONSE: These paragraphs do not conflict. N.J.A.C. 7:15-3.1(b)5 and (b)7 distinguish new hazardous waste facilities from other new solid waste facilities because the Department usually regulates hazardous waste separately from other solid waste. See, for example, N.J.A.C. 7:26-1.1(c), 2.1(b), 2A.1(d), 2B.1(d), 3.8, and N.J.A.C. 7:26-7 through 13.

49. COMMENT: Five commenters said that proposed N.J.A.C. 7:15-3.1(b) removes from the consistency determination process certain development activities in expired N.J.A.C. 7:15-3.1(a)3i(5) (sewer systems for residential development of 50 units or greater, industrial/commercial development generating more than 25,000 gallons of flow per day). Why was this review eliminated? A sixth commenter said that N.J.A.C. 7:15-3.1(b)9 should not eliminate such review.

RESPONSE: N.J.A.C. 7:15-3.1(b) does not eliminate reviews under expired N.J.A.C. 7:15-3.1(a)3i(5), but simply aggregates them under N.J.A.C. 7:15-3.1(b)1 and (b)2.

50. COMMENT: N.J.A.C. 7:15-3.1(b)10 should be deleted, since "adoption of an ordinance" does not require a permit.

RESPONSE: The County Environmental Health Act at N.J.S.A. 26:3A-27 expressly requires environmental health ordinances to be consistent with areawide WQM plans and Department rules, and expressly stipulates that such ordinances shall not take effect if disapproved by the Department. It is therefore reasonable for the Department to list such ordinances as being subject to a Department "permit" under N.J.A.C. 7:15-3.1(b). See also the Department response to comment number 42, concerning the meaning of "permit".

51. COMMENT: Two commenters said that N.J.A.C. 7:15-3.1 should specify that projects of special concern under the stream encroachment program require consistency determinations. One of these commenters stated that the commenter did not agree that certain stream encroachment and waterfront development activities should be exempt from consistency determination review. Neither the stream encroachment program nor the waterfront development program have ever evaluated water quality impacts. When these issues are raised, the response is that water quality concerns are not part of the statute under which they function. Thus, a procedure should be established under which projects of special concern are subject to consistency review, and any project in which legitimate questions are raised can be evaluated by the proper authority within the Department.

RESPONSE: The central issue of this comment was addressed in the Department response to comment number 46. As with solid waste activities, water quality issues for stream encroachment and waterfront development activities are examined by the Department during the permit process (see, for example, N.J.A.C. 7:13-5.2(c) and 7:7E-8.4). If the areawide WQM plans or the Statewide WQM Plan components identified in N.J.A.C. 7:15-3.1(f) are revised in the future to address water quality aspects related to stream encroachments, N.J.A.C. 7:15-3.1 may be changed to include these activities in the formal consistency determination review process. Most significant waterfront development activities will be reviewed under N.J.A.C. 7:15-3.1(b)8.

52. COMMENT: Five commenters said that logical reasoning should be provided for eliminating water diversions from consistency determination review under N.J.A.C. 7:15-3.1(b); review of these permits is necessary to evaluate the water balance effect of proposed discharges. A sixth

commenter said that because of the potential negative impacts to WQM planning, N.J.A.C. 7:15-3.1(b) should not eliminate water diversions from consistency determination review.

**RESPONSE:** The Department has determined that for the most part, the areawide WQM plans and the Statewide WQM Plan components identified in N.J.A.C. 7:15-3.1(f) do not address the water quality impacts of water diversions; therefore, water diversions have been moved to N.J.A.C. 7:15-3.1(c)11. Since the adoption of the expired N.J.A.C. 7:15, the Department has only found one water diversion to be inconsistent with a WQM plan. Thus, it was determined that it was no longer appropriate to require formal consistency determination reviews for these activities. If the WQM plans are revised in the future, then the rule may be changed accordingly.

**53. COMMENT:** Five commenters expressed particular concern about the exclusion of some activities from the consistency review process in N.J.A.C. 7:15-3.1(c)12 and 13. Some residual freshwater wetlands review should remain under the WQM plan program for activities exempted or grandfathered under the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq., or grandfathered into the Corps of Engineers Section 404 program, 33 U.S.C. §1344. A sixth commenter said such activities should be included in N.J.A.C. 7:15-3.1(b) and excluded from N.J.A.C. 7:15-3.1(c)12 and 13.

**RESPONSE:** The consistency determination review process is an integral part of the Department permit process, and is intended solely for projects and activities that are subject to Department permits. Therefore, the rules should not require that an activity that is exempt or grandfathered from a Department permit be subject to formal consistency determination review for that permit. However, if the activity requires one of the permits identified in N.J.A.C. 7:15-3.1(b), then the consistency determination review is required for that identified permit.

**54. COMMENT:** One commenter applauded the Department's implementation of the intent of the Freshwater Wetlands Protection Act in N.J.A.C. 7:15-3.1(c). Permits listed under this provision need not be submitted for consistency reviews but must not be in conflict with WQM plans. This approach has been successfully used for many of the listed permit programs. The commenter supports the inclusion of all permits pertaining to activities involving freshwater wetlands permits.

**RESPONSE:** The Department appreciates the commenter's support.

**55. COMMENT:** In N.J.A.C. 7:15-3.1(c)12, a definition is needed for activities that require freshwater wetlands permits but do not require a formal consistency determination.

**RESPONSE:** Requirements for freshwater wetlands permits are identified in N.J.A.C. 7:7A. If the activity requires a permit under those rules, then it does not require a formal consistency determination review for that permit, although it must still be consistent with WQM plans and N.J.A.C. 7:15. Also, if the activity requires one of the permits identified in N.J.A.C. 7:15-3.1(b), then consistency determination review is required for that identified permit.

**56. COMMENT:** In N.J.A.C. 7:15-3.1(c), clarify what "not require a formal consistency determination" means when obtaining one of the listed approvals. Will an applicant need to pursue any additional "informal" reviews by the Department? This section should be revised to read "The following projects and activities do not require any review for consistency under N.J.A.C. 7:15-3.2, but nevertheless, shall still not conflict with WQM plans."

**RESPONSE:** "Not require a formal consistency determination review" means that the Department will not perform any consistency determination review under N.J.A.C. 7:15-3.2 for the listed approvals. However, the Department may review the project in the course of the permit application process to determine consistency. Nevertheless, the applicant has no responsibility to provide documentation, or make any separate application, for consistency, unless specifically requested by the Department through the permit review process. (Also, if the project or activity requires one of the permits identified in N.J.A.C. 7:15-3.1(b), then consistency determination review under N.J.A.C. 7:15-3.2 is required for that identified permit.)

**57. COMMENT:** N.J.A.C. 7:15-3.1(c)5 needs to explain the kinds of renewals or modifications that are "major" or "not major" so a specific comment can be offered on this rule.

**RESPONSE:** The term "major modification" was defined in proposed N.J.A.C. 7:15-1.5 as a "significant alteration, expansion or other change that may reasonably be expected to affect the quantity of flow treated or the quality of the effluent discharged to the waters of the State or to a publicly owned treatment works". To prevent confusion with terminology in the NJPDES program, the term "major modification" has been changed to "significant modification" in N.J.A.C. 7:15-1.5,

N.J.A.C. 7:15-3.1(b)1, and N.J.A.C. 7:15-3.1(c)5. In N.J.A.C. 7:15-1.5, the term "significant modification" has the same definition that the term "major modification" had in proposed N.J.A.C. 7:15-1.5.

The term "major modification" is used in the NJPDES program to refer to a permit modification that cannot be processed as a "minor modification" under N.J.A.C. 7:14A-2.14. Not every "major modification" (as that term is used in the NJPDES program) is considered a "significant modification" under N.J.A.C. 7:15-1.5. Although "minor modifications" processed under N.J.A.C. 7:14A-2.14 would not be considered "significant modifications" under N.J.A.C. 7:15-1.5, there are some permit modifications that cannot be processed as "minor modifications" under N.J.A.C. 7:14A-2.14, but that are still not significant enough to be characterized as "significant modifications" under N.J.A.C. 7:15-1.5.

Because it is not possible for the Department to identify all of the potential modifications that could be proposed for all of the existing permits, these modifications must be examined on a case-by-case basis to determine whether the change from the existing permit is significant enough to warrant a formal consistency determination review. No explanation of N.J.A.C. 7:15-3.1(c)5 is required where the proposal is renewal of the existing permit without modification of that permit.

**58. COMMENT:** Proposed N.J.A.C. 7:15-3.1(c)16 excludes from consistency review various spills or hazardous waste removal actions. Five commenters agree with the general intent of the rule (not to subject remedial actions to delays) but believe the exclusion is too broad. Specifically, "initial remedial actions" could be exempted, but long term remedial actions should still be subject to a consistency review process.

**RESPONSE:** As the commenters correctly indicated, the principal intent of N.J.A.C. 7:15-3.1(c)16 was to exempt remedial actions from administrative delays associated with the consistency determination review process. The Department has found that the areawide WQM plans and the Statewide WQM Plan components identified in N.J.A.C. 7:15-3.1(f) generally do not address these types of activities; it is therefore not appropriate to require a formal consistency determination review for these projects. Because the purpose of these activities is to abate existing pollution problems, it would not be in the best interests of the public to delay their implementation any longer than necessary.

When the Department considered this comment, the Department observed that the actions identified in N.J.A.C. 7:15-3.1(c)16 are similar in purpose to the treatment works identified in N.J.A.C. 7:15-4.2(a)2. To establish a more consistent policy on the consistency of pollution abatement measures, the Department has moved these actions from N.J.A.C. 7:15-3.1(c)16 to N.J.A.C. 7:15-4.2(a)3. Also, the Department changed "actions performed by" to "actions performed or required by" in order to address a wider range of removal or remedial actions, and to be consistent with N.J.A.C. 7:15-4.2(a)2, which refers to "required" treatment works.

**59. COMMENT:** Five commenters said proposed N.J.A.C. 7:15-3.1(c)17 is overly broad. Such a catchall exclusion could seriously undermine the consistency review process.

**RESPONSE:** The Department does not agree that N.J.A.C. 7:15-3.1(c)17 is overly broad. N.J.A.C. 7:15-3.1(b), the rest of N.J.A.C. 7:15-3.1(c), and N.J.A.C. 7:15-4.2 specifically identify almost all activities presently regulated by the Department. The comment does not cite a single specific example of a presently regulated activity not identified in those provisions. If additional activities are regulated by the Department in the future, the Department will then consider whether the WQM plans and this chapter apply to such activities. If appropriate, the rules may be revised to identify such activities under N.J.A.C. 7:15-3.1(b). In the meantime, such activities would be subject to the consistency requirements of N.J.A.C. 7:15-3.1(a) and (c).

**60. COMMENT:** Four commenters said that N.J.A.C. 7:15-3.1 and 3.2 should allow applicants to obtain consistency determinations prior to permit applications. One of these commenters said these sections should specify that an applicant can apply for and receive a consistency determination separate from the permit process, in advance of the permit process, or at the same time the permit application is made, at the applicant's discretion. At present, for certain permits (NJPDES permit for discharge to surface and ground water), an applicant can apply for a preliminary determination that a project is consistent with the applicable WQM plan; however, other permit processes (sewer connection approvals, for example) do not permit a separate applicability determination in advance. Thus, an applicant must prepare engineering designs and a full permit application package, often at considerable expense, without the certainty of a consistency determination in advance. A second commenter said that advance consistency determinations regarding sewer

service areas are needed to prevent tremendous expenditures of time and money on projects that would be deemed to be inconsistent at the end of the formal permit process.

A third commenter said that the advanced consistency determination should be in writing and binding, provided no change takes place in the project or the WQM plans, and that applicants should also be notified of any changes in these WQM plans that may affect their consistency determination.

A fourth commenter supported the intent of N.J.A.C. 7:15-3.1(d) and stated that the concurrent processing of permits and consistency reviews is an essential element in efficient permit administration. The commenter urges that the consistency determination be performed as quickly as possible within the permit's 90 day processing period. The commenter supports the creation of an optional review certification program that would allow developers, at their discretion, to obtain binding consistency determinations for large and complex projects in advance of permit submissions.

**RESPONSE:** Based upon three years of experience with the consistency determination program, the Department found that when formal consistency determinations were made prior to the actual permit reviews, the projects were sometimes inconsistent by the time the permit application was submitted. In some instances, applicants would obtain a consistency determination and then wait as much as three years before applying for the permit. During that time the WQM plans had changed to the point that the permit was now inconsistent with the WQM plan. Since the Department is precluded from issuing a permit which is in conflict with the WQM plan, the permit had to be denied. This has created considerable confusion and frustration.

It is important to understand that the consistency determination is not an approval in and of itself. It is merely a part of the Department's permit review process. Therefore, to have a separate determination, well in advance of the permit application, would not only be inappropriate, but could result in conflicting review responses.

In addition, there was some administrative delay, as well as staff duplication of effort, involved in making separate consistency determinations and permit reviews. Therefore, in order to streamline this process, as well as to make it more efficient, the Department decided to consolidate the two review processes as much as possible. Because N.J.A.C. 7:15-3.2 applies only to projects and activities that are listed in N.J.A.C. 7:15-3.1(b), and because all of these projects and activities require Department permits, the phrase "where a Department permit is sought" is superfluous in N.J.A.C. 7:15-3.2(c)1 and (c)2, and the Department has deleted that phrase from those paragraphs. The Department will perform all consistency determination reviews under N.J.A.C. 7:15-3.2 upon receipt of both a complete request for consistency determination review and a complete permit application.

The Department is committed to providing assistance to applicants on WQM consistency, therefore applicants can obtain informal consistency determinations under N.J.A.C. 7:15-3.1(e) at any time, for the purposes of project guidance.

61. **COMMENT:** In N.J.A.C. 7:15-3.1(e), when the Department is notified of a plan amendment, a brief notice to the designated planning agency should be required so requests can be tracked locally.

**RESPONSE:** This comment only applies to the Tri-County WQM planning area and the Delaware Valley Regional Planning Commission (DVRPC), since for all other designated areas the areawide WQM plans, for the most part, can only be amended through the designated planning agency. The Department agrees that for the Tri-County WQM planning area, DVRPC should be notified of plan amendment requests, and the Department shall provide this guidance to applicants. However, the Department feels that this can be accomplished without changing the rule.

62. **COMMENT:** Five commenters said the scope of Department review in performing consistency determinations in proposed N.J.A.C. 7:15-3.1(f) is too limiting.

**RESPONSE:** This comment is too vague to warrant any changes to the proposed rules. The comment does not identify what additional items the commenters think should be used in performing consistency reviews under N.J.A.C. 7:15. In performing such reviews, the Department can only review projects and activities for consistency with WQM plans and this chapter. N.J.A.C. 7:15-3.1(f) pertains only to use of the Statewide WQM Plan, and does not affect the use of areawide WQM plans in performing consistency reviews.

Much of the Statewide WQM Plan is not intended to be used in the performance of consistency reviews. (For example, Chapter II of that Plan consists of 20 "strategies" that outline suggested future actions, but that are not binding on the Department or other persons.) Department rules

(other than N.J.A.C. 7:15 itself) and wastewater assistance documents that are part of the Statewide WQM Plan under N.J.A.C. 7:15-3.4(b)1 and 2 shall be enforced and implemented through Department regulatory and wastewater assistance programs to the extent required by those programs, but should not be independently enforced through consistency reviews under N.J.A.C. 7:15. Such consistency reviews should not duplicate other Department programs, or expand the application of Department rules and other Department documents in haphazard fashion. As discussed in the Department response to comment number 30, the Department has changed N.J.A.C. 7:15-3.1(f)1 to make it clear that N.J.A.C. 7:15-3.1(f)1 does not provide for the use in consistency reviews of sources incorporated into this chapter by reference.

63. **COMMENT:** Seven commenters on N.J.A.C. 7:15-3.1(g) or 3.2 expressed closely related concerns about public participation. Five commenters said that in N.J.A.C. 7:15-3.1(g), limiting interested parties to commenting during the permit public notice process is too restrictive. It is preferable to identify the various issues as early as possible in the process, prior to drafting a permit. Designated planning agency involvement in the consistency determination process would fulfill this need for information.

A sixth commenter said that N.J.A.C. 7:15-3.1(g) and 3.2 are inconsistent with the Clean Water Act and its intent for public participation, and promote a fragmented rather than a regional focus in water quality planning. Public participation is only allowed at the end of the project, at the point where a draft permit is issued. The public should be involved at the earliest time possible, prior to issuance of a draft permit.

A seventh commenter cited the statement in N.J.A.C. 7:15-3.1(g) that "interested parties may comment on the consistency of Department permits with WQM plans" and asked, how will the public be informed? What kind of time limits will there be? What kind of response will be made available to the comments? Will an unencumbered appeals process be established? This commenter also objects to the 90 day review process in N.J.A.C. 7:15-3.2 unless a more efficient process is established to inform the public. Where in this 90 day process will the public be informed, and can the public request a time extension for their review?

**RESPONSE:** In light of the USEPA regulation discussed below and the Water Pollution Control Act provision (N.J.S.A. 58:10A-9.b) discussed in the Department response to comment number 11, the Department does not agree that allowing public comment through review of a draft permit is too restrictive. The issue of designated planning agency involvement in the consistency review program was addressed in the Department response to comment number 11.

Under Section 101(e) of the Clean Water Act (33 U.S.C. §1251(e)), the USEPA shall publish regulations specifying guidelines for public participation. The Clean Water Act permit program most closely related to WQM planning is the permit program under Section 402 of that Act (33 U.S.C. §1342). USEPA regulations for that program require that public notice be given at the time a draft permit has been prepared, but not beforehand (40 CFR 124.10). Thus, the Department does not agree that N.J.A.C. 7:15-3.1(g) and 3.2 are inconsistent with the Clean Water Act.

The sole function of the consistency review program is to review projects and activities for consistency with WQM plans and this chapter. The consistency review program does not amend WQM plans and has no direct effect on WQM planning. The program is not intended to address regional water quality issues except to the extent that requirements concerning such issues are contained in WQM plans and this chapter. The program must conform to the needs of the Department permit process, including the need for prompt Department action on individual permit applications. The issuance of draft permits occurs prior to the end of, not at the end of, the Department permit process.

As discussed in the Department response to comment number 11, the consistency review program is an integral part of the Department permit process, and that process should not contain two separate procedures for public input. The consistency review program is simply a component of the various Department permit programs, and is not a separate Department permit program. The key issue for the applicant and the public is the permit as a whole, rather than the individual components of the Department review process for that permit. The public participation opportunities associated with the consistency review program should not be separate and different from the public participation opportunities associated with individual permit programs. (This principle applies to all aspects of public input including methods of public notice, length of public comment periods, Department responses to public comments, and appeal provisions.) These opportunities vary from program to program (partly because of differences among the applicable statutes), and persons who want those opportunities expanded should submit comments on the

Department rules directly governing individual permit programs (for example, N.J.A.C. 7:1C and 7:14A). For many Department permits, the DEP Bulletin informs the public of pending permit applications. Many Department permits have a public comment procedure. The 90 day time period in N.J.A.C. 7:15-3.2 was chosen to be consistent with the 90 Day Act, N.J.S.A. 13:1D-29 et seq., which governs many Department permit programs.

The administrative appeal mechanism in N.J.A.C. 7:15 is contained in N.J.A.C. 7:15-3.9. As discussed in the Department response to comment numbers 77 and 134, the Department has revised N.J.A.C. 7:15-3.9 to stipulate that an appeal of a decision made by the Department pursuant to N.J.A.C. 7:15-3.1 or 3.2 shall follow whatever statutes or rules govern the particular Department permit that is the subject of the decision. The access of applicants and other persons to the appeal process will depend entirely on those statutes or rules. In cases where the appeal process is governed by the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, procedures and standards for intervention and participation are set forth at N.J.A.C. 1:1-16.

64. COMMENT: N.J.A.C. 7:15-3.1(g) should clarify that the "comments" by interested parties are only those associated with the permit process and not a separate comment process. Public comments should not be the basis for a permit application to be denied if comments do not address the appropriate water quality regulatory requirements for the permit application.

RESPONSE: It is not clear what the commenter specifically means by "the appropriate water quality regulatory requirements". In particular, it is not clear whether this phrase is intended to be broader, narrower, or co-extensive with the scope of N.J.A.C. 7:15-3.1(g), which is clearly limited to public comments "on the consistency of Department permits with WQM plans and this chapter". N.J.A.C. 7:15-3.1(g) makes it sufficiently clear that these comments are submitted through the permit review process and not through a separate process.

N.J.A.C. 7:15-3.1(g) should not stipulate that the only public comments which may serve as the basis for permit denial are comments on water quality regulatory requirements. Depending on the particular permit program and the statutes and rules applicable to that program, permit applications may be denied for numerous reasons unrelated to such requirements. Public comments on issues other than the consistency of Department permits with WQM plans and N.J.A.C. 7:15 are properly outside the scope of N.J.A.C. 7:15-3.1(g).

#### 7:15-3.2 Procedures for consistency determination reviews

65. COMMENT: N.J.A.C. 7:15-3.2(a)3 should clarify that the drawings and/or plans include a two to three page report with a concept plan or sketch that describes the intent of the project.

RESPONSE: It is unclear what the commenter is seeking with regard to the "intent of the project". N.J.A.C. 7:15-3.2(a)1 requires a narrative description of the project. This description has been found by the Department to be sufficient for the consistency determination review.

66. COMMENT: One commenter objects to the vagueness of N.J.A.C. 7:15-3.2(c)lix, which indicates only that "other water quality based policies, goals, objectives or recommendations" "shall" be included in water quality management plans. The basis document for these rules does not provide any guidance for clarification of this provision. Thus, municipalities, counties, and individuals preparing WQM plans must glean from persons and references unknown what types of policies, goals, and objectives belong in a WQM plan. This provision should not be adopted until the Department provides ample background material so that the regulated community can properly respond to this proposed regulatory requirement. This language raises the possibility that any final rule might be invalid because these standards are not incorporated in the rule.

Another commenter states that this provision should be deleted or clarified that the policies or standards refer only to those that are adopted by rule.

RESPONSE: By quoting the word "shall" out of context, this comment erroneously describes the contents of N.J.A.C. 7:15-3.2(c)l, which does not state or indicate that other water quality based policies, goals, objectives, or recommendations "shall" be included in WQM plans. Rather, N.J.A.C. 7:15-3.2(c)l states that in performing consistency determination reviews, "the Department shall" review the appropriate WQM plan and this chapter, and that "this review shall" include various WQM plan components (including such policies, goals, objectives, or recommendations) "where applicable". N.J.A.C. 7:15-3.2(c)lix means nothing more than this: if a WQM plan contains applicable water quality based policies, goals, objectives, or recommendations not identified in N.J.A.C. 7:15-3.2(c)li through viii, then the Department shall review those policies,

goals, objectives, or recommendations in performing consistency determination reviews.

The sole function of N.J.A.C. 7:15-3.2(c)l is to describe how the Department shall perform consistency determination reviews. It is not the function of N.J.A.C. 7:15-3.2(c)l to describe how WQM plans shall be prepared or amended, and N.J.A.C. 7:15-3.2(c)lix imposes no duties on those who prepare WQM plans or submit petitions to amend WQM plans. N.J.A.C. 7:15-1.3 and the statutes cited therein provide general information about what belongs in a WQM plan. The Water Quality Planning Act does not require N.J.A.C. 7:15 to specify in advance what types of policies, goals, objectives, or recommendations should be included in future amendments to N.J.A.C. 7:15, or in areawide WQM plans adopted by the Governor or his designee.

The comment seems to have confused the requirements for preparing wastewater management plans with the consistency determination review process, which involves the review of the Statewide and areawide WQM plans. These WQM plans were prepared by the Department and the designated planning agencies, as defined in N.J.A.C. 7:15-1.5. Municipalities and individuals do not prepare these WQM plans, although they may submit petitions to amend these WQM plans under N.J.A.C. 7:15-3.4. Some municipalities are required to submit wastewater management plans (one type of amendment to an areawide WQM plan) under N.J.A.C. 7:15-5, and the required contents of wastewater management plans are discussed in detail in that subchapter.

N.J.A.C. 7:15-3.2(c)lix should not be deleted. The Water Quality Planning Act at N.J.S.A. 58:11A-10 requires consistency with areawide WQM plans whose provisions may not be limited to the components identified in N.J.A.C. 7:15-3.2(c)li through viii. Those eight subparagraphs assist the consistency determination review process by drawing attention to certain components which may be found in WQM plans, but are not intended to serve as an exhaustive list of WQM plan components. Nor can N.J.A.C. 7:15-3.2(c)lix be changed to refer only to policies or standards adopted by rule. The Water Quality Planning Act at N.J.S.A. 58:11A-10 expressly requires consistency with the areawide WQM plans. These WQM plans and amendments thereto are adopted by the Governor or his designee, and therefore are not rules under the Administrative Procedure Act. The initial areawide WQM plans were adopted by the Governor prior to the promulgation of N.J.A.C. 7:15 in 1984.

67. COMMENT: Ninety days are allowed for consistency determination review. If it is merely a matter of whether a proposal is consistent or non-consistent, 45 days is plenty of time to make such a determination. It should be clear whether or not a submission is in conformance.

RESPONSE: The 90 day time period in N.J.A.C. 7:15-3.2(c)2 was chosen to be consistent with the 90 Day Act, N.J.S.A. 13:1D-29 et seq., which governs many Department permits. The Department has changed N.J.A.C. 7:15-3.2(c)2 to allow the 90 day time period to be extended an additional 30 days, by the mutual consent of the applicant and the Department. This change makes N.J.A.C. 7:15-3.2(c)2 more consistent with the 90 Day Act, which authorizes such an extension.

68. COMMENT: In N.J.A.C. 7:15-3.2(c)3 and elsewhere, three commenters object to the term "not inconsistent." Two of the commenters said the term is confusing. A project is either consistent or inconsistent. Do not two negatives still create a positive? In N.J.A.C. 7:15-3.2(c)3ii, "not inconsistent" has the same effect as "consistent." If the new rules are intended to clarify matters, delete "not inconsistent" altogether.

A third commenter said the term raises many unnecessary questions. At best, the double negative is confusing and often opens the door for disagreement. At worst, the term creates litigation and an opportunity for preferential treatment on an individual application. Deleting this term with a statement in the rule that clearly states that activities not precluded by the plan are deemed to be consistent with the plan would be much preferable and would sacrifice absolutely no environmental or water quality value.

RESPONSE: The Department agrees that the term "not inconsistent" may be confusing to some persons, and has changed N.J.A.C. 7:15 to substitute "not addressed" for "not inconsistent", where appropriate. Because the treatment works and activities specified in N.J.A.C. 7:15-4.2 cannot logically be said to be "not addressed" by this chapter, the Department has substituted "consistent" for "not inconsistent" in N.J.A.C. 7:15-4.2.

69. COMMENT: The Department is commended for streamlining the consistency review process by eliminating unnecessary written consistency determinations, and allowing bureaus to issue routine permits.

RESPONSE: The Department appreciates the commenter's commendation of N.J.A.C. 7:15-3.2(c)4.

70. COMMENT: N.J.A.C. 7:15-3.2(c)4 should be deleted. A written consistency determination should be issued for all projects.

RESPONSE: The purpose of making the issuance of a written consistency determination optional is to streamline the permit process and eliminate unnecessary paperwork. Consistency determination review is part of the permit process, and the need for a written consistency determination varies depending on the decisions made about projects in that process. If the project is consistent or "not addressed" and the permit is issued, then the permit itself can serve, in effect, as the written consistency determination. If the project is consistent or "not addressed", but for other reasons the project does not receive a permit, then a written consistency determination is irrelevant because such a determination is not a separate approval of the project. If the project is inconsistent, then N.J.A.C. 7:15-3.2(c)4 does not apply and a written consistency determination is always provided.

71. COMMENT: Five commenters support the basic reasoning for the consistency determination waiver in proposed N.J.A.C. 7:15-3.2(c)4, but believe that a broad waiver is not advisable. The waiver provision could allow some applications to be overlooked by the Department. Such oversights have, in fact, happened.

RESPONSE: N.J.A.C. 7:15-3.2(c)4 does not allow waiver of the consistency determination review requirement, but waiver of the issuance of a written consistency determination. The consistency determination review would still be conducted as part of the permit review process, but the issuance of the permit would represent the finding of consistency, as discussed in the Department response to comment number 70.

72. COMMENT: In N.J.A.C. 7:15-3.2(c)4, substitute the word "shall" for "may" to be consistent with the rest of the subsection.

RESPONSE: For some projects subject to N.J.A.C. 7:15-3.2(c)4, it is not appropriate for the Department to issue a written consistency determination or issue a permit. Suppose, for example, that the Department finds a project to be "consistent" or "not addressed" (as those terms are used in N.J.A.C. 7:15-3.2(c)), but also finds that the project does not comply with other statutes or rules applicable in the particular permit program. Obviously, the Department could not issue the permit for that project. Because a consistency determination is not a separate approval of the project, independent of the permit, the Department should also not issue a written consistency determination for that project.

73. COMMENT: In N.J.A.C. 7:15-3.2(c)4, if the Department does not issue a written consistency determination, a statement that the project elements relating to the permit are consistent or not inconsistent with the WQM plan should be clearly provided within the permit document. This paragraph should be amended to require an appropriate statement within the permit document in the absence of a written consistency determination.

RESPONSE: The statement requested in this comment would be, in effect, a written consistency determination. Therefore, for the reasons set forth in the Department response to comment number 70, the Department does not agree with this comment.

74. COMMENT: In N.J.A.C. 7:15-3.2(c)4, a written consistency determination should be issued where a project or activity is not specifically mentioned in the WQM plan for clarity and legal purposes. A standard format should be developed for this purpose. It need not be a lengthy document.

RESPONSE: Because large numbers of projects and activities fall in this category, requiring written consistency determinations for such projects and activities would largely defeat the purpose of N.J.A.C. 7:15-3.4(c)2. For this reason and the reasons set forth in the Department response to comment number 70, the Department does not agree with this comment.

75. COMMENT: In N.J.A.C. 7:15-3.2(c)6i, clarify that an amendment is one that has been adopted by the Department, not merely a proposed one.

RESPONSE: The definition of the term "amendment" in N.J.A.C. 7:15-1.5 clearly restricts that term to WQM plan amendments that are "proposed and adopted". The Department has also inserted the word "adopted" before "WQM plan" in N.J.A.C. 7:15-3.1(a), which is directly related to N.J.A.C. 7:15-3.2(c). Therefore, no change to N.J.A.C. 7:15-3.2(c)6i is necessary.

76. COMMENT: One commenter suggests a special consistency determination review procedure for sewer service areas. The procedure would apply where adopted wastewater management plans are incomplete (and therefore arguably do not comply with Federal and State law) because they do not identify detailed, feasible sewerage schemes for sewer service areas delineated in such plans. Under the suggested procedure, the Department would review sewerage options without requiring

piecemeal amendments to such plans. Because the plans are incomplete, the Department has the authority to approve as consistent any sewerage system that is cost-effective. In effect, the private sector would complete portions of these plans, except where local governments adopt specific alternatives. The procedure is a reasonable compromise between the original mandate of Sections 201 and 208 of the Clean Water Act and the realities of funding availability to complete detailed plans for sewerage.

The procedure would be used when the applicant's project is in a delineated sewer service area, but regional treatment or collection systems will not be available in a reasonable time frame to provide corresponding sewer service. In this circumstance, the applicant may furnish, to the Department, municipality, and sewerage authority (if applicable), a study to determine the most cost-effective means to provide service for individual projects. The study would delineate the subarea of interest, identify zoned land use and flow projections, identify the development expectations and flow projections of major property owners, describe and evaluate alternatives for servicing projected development for two, five and 10 year periods (including conceptual delineation of treatment and collection systems and costs therefor), obtain commitment letters from potential users, and select the best plan considering the needs of the applicant and other potential users. Unless the municipality (and sewerage authority if applicable) notifies the Department within 30 days of its intent to amend a wastewater management plan to provide an alternative, detailed plan, the Department would review the applicant's plan and choose the most cost-effective system for the area considering the applicant's needs, plans of other users, and feasibility and environmental impact of the alternatives considered.

RESPONSE: The Department appreciates the commenter's thoughtful suggestions. Due to the number of changes recommended, the Department needs more time to evaluate these suggestions. The Department expects to proposed amendments to the rules in the future, and will consider the suggestions for inclusion in N.J.A.C. 7:15-3.2 or elsewhere at that time.

#### 7:15-3.3 Procedures for resolution of conflicts in plan consistency

77. COMMENT: Seven commenters said N.J.A.C. 7:15-3.3 should allow the public or designated planning agencies to participate in the conflict resolution procedure. Five commenters said that N.J.A.C. 7:15-3.3 effectively precludes such participation. If a designated planning agency or member of the public disagrees with the agency determination, there is no effective administrative mechanism for appeal. The designated planning agencies should receive notice of the conflict resolution procedure and be allowed to participate in the procedure. A sixth commenter said N.J.A.C. 7:15-3.3 should include provision for public notice and inclusion of the interested public at meetings. A seventh commenter asked why N.J.A.C. 7:15-3.3 does not provide procedures for resolution of conflicts by the public. Under N.J.A.C. 7:15-3.3(a)4, the Department grants itself a waiver provision regarding a resolution conference. It does not, however, provide an appeals process. Is the public then left without recourse?

RESPONSE: The Department has reconsidered what was proposed at N.J.A.C. 7:15-3.3, and has deleted the conflict resolution procedure in that section. In its place, the Department has added a provision at N.J.A.C. 7:15-3.1(h), which stipulates that at the request of any applicant whose proposed project has been found by the Department to be inconsistent with a WQM plan or this chapter, the Department may informally discuss with the applicant the actions which the applicant might take to attempt to resolve the conflict. Information provided by the Department in such discussions is for guidance only, and is not binding on the Department or the designated planning agencies. In related actions, the Department has changed N.J.A.C. 7:15-3.2(c)7 to refer to N.J.A.C. 7:15-3.1(h) rather than to N.J.A.C. 7:15-3.3, has deleted the reference to "conflict resolution" in N.J.A.C. 7:15-3.4(a), and has deleted the references to N.J.A.C. 7:15-3.3 and conflict resolution conferences in N.J.A.C. 7:15-3.9(a) and (b).

As proposed, N.J.A.C. 7:15-3.3 contained language that may have suggested that conflict resolution conferences are more important than they have been in practice. Commenters may have inferred from such language that a conflict resolution conference is a formal administrative proceeding at which conflicts are definitively resolved or final, binding decisions are made about how conflicts shall be resolved. In practice, however, such conferences have been nothing more than informal, preliminary discussions about possible courses of action available to

applicants. By deleting what was proposed at N.J.A.C. 7:15-3.3 and adopting N.J.A.C. 7:15-3.1(h), the Department is clearly establishing the optional, informal, and non-binding nature of these discussions.

The administrative appeal mechanism in N.J.A.C. 7:15 is contained in N.J.A.C. 7:15-3.9. The provisions proposed at N.J.A.C. 7:15-3.3 and adopted at N.J.A.C. 7:15-3.1(h) are not administrative appeal mechanisms for the applicant or any other person. Rather, N.J.A.C. 7:15-3.1(h) is provided in order to consider whether the project can be modified to eliminate conflict with the WQM plan or this chapter. In most cases the project cannot be modified sufficiently to resolve the conflict, and the applicant therefore requests a WQM plan amendment. There is ample opportunity within the WQM plan amendment process for public comment.

In N.J.A.C. 7:15-3.9(a) and (b), the Department has not replaced the deleted references to N.J.A.C. 7:15-3.3 and conflict resolution conferences with references to N.J.A.C. 7:15-3.1(h). Instead, the Department has narrowed the scope of N.J.A.C. 7:15-3.9(a) through (e) to Department decisions on WQM plan amendments, and has added a provision at N.J.A.C. 7:15-3.9(g), which stipulates that an appeal of a decision made by the Department pursuant to N.J.A.C. 7:15-3.1 or 3.2 shall follow whatever statutes or rules govern the particular Department permit that is the subject of the decision. The access of applicants and other persons to the appeal process will depend entirely on those statutes or rules. Examples of Department rules that establish appeal procedures for particular Department permit programs include N.J.A.C. 7:14A-8.9 et seq. (NJPDES permits), N.J.A.C. 7:1C-1.9 and 1.14 (construction permits), and N.J.A.C. 7:7A-12.8 (freshwater wetlands and open water fill permits). In cases where the appeal process is governed by the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, procedures and standards for intervention and participation are set forth at N.J.A.C. 1:1-16. N.J.A.C. 7:15-3.1(h) stipulates that an appeal under N.J.A.C. 7:15-3.9(g) may be made without regard to a discussion under N.J.A.C. 7:15-3.1(h).

As discussed in the Department response to comment number 11, the consistency review is an integral part of the Department permit process. That process should not contain two separate procedures for administrative appeals, one being a general procedure through which all permit issues may be addressed, and the other being a narrow procedure limited to the narrow issue of consistency with WQM plans and this chapter. Such dual procedures would produce duplication and confusion, and are not necessary. If statutes and rules that govern individual permit programs do not provide adequate opportunities for administrative appeals on all issues related to the permit (including but not limited to consistency with WQM plans and this chapter), then the proper remedy is to amend those statutes or rules, not to establish an independent appeal procedure limited to the consistency review program.

Because the topics at discussions under N.J.A.C. 7:15-3.1(h) may include possible proposals to amend areawide WQM plans, and because of the direct interest which designated planning agencies have in these plans, the Department agrees that such agencies should be invited to participate in such discussions. N.J.A.C. 7:15-3.1(h) expressly requires such invitations. Because these are informal, preliminary discussions which may occur prior to requests for WQM plan amendments or to modification of proposed projects, the Department does not feel it is appropriate to notify parties other than applicants and designated planning agencies of the discussions. If the result of the discussion is a request for a WQM plan amendment, then the public notice and public comment requirements of N.J.A.C. 7:15-3.4 will apply to that amendment. Any modification of the proposed project to eliminate the conflict may be challenged by the public through the permit approval process, to the extent allowed by the rules applicable to the particular permit program (see the Department response to comment number 63).

78. COMMENT: Three commenters said N.J.A.C. 7:15-3.3(a)2 should include timeframes for the conflict resolution conference. One of the commenters said the rules should specify the time period for the scheduling of the conference; two weeks would be appropriate. A second commenter said the rules should specify a timeframe within which the Department shall grant a conference; 30 days would be reasonable. A third commenter said the rules should include mandatory timeframes wherein the Department must respond to the applicant's request and establish the maximum waiting time for the conference.

RESPONSE: As discussed in the Department response to comment number 77, the Department has deleted the conflict resolution procedure proposed at N.J.A.C. 7:15-3.3, and has adopted in its place an informal discussion provision at N.J.A.C. 7:15-3.1(h). The Department has not set specific time frames for these discussions because experience has shown

that each conflict is different and requires varying lengths of time to examine. The Department makes every effort to meet with applicants as expeditiously as possible. Discussions may often be conducted over the telephone without the need for direct meetings.

The commenters' concerns about these time frames may be related to proposed N.J.A.C. 7:15-3.3(a)3, which stipulated that the applicant may take various actions "as a result of the resolution conference", and to proposed N.J.A.C. 7:15-3.9(a), which referred to resolution conferences under N.J.A.C. 7:15-3.3 in its discussion of when applicants may request adjudicatory hearings to contest findings of inconsistency. To address these concerns N.J.A.C. 7:15-3.1(h) stipulates that applicants may revise projects, request WQM plan amendments, or appeal Department findings without regard to discussions under that subsection. Also, as discussed in the Department response to comment number 77, the Department has narrowed the scope of N.J.A.C. 7:15-3.9(a) through (e) to Department decisions on WQM plan amendments. The appeal procedure in those subsections no longer applies to Department decisions about the consistency of projects with WQM plans and this chapter. Thus, the ability of applicants to take actions to attempt to resolve conflicts is not impaired by any delay of informal discussions under N.J.A.C. 7:15-3.1(h).

79. COMMENT: Two commenters said N.J.A.C. 7:15-3.3(a)4 should provide that a conflict resolution conference may be waived only if both the applicant and the Department agree that the conference should be waived.

RESPONSE: As discussed in the Department response to comment number 77, the Department has deleted the conflict resolution procedure proposed at N.J.A.C. 7:15-3.3, and has adopted in its place an informal discussion provision at N.J.A.C. 7:15-3.1(h). Under that subsection, the Department is generally willing, at the applicant's request, to discuss informally with the applicant possible actions that the applicant might take to resolve the conflict.

The commenters' concern about waiver of conflict resolution conferences may be related to provisions in proposed N.J.A.C. 7:15-3.3(a)3 and 3.9(a), as discussed in the Department response to comment number 78. As noted in that response, N.J.A.C. 7:15-3.1(h) stipulates that applicants may revise projects, request WQM plan amendments, or appeal Department findings without regard to discussions under that subsection, and the appeal procedure in N.J.A.C. 7:15-3.9(a) through (e) no longer applies to Department decisions about the consistency of projects with WQM plans and this chapter. Thus, the ability of applicants to take actions to attempt to resolve conflicts is not impaired by any Department decision not to hold an informal discussion under N.J.A.C. 7:15-3.1(h).

#### 7:15-3.4 Water quality management plan amendment procedures

80. COMMENT: In the Regulatory Flexibility Statement, the Department projects a procedural cost to small business of \$200.00 for amendments to WQM plans. One commenter states that this amount cannot be accepted without some analysis of how the figure was reached. Perhaps \$2,000 or \$20,000 would be more realistic. Another commenter sees no economic justification of the \$200.00 figure and how it was calculated. Their experience has been that any changes to a wastewater management plan cost much more than that.

RESPONSE: The Department calculated \$200.00 based on the procedural costs of a WQM plan amendment, which generally include the costs of publishing newspaper notices and, in occasional instances, of hiring a court stenographer for public hearings. As indicated in the Regulatory Flexibility Statement, most of the cost for other work associated with the WQM plan amendment process, notably the preparation of a wastewater management plan, would be borne by public agencies. Costs for professional services may be likely; however, in almost all cases the professionals retained for permit applications would also be used for the WQM plan amendment, and their cost would be the incremental difference between the cost of applying for permits alone, and the cost of applying for permits and the WQM plan amendment.

81. COMMENT: Five commenters said that the approach of the proposed rule appears to be to amend each areawide WQM plan by separate actions addressing individual pieces. Specifically, the proposed rules provide for municipal plan amendments, amendments for individual discharges, and automatic amendment by incorporation of the 201 facilities plans. This approach is inconsistent with that envisioned in Section 208 of the Clean Water Act, which established areawide planning. Under Section 208, the goal is to fit the pieces into an areawide concept, not vice versa. A sixth commenter stated that Section 208 established areawide planning to promote regional responsibility and protection of water resources, and that the proposed rules appear to be inconsistent with this intent since procedures are set up for piecemeal amendment of

areawide WQM plans without adequate attention to water resources as regional public resources.

RESPONSE: As discussed in the Department response to comment number 9, areawide WQM plans address requirements of section 303(e) of the Clean Water Act (33 U.S.C. §1313(e)) as well as Section 208 of that Act (33 U.S.C. §1288). These sections and related USEPA regulations (40 CFR 130.6) impose no minimum requirements concerning the geographic scope of individual amendments to areawide WQM plans, the number of pollutant sources which may be addressed in such amendments, or the categories of persons who may request such amendments. These sections and regulations thus allow substantial flexibility in the establishment of procedures to amend areawide WQM plans. In light of this flexibility and the extensive powers reserved to the State under Sections 101(b), 303(e), and 510 of the Clean Water Act (33 U.S.C. §§1251(b), 1313(e), and 1370; see the response to comment number 9), the Department does not agree that the procedures in N.J.A.C. 7:15 for amendment of areawide WQM plans contravene Section 208 of the Clean Water Act.

The Department encourages comprehensive amendments to areawide WQM plans. The Department and the designated planning agencies may propose such amendments in accordance with N.J.A.C. 7:15-3.4. The Department has found, however, that in order to satisfy statutory WQM planning requirements in a timely, efficient manner and to integrate areawide WQM planning with other planning programs, it is appropriate for the areawide WQM plan amendment procedures in N.J.A.C. 7:15 to include special provisions for amendments concerning municipalities, discharges, and 201 Facilities Plans. Areawide WQM plan provisions resulting from such amendments can subsequently be the subject of more comprehensive amendments where appropriate.

The phrase "municipal plan amendments" in the comment apparently refers to wastewater management plans that are required under N.J.A.C. 7:15-5 and processed as amendments to areawide WQM plans under N.J.A.C. 7:15-3.4(c). Although N.J.A.C. 7:15-5.8 requires some municipalities to prepare wastewater management plans, not all wastewater management plans are prepared by municipalities. The Department expects that many wastewater management plans will be prepared by agencies responsible for two or more municipalities, such as the Passaic Valley Sewerage Commissioners, regional authorities, county utilities authorities, and joint meetings. (Where appropriate, joint wastewater management planning responsibility may also be assigned to two or more municipalities under N.J.A.C. 7:15-5.12.) Many municipalities perform sewerage-related functions such as the construction, operation, planning, or regulation of sewerage facilities. Municipal preparation of wastewater management plans helps to integrate WQM plans with "related . . . local comprehensive, functional and other relevant planning activities, programs and policies", as required by the Water Quality Planning Act at N.J.S.A. 58:11A-2.b and N.J.S.A. 58:11A-7.

An amendment to an areawide WQM plan should not automatically be deemed invalid under Section 208 of the Clean Water Act merely because the amendment was submitted by or pertains to a single municipality. Wastewater management plans prepared by municipalities need not conflict with areawide planning objectives. Pursuant to N.J.A.C. 7:15-3.4, wastewater management plans are not valid until they are reviewed by the Department, approved by the designated planning agency, and adopted by the Governor or his designee. Any of these parties may evaluate such plans against areawide planning objectives. Municipal preparation of wastewater management plans allows the Department and the designated planning agencies to make direct use of wastewater planning conducted by municipalities, prevents unnecessary duplication of such planning, and allows the Department and designated planning agencies to give less attention to local aspects of wastewater management and more attention to those wastewater management issues which only the Department and those agencies can satisfactorily address.

Any designated planning agency that objects to the preparation of wastewater management plans by municipalities in its designated area may obtain wastewater management plan responsibility by submitting a resolution under N.J.A.C. 7:15-5.4. Designated planning agencies may also obtain such responsibility through assignments under N.J.A.C. 7:15-5.9. If a municipality does prepare a wastewater management plan where a designated planning agency exists, that agency shall process the WQM plan amendment request pursuant to N.J.A.C. 7:15-3.4(c). Thus, the rules preserve a very substantial role for designated planning agencies in the preparation and approval of wastewater management plans.

The phrase "amendments for individual discharges" in the comment apparently refers to N.J.A.C. 7:15-3.4(i), which pertains to effluent limi-

tations and schedules of compliance. In the Clean Water Act, the requirement that WQM plans include effluent limitations and schedules of compliance is expressly stated in Section 303(e) rather than in Section 208. The Clean Water Act does not require the States to delegate their responsibilities under Section 303(e) to the planning agencies designated under Section 208.

The Department has direct statutory responsibility for effluent limitations and schedules of compliance under Section 303(e) of the Clean Water Act and Section 7 of the Water Quality Planning Act (see N.J.S.A. 58:11A-7). N.J.A.C. 7:15-3.4(i) helps to satisfy these statutory requirements in a timely and efficient manner, by providing that effluent limitations and schedules of compliance established as NJPDES permit conditions shall be considered to be part of the areawide WQM plans. This policy is consistent with Section 101(f) of the Clean Water Act (33 U.S.C. §1251(f)), which encourages the drastic minimization of paperwork and interagency decision procedures and the best use of staff and funds.

N.J.A.C. 7:15-3.4(i) does not discourage the adoption of amendments to areawide WQM plans that would address two or more discharges at a single time. N.J.A.C. 7:15-3.4(i) simply recognizes that the Department establishes vast numbers of effluent limitations and schedules of compliance as NJPDES permit conditions under the NJPDES rules (N.J.A.C. 7:14A), and that these officially established effluent limitations and schedules of compliance should not be subject to further administrative procedure before they are declared to be part of the areawide WQM plans. These effluent limitations and schedules of compliance are legally adopted and enforceable whether or not they are part of the areawide WQM plans.

Through the public comment procedures in the NJPDES rules (see N.J.A.C. 7:14A-8), designated planning agencies and other interested persons may comment on such effluent limitations and schedules of compliance prior to their establishment as NJPDES permit conditions. If an areawide WQM plan already includes requirements applicable to the particular discharge, N.J.A.C. 7:15-3.4(i) prohibits (through its reference to N.J.A.C. 7:15-3.1 the Department from issuing a NJPDES permit that conflicts with that plan. N.J.A.C. 7:15-3.4(i) also provides that the Department may adopt effluent limitations and schedules of compliance in areawide WQM plans through N.J.A.C. 7:15-3.4(g), rather than through the NJPDES rules. (NJPDES permits themselves, however, can be modified only through the NJPDES rules.)

The objection in the comment to the automatic incorporation of 201 Facilities Plans is addressed in the Department response to comment number 128.

The sixth commenter's statement about "piecemeal amendment" of areawide WQM plans does not make it clear whether that commenter is concerned about rule provisions discussed in the preceding paragraphs or about other provisions in N.J.A.C. 7:15-3.4 or elsewhere. Because that statement does not specify what the commenter means by "piecemeal amendment", that statement does not warrant any change to the rules. The decision-making responsibilities which the State and, in appropriate instances, the designated planning agencies exercise under N.J.A.C. 7:15-3.4, coupled with the public comment procedures in N.J.A.C. 7:15-3.4 or in programs cited in N.J.A.C. 7:15-3.4, allow regional concerns to be addressed in the review of WQM plan amendments prior to their adoption.

Allowing interested persons to submit petitions to amend areawide WQM plans (as provided in N.J.A.C. 7:15-3.4(d)1 and (g)1) provides a means for direct public participation in the amendment of areawide WQM plans, and is somewhat analogous to the provision in the Administrative Procedure Act which authorizes any interested person to petition a State agency to promulgate, amend, or repeal any rule (see N.J.S.A. 51:14B-4(f)). Because of the extensive land development in New Jersey, the significant effects of areawide WQM plans on such development, and the inexact nature of areawide WQM planning, there must be opportunities for individual amendments to areawide WQM plans in order to recognize changing circumstances in a timely manner.

82. COMMENT: Department staff, designated planning agencies, and applicants for amendments should be able to determine which steps are involved in their submissions. If the process cannot be portrayed by a flow chart, it is likely that it is not sufficiently clear to be used by applicants for amendments. Either a flow chart or a step-by-step guide should be prepared to identify the proper path and applicable regulations for various kinds of amendments.

RESPONSE: The Department has a checklist of steps associated with the present WQM plan amendment procedure, and will revise this checklist to reflect the new procedure in N.J.A.C. 7:15-3.4. This checklist is

available to the public upon written request to the Bureau of Water Quality Planning at the address provided in N.J.A.C. 7:15-3.4(g)1.

83. COMMENT: Five commenters said that proposed N.J.A.C. 7:15-3.4(c) allows the Department to unilaterally amend locally prepared and adopted areawide WQM plans without notice or referral to the affected designated planning agency, and broadly excludes items for which amendments can only be initiated and adopted by the Department. The practical effect of this proposal is to effectively eliminate opportunities for public input. The Department should be required to notify and obtain input from the designated planning agency whenever the Department proposes to modify the areawide WQM plan. A sixth commenter stated that such notification should occur in advance, to ensure opportunity to coordinate any issues prior to the public announcement, and that N.J.A.C. 7:15-3.4(g)5 requires public notice of the intended amendment.

RESPONSE: N.J.A.C. 7:15-3.4(c) provides, in part, that only the Department shall process certain limited categories of areawide WQM plan amendments, regardless of whether the plan is for a designated area or a non-designated area. This provision is not broad and is justified by the special subject matter of these amendments. The first category of amendments concerns N.J.A.C. 7:15-3.4(i) and (j), which address effluent limitations, schedules of compliance, and total maximum daily loads (including wasteload allocations, load allocations, and the closely related subject of water quality limited segments). The Department has direct statutory responsibility for these WQM plan components under Section 303 of the Clean Water Act (33 U.S.C. §1313) and Section 7 of the Water Quality Planning Act (see N.J.S.A. 58:11A-7). The second category of amendments concerns projects and activities of the State and Federal governments. The Statewide responsibilities of State and Federal agencies are most effectively addressed through consistent Statewide policies. The final category of amendments concerns projects and activities regulated by the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq. Here, N.J.A.C. 7:15-3.4(c) prevents fragmentation and duplication of regulatory authority over subject matter that is pervasively supervised by the Department, and that has long been recognized to require uniform, integrated Statewide treatment.

Department processing of amendments pursuant to N.J.A.C. 7:15-3.4(c) does not effectively eliminate opportunities for public input. Such amendments are processed under N.J.A.C. 7:15-3.4(g), which sets forth the Department procedure for amendment of areawide WQM plans and includes specific provisions for public notice and public comment. Nor does N.J.A.C. 7:15-3.4(c) provide that such amendments can "only be initiated" by the Department. N.J.A.C. 7:15-3.4(g)1 expressly provides that "for amendments which are the Department's responsibility under (c) above, any interested person may petition the Department to amend the areawide WQM plan".

The Department agrees that the designated planning agency should be notified and given opportunity to comment whenever an amendment to an areawide WQM plan for a designated planning area is processed by the Department under N.J.A.C. 7:15-3.4(c) and (g). Such notice is appropriate because of the direct interest which the designated planning agency has in that plan. Therefore, the Department has changed N.J.A.C. 7:15-3.4(g)3 and 5 to require notification of the designated planning agency. However, Department processing of the amendment should not automatically be required to cease if the agency does not submit comments in response to the notice. Such a requirement would defeat the purpose of having the Department process the amendment.

In the Tri-County WQM planning area, with the consent of the designated planning agency (the Delaware Valley Regional Planning Commission), the Department presently processes all amendments to the areawide WQM plan. To allow for such arrangements, the Department has expanded N.J.A.C. 7:15-3.4(c) to provide that by the mutual consent of the Department and the designated planning agency, the Department may process all amendments to the areawide WQM plan for a designated area.

84. COMMENT: N.J.A.C. 7:15-3.4(c) proposes to exclude from these rules activities regulated by the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq. There should be a clearer definition of what solid waste related projects are incorporated into the plan amendment process for water quality, and whether they will be exposed to the full amendment process or whether they will be exclusively handled in the solid waste process under Department purview (a closed loop of State review). The commenter, a designated planning agency, has been involved in many landfill-related and incinerator-related projects. Since it is not clear what activities are exclusively covered under the Solid Waste Management Act, the following statements may or may not apply.

N.J.A.C. 7:15-4.3(c)2 suggests that treatment works components handling only sludge are exempt from an inconsistency finding. This implies that septage facilities, leachate treatment facilities, and incinerators would receive review. It is difficult to imagine that the sludge and septage aspects of wastewater treatment, and leachate treatment facilities and incinerator projects requiring NJPDES permits, would be excluded from WQM planning regulations and the full amendment process. If these activities are considered to be regulated under the Solid Waste Management Act, then these rules should be revised to allow review of these activities for water quality impacts using the full amendment process.

RESPONSE: N.J.A.C. 7:15-3.4(c) does not exclude solid waste activities from the requirements of the WQM plan amendment process; rather, it identifies the Department as the appropriate agency to process WQM plan amendments that address such activities.

N.J.A.C. 7:15-4.3(c)2 does not distinguish sludge handling facilities from other solid waste facilities for purposes of N.J.A.C. 7:15-3.4(c). N.J.A.C. 7:15-4.3(c)2 does not exempt sludge handling facilities from inconsistency findings in general, but only from the provision in N.J.A.C. 7:15-4.3(a) which deems certain treatment works to be inconsistent if such treatment works are not identified in an existing areawide WQM plan. Sludge handling facilities still require consistency determination review under N.J.A.C. 7:15-3.1(b)2, cannot receive Department permits if found to be inconsistent, and may be the subject of amendments to areawide WQM plans.

85. COMMENT: Two commenters criticized requirements in N.J.A.C. 7:15-3.4(d) and (e) that the designated planning agencies develop and submit revised procedures for WQM plan amendment. One of these commenters said the rules contain minimum requirements. Submission by every designated planning agency will require substantial work by each agency and the Department. The time would be better spent if the Department would develop detailed procedures for all designated planning agencies, thus saving considerable time and having consistent procedures across the State.

A second commenter said it appears that every designated planning agency can design their own plan amendment procedure. Because there are 275 areas, 275 agencies will have to prepare these procedures. It would be much more effective if the Department prepared procedures that are consistent throughout the State, and specified those procedures, if not in regulations, at least in guidelines.

RESPONSE: N.J.A.C. 7:15-3.4(d) and (e) apply only to "designated planning agencies", a term defined in N.J.A.C. 7:15-1.5. At least one of the commenters appears to have confused "designated planning agencies" with the sewerage agencies and municipalities that are expected to submit most of the 275 wastewater management plans mentioned in the Economic Impact statement for these rules. As discussed in the Department response to comment number 8, there are only seven "designated planning agencies" in the State: Atlantic County, Cape May County, Mercer County, Middlesex County, Ocean County, Sussex County, and the Delaware Valley Regional Planning Commission ("DVRPC"). With the exception of DVRPC, each of these designated planning agencies presently has an adopted WQM plan amendment procedure. The Department expects that these procedures can be revised and adopted without significant effort and within a short period of time.

86. COMMENT: N.J.A.C. 7:15-3.4 does not state how a designated planning agency must react to a written or documented petition to amend an areawide WQM plan. Must the agency respond to every written request with a public hearing or other costly response?

RESPONSE: Each designated planning agency is responsible for developing its own WQM plan amendment procedure under N.J.A.C. 7:15-3.4(d), which requires these procedures to be consistent with N.J.A.C. 7:15-3.4. To be consistent with N.J.A.C. 7:15-3.4(g)1 and 2, the designated planning agency shall provide a written response to each written request for a WQM plan amendment that is submitted to that agency. Whether such a written response will be costly will depend on the kind and amount of effort expended in preparing the response. This effort will vary depending on the nature of the request and the judgment of the agency as to what constitutes an adequate response.

N.J.A.C. 7:15-3.4 does not require the designated planning agency to hold a public hearing if the request does not meet the requirements of the agency's WQM plan amendment procedure, or if the initial decision of the agency is to disapprove or return the amendment request, or if the agency does not determine that there is significant interest in holding a public hearing. In addition, the applicant usually pays for any public notices, endorsement requests, and public hearing transcripts that may be necessary for particular amendment requests.

87. COMMENT: Five commenters said that N.J.A.C. 7:15-3.4(d)1 is unclear as to the procedure for acceptance of amendment petitions. Can the designated planning agency accept petitions from private parties in the absence of a municipal endorsement or a municipal wastewater management plan?

RESPONSE: The designated planning agency must accept written amendment petitions from any interested person. In other words, the agency must receive such petitions and consider them under the agency's WQM plan amendment procedure. However, if the proposed amendment is not endorsed by the appropriate parties, then the agency may choose not to approve the amendment.

The absence of a wastewater management plan is irrelevant to the mere acceptance of a petition. The requirement for such a plan affects only the subsequent disposition of the petition. If the requested amendment requires a wastewater management plan under N.J.A.C. 7:15-5.1 and does not include such a plan, the designated planning agency should notify the applicant in writing that, because of the absence of the plan, the agency can proceed no further with the amendment request. (Under N.J.A.C. 7:15-3.4(d)2, the Department would not allow such an amendment request to proceed to public notice.)

88. COMMENT: Four commenters commended the Department for streamlining or expediting the WQM plan amendment process. Three of these commenters identified, as streamlining actions, the 60 day time limit for endorsements, or the removal of the New Jersey Register notice requirement. (Comments referring to N.J.A.C. 7:15-3.4(h) are discussed separately below.)

RESPONSE: The Department appreciates the commenters' commendation of proposed N.J.A.C. 7:15-3.4, but notes that the New Jersey Register notice requirement has been restored in adopted N.J.A.C. 7:15-3.4, as discussed in the Department response to comment number 93.

89. COMMENT: Five commenters said the procedure in N.J.A.C. 7:15-3.4(d)3 and (f) appears cumbersome because two separate referrals to the Department now seem necessary: once, to determine who the affected party is; secondly, to ultimately consider the amendment. The procedure should be streamlined.

RESPONSE: The identification of affected parties under N.J.A.C. 7:15-3.4(d)3 is usually relatively straightforward and takes very little time. The list of affected parties is usually similar for different amendments. Moreover, this identification is performed concurrently with Department review, under N.J.A.C. 7:15-3.4(d)2, of proposed amendments prior to public notice. (Such review is performed to minimize the issuing of public notices for proposed amendments that are subsequently rejected by the Governor or his designee, and thereby minimize the confusion and delays associated with such amendments.) Because present Department policy is to review all proposed amendments prior to public notice, N.J.A.C. 7:15-3.4(d)2, (d)3, and (f) do not increase the number of referrals beyond present practice.

N.J.A.C. 7:15-3.4(d)3 cannot be performed concurrently with N.J.A.C. 7:15-3.4(f) because of the nature of the activities addressed by these provisions. The identification of affected parties must occur before the public comment period begins and the designated planning agency approves the amendment. Final consideration of the proposed amendment by the Governor or his designee under N.J.A.C. 7:15-3.4(f) must occur after the public comment period has ended and the designated planning agency has approved the amendment.

90. COMMENT: Five commenters said that proposed N.J.A.C. 7:15-3.4(d)3 seems to imply that only the Department can identify affected parties for required endorsements to areawide WQM plans. A similar flexibility must be provided to the designated planning agency as in the current rule.

RESPONSE: N.J.A.C. 7:15-3.4(d)3 does not imply that only the Department can identify affected parties. On the contrary, N.J.A.C. 7:15-3.4(d)3 expressly states that the parties identified by the Department are "in addition to" parties identified by the designated planning agency.

91. COMMENT: Proposed N.J.A.C. 7:15-3.4(d)3 and (g)4i provide a great deal of flexibility to the Department in listing parties from which endorsements of a WQM plan amendment must be sought. It should be clarified that the only parties from which endorsements will be required are government agencies or duly constituted governmental bodies. Currently, these provisions could be construed to include non-governmental organizations. N.J.A.C. 7:15-3.4(g)3 already provides adequate notice to the public-at-large.

RESPONSE: The Department largely agrees with this comment. However, because BPU-regulated sewer and water utilities operate water-related businesses peculiarly of a public nature, and because such utilities

may be affected by or otherwise have a substantial interest in approval of proposed WQM plan amendments, N.J.A.C. 7:15-3.4 should allow endorsements to be requested from such utilities as well as from governmental agencies or bodies. At present, the Department requires endorsements from governmental and non-governmental organizations that are either directly affected by the activity, or that have authority over the activity. In practice, endorsements have usually been requested from "governmental entities" and "sewerage agencies" (as defined in N.J.A.C. 7:15, BPU-regulated sewer utilities, and, where appropriate, BPU-regulated water utilities. Under expired N.J.A.C. 7:15, the Department has never requested an endorsement from any other organization or party. In light of these considerations, the Department has changed N.J.A.C. 7:15-3.4(d)3 and (g)4i to identify governmental entities, sewerage agencies, and the BPU-regulated sewer and water utilities as the potential endorsing parties.

92. COMMENT: N.J.A.C. 7:15-3.4(d)3, (g)4, and (h)1 state that the Department will identify the parties who will endorse proposed amendments. If a public utility has a substantial interest in a WQM plan amendment, then that utility and the BPU should be included in any discussions relating to these amendments.

RESPONSE: For reasons discussed in the Department response to comment number 91, the Department has changed N.J.A.C. 7:15-3.4(d)3 and (g)4 to identify "governmental entities" and BPU-regulated sewer and water utilities as potential endorsing parties. Because "potentially affected or interested parties" are identified under N.J.A.C. 7:15-3.4(h)1 "in lieu of the endorsement requirements" in N.J.A.C. 7:15-3.4(g)3 and (g)4, the parties that may be identified under N.J.A.C. 7:15-3.4(h)1 are generally the same kinds of parties that may be identified under N.J.A.C. 7:15-3.4(g)4, and include "governmental entities" and BPU-regulated sewer and water utilities. The Department has added a definition of "BPU-regulated sewer or water utilities" to N.J.A.C. 7:15-1.5. The definition of "governmental entities" in N.J.A.C. 7:15-1.5 includes State government, which, in turn, includes the BPU and other State agencies.

93. COMMENT: Two commenters said the requirements in N.J.A.C. 7:15-3.4(d)4, (g)3, and (g)5 for public notice in newspapers are inadequate, and need to be supplemented by other means of public notice. One of these commenters said that while N.J.A.C. 7:15-1.3(a)10 states that the rules "provide opportunities for public participation in the WQM planning process" the rules do not bear this out. Publication of rule amendments in the New Jersey Register has been eliminated and not replaced by a requirement for publication in a more practical publication such as the DEP Bulletin. Publishing in newspapers alone is not adequate for promoting meaningful public participation. N.J.A.C. 7:15-3.4(d)4 should be expanded to require notice to planning boards and environmental commissions of the municipalities affected, and to watershed associations in which the project is located. This would allow the Department to consider public concerns before making decisions. In N.J.A.C. 7:15-3.4(g)3, public notice should be sent to planning boards and environmental commissions in the municipalities affected. In N.J.A.C. 7:15-3.4(g)5, public notice should be sent to municipal clerks, planning boards, and environmental commissions in the municipalities affected, and publication in the DEP Bulletin should also be required.

A second commenter said the WQM plan amendment procedures in N.J.A.C. 7:15-3.4 have been lacking in public notification. In addition to publication in those ineffective newspaper notices, the Department should require proof of outreach for comment from the public. For example, where a watershed association exists, and there are several in New Jersey, notification should be mandatory within their areas of jurisdiction. The commenter, a watershed association, wants to be notified of any WQM plan amendment within the Passaic River Basin. The commenter does not and cannot read all of the local newspapers in their watershed.

RESPONSE: The Department has reconsidered the public notice requirements for proposed WQM plan amendments, and agrees that additional notification is needed beyond publication in a newspaper of general circulation. Therefore, the Department has changed N.J.A.C. 7:15-3.4(d)4, (g)5, and (g)7 to require that notice of proposed amendments and associated public hearings be published in the New Jersey Register. This change continues a requirement that has been in effect since 1984 under expired N.J.A.C. 7:15-3.4(c)4i. During that time, some interested persons have come to rely on the New Jersey Register as a consistent information source and historical reference regarding WQM plan amendments.

In the "Social Impact" statement for proposed N.J.A.C. 7:15 (20 N.J.R. 2198(a)), the Department stated that because of the elimination of the New Jersey Register notice requirement and the establishment of

a 60 day time period for endorsements, the average time needed to process routine WQM plan amendments would be reduced by about two months. In N.J.A.C. 7:15-3.4 as adopted, the Department is restoring the New Jersey Register notice requirement and adopting the proposed 60 day time period for endorsements. The Department estimates that under N.J.A.C. 7:15-3.4 as adopted, the average time needed to process routine WQM plan amendments would be reduced by about one month (relative to the time needed under expired N.J.A.C. 7:15-3.4). Once the Department decides that an amendment request should proceed to public notice, three or four weeks generally elapse before the notice is published in the New Jersey Register. The Department has determined that the three to four weeks required for New Jersey Register notices, and the corresponding economic and social costs to applicants and the general public, are justified by the contribution which the New Jersey Register notice requirement makes towards satisfying the public participation mandates in the Water Quality Planning Act (see N.J.S.A. 58:11A-2(b) and N.J.S.A. 58:11A-8).

Because the DEP Bulletin (like the New Jersey Register) is published every two weeks, publication of notices in the DEP Bulletin would also require some additional processing time. Moreover, the present format of the DEP Bulletin does not allow for narrative notices of the kind published in the New Jersey Register. For these reasons notice will not be published in the DEP Bulletin.

Under N.J.A.C. 7:15-3.4(d)3 and (g)4, the Department may require endorsements of proposed WQM plan amendments to be requested from municipal governing bodies. The Department has generally required such endorsement requests in the past, and expects that it will generally require such endorsement requests in the future. Such endorsement requests give municipal governing bodies direct notification of proposed amendments. With regards to direct notification of municipal planning boards and environmental commissions, the Department has balanced the need for municipal notice and input against the administrative burdens of ensuring such notice and input. The requested addition of a requirement in N.J.A.C. 7:15-3.4 of direct notice to multiple municipal bodies, all affiliated with the same jurisdiction, was deemed too onerous, and so was not included in the adoption. (If, however, the proposed amendment is a wastewater management plan or an amendment to a wastewater management plan, then N.J.A.C. 7:15-5.22(a) does require advance notification of municipal planning boards as well as governing bodies.) The endorsement requirements in N.J.A.C. 7:15-3.4(d)3 and (g)4, coupled with the requirements in N.J.A.C. 7:15-3.4(d)4 and (g)3 for public notice in a newspaper and the New Jersey Register, provide adequate notice to municipal governments of proposed WQM plan amendments.

Because watershed associations are not governmental bodies and should not receive preferential treatment over other segments of the public that may have an equal interest in proposed WQM plan amendments, the Department does not agree that watershed associations should be directly notified of proposed WQM plan amendments. As noted above the Department has changed N.J.A.C. 7:15-3.4(d) and (g) to require that public notice of proposed WQM plan amendments be published in the New Jersey Register. In addition, N.J.A.C. 7:15-3.4(g)3 provides that the Department shall maintain a list identifying the single newspaper that shall be used for public notices in each of New Jersey's twelve WQM planning areas. This list shall be available to the public upon written request to the Bureau of Water Quality Planning at the address provided in N.J.A.C. 7:15-3.4(g)1. Interested persons do not have to "read all of the local newspapers" to learn about proposed amendments to the areawide WQM plan for their area. These changes and provisions should provide adequate notice of proposed WQM plan amendments.

94. COMMENT: How would the United States Fish and Wildlife Service be able to input into an areawide WQM plan? Would they be allowed, or is there any authority given to them, to be a part of WQM plan formulation as it may affect their own lands, such as the Great Swamp National Wildlife Refuge? How do they ensure that they are contacted and involved in the process?

RESPONSE: N.J.A.C. 7:15-3.4(d) and (g) provide that interested parties may submit petitions to amend areawide WQM plans, and may submit comments on proposed areawide WQM plan amendments. Federal agencies, like other interested parties, may submit petitions and comments under these provisions.

95. COMMENT: One commenter said that N.J.A.C. 7:15-3.4(d)5 should define the time required for adequate public comment periods; another said the Department should specify what "adequate" is, by stating a number of days.

RESPONSE: N.J.A.C. 7:15-3.4(d) requires that procedures developed by designated planning agencies for WQM plan amendment must be consistent with N.J.A.C. 7:15-3.4. Therefore, the public comment periods

in these procedures must be consistent with the public comment periods specified in N.J.A.C. 7:15-3.4(g) and (h). The Department expects that, for most WQM plan amendments, the public comment periods in the revised procedures will not differ significantly from the public comment periods in the previously adopted procedures presently used by these agencies.

96. COMMENT: Three commenters expressed related concerns about N.J.A.C. 7:15-3.4(e). One commenter asked, what happens if a designated planning agency fails to submit or secure approval for WQM plan amendment procedures? Will amendments be subject to delay because of conflicts between that agency and the Department? A second commenter asked, if a designated planning agency's amendment procedure becomes void after 180 days, will the statewide rules be in effect? The proposed rules do not define what amendment procedures will be used or even whether a plan could be amended under such circumstances. The final rule should address this issue, at least referring to the methods of enforcing WQM plan consistency and providing a method of processing pending amendment petitions; otherwise, the Department would have no defined approach for response to a potentially serious situation, and the interests of parties with pending petitions would be jeopardized.

A third commenter said that N.J.A.C. 7:15-3.4(e) should clarify that if the designated planning agency's plan amendment procedures become void after 180 days, then the Department procedures as contained in this proposal become effective for that planning area. It should be clarified that the designated planning agency's underlying plan will not become void, nor should it become void, since much valuable time and effort has been expended to adopt these plans. If the designated planning agency merely fails to adopt the procedures, the Department's procedures are adequate.

RESPONSE: The Department agrees that in order to maintain the continuity of the WQM planning program, there is a need to define what WQM plan amendment procedure shall be used if an existing plan amendment procedure becomes void under N.J.A.C. 7:15-3.4(e). Therefore, the Department has changed N.J.A.C. 7:15-3.4(e) to stipulate that if a plan amendment procedure becomes void, the Department shall immediately provide to the designated planning agency a plan amendment procedure that is consistent with N.J.A.C. 7:15-3.4, and that shall be used by the designated planning agency until a plan amendment procedure is submitted by the designated planning agency and approved by the Department under N.J.A.C. 7:15-3.4(e).

By this means, N.J.A.C. 7:15-3.4(e) ensures that designated planning agencies shall continue to process WQM plan amendments, and that the plan amendment procedure used by these agencies shall be consistent with N.J.A.C. 7:15-3.4. The processing of WQM plan amendments is one of the most important WQM planning functions of most designated planning agencies, and it is preferable (except as provided in N.J.A.C. 7:15-3.4(c)) to have such amendments processed by those agencies rather than by the Department. Because N.J.A.C. 7:15-3.4(e) does not state or imply that the areawide WQM plan becomes void, it is not necessary for N.J.A.C. 7:15-3.4(e) to declare that the areawide WQM plan does not become void.

97. COMMENT: N.J.A.C. 7:15-3.4(e) does not seem to consider the effect upon an existing WQM plan amendment petition that has not been acted upon before the new rules take effect. It is not clear whether that petition is grandfathered under the existing designated planning agency amendment procedures, whether the designated planning agency must wait to endorse the petition until it has adopted consistent procedures, or whether the petitioner may withdraw its petition until consistent procedures are adopted or until the existing inconsistent procedures become void and the new state procedures come into effect.

Provision should be made in the final rules for pending petitions or submission of proposed amendments during the period the designated planning agency is establishing consistent procedures. For example, a petitioner could be permitted to withdraw the pending amendment proposal, without prejudice, or request that it be processed under the State procedures during the time the designated planning agency is attempting to establish consistent amendment procedures. Such an approach would balance the petitioner's interests in having the protection of the new rules and encourage the designated planning agency to promptly establish consistent procedures to define its role in processing amendments.

If this situation is not accounted for, it is likely that the Department will be requested to act on many existing petitions, on the rationale that the amendments are of the type only the Department should process, during the 90 to 180 day period designated planning agencies are given to adopt consistent procedures. Further, since the situation will most

likely arise with designated planning agencies that are reluctant to adopt consistent procedures, the Department's position will be made more difficult because it will be required to balance the conflicting interests between the designated planning agency and the petitioner on a case-by-case basis.

RESPONSE: N.J.A.C. 7:15-3.4(e) stipulates that the existing WQM plan amendment procedures of designated planning agencies become void "180 days after" the effective date of this chapter. It directly follows, therefore, that these existing procedures do not become void beforehand, and that these existing procedures remain in effect until they become void or are replaced by revised procedures approved under N.J.A.C. 7:15-3.4(e). This conclusion is sufficiently evident that it is not necessary to state it expressly in N.J.A.C. 7:15-3.4(e). Until these existing procedures become void or are replaced by revised procedures, petitions to amend areawide WQM plans shall be submitted to and shall be processed by, designated planning agencies under these existing procedures.

As discussed in the Department response to comment number 96, the Department has changed N.J.A.C. 7:15-3.4(e) to stipulate that if the existing WQM plan amendment procedure becomes void, the designated planning agency shall use a plan amendment procedure provided by the Department. Between the time that the existing procedure becomes void and the time that a revised procedure is submitted by the designated planning agency and approved by the Department, petitions to amend areawide WQM plans shall be submitted to, and shall be processed by, designated planning agencies under the procedure provided by the Department.

An applicant who has submitted a petition under the existing WQM plan amendment procedure of a designated planning agency, but who prefers to have the petition processed under an amendment procedure approved or provided under N.J.A.C. 7:15-3.4(e), may withdraw the original petition without prejudice (provided that the petition is still pending). After another amendment procedure is approved or provided under N.J.A.C. 7:15-3.4(e), such an applicant may resubmit the petition under that procedure.

98. COMMENT: In N.J.A.C. 7:15-3.4(f), one commenter supported the inclusion of timeframes for processing WQM plan amendments. There should be an additional timeframe for the adoption by the Governor or his designee of an amendment approved by a designated planning agency. Another commenter advocated a 30 day limit for such adoption.

RESPONSE: Because the Department is a State agency under the supervision of the Governor, it is not appropriate for N.J.A.C. 7:15-3.4(f) to establish a mandatory deadline for decisions by the Governor or his designee.

99. COMMENT: The comment immediately above assumes that N.J.A.C. 7:15-3.4(g) does not apply to amendments duly approved under N.J.A.C. 7:15-3.4(c) and (d). If these timeframes are used for amendments which have proceeded through the aforementioned mechanism, the commenter objects. The process for local amendment will most likely duplicate the timeframes the Department has reserved unto itself in this subsection. Therefore, the amendment process would become even more cumbersome than it is at present.

RESPONSE: N.J.A.C. 7:15-3.4(c) provides that designated planning agencies may amend areawide WQM plans for their designated areas, that the Department may amend areawide WQM plans for non-designated areas, that only the Department shall process certain categories of amendments in designated or non-designated areas, and that the Department may process all other amendments in designated areas by mutual consent of the Department and the designated planning agency. N.J.A.C. 7:15-3.4(g) establishes Department procedure for WQM plan amendment. The designated planning agencies are required to submit their revised plan amendment procedures for Department approval in accordance with N.J.A.C. 7:15-3.4(d) and (e). These revised procedures shall be consistent with, but shall not be in addition to, the Department's plan amendment procedure. Amendments that are approved by designated planning agencies pursuant to procedures approved under N.J.A.C. 7:15-3.4(e), and that are then submitted to and adopted by the Governor or his designee under N.J.A.C. 7:15-3.4(f), are not subject to any additional processing requirements under N.J.A.C. 7:15-3.4(g).

100. COMMENT: Five commenters said the applicability of N.J.A.C. 7:15-3.4(g) is unclear. It seems to imply that the applicant has the ability to go either to the designated planning agency or come directly to the Department. It should only apply to non-designated areas. Where a designated planning agency exists, the Department should direct the applicant to that agency, using the procedure from N.J.A.C. 7:15-3.4(d).

If the Department determines that proposed N.J.A.C. 7:15-3.4(g) is also applicable to designated planning agencies, then the provisions should direct the applicant to go to the designated planning agency first, before the applicant goes to the Department. At a minimum, N.J.A.C. 7:15-3.4(g)4 should require endorsement from the affected designated planning agency.

RESPONSE: The applicability of N.J.A.C. 7:15-3.4(g) is clear. N.J.A.C. 7:15-3.4(g)1 expressly provides that N.J.A.C. 7:15-3.4(g) applies to "amendments which are the Department's responsibility" under N.J.A.C. 7:15-3.4(c), and that interested persons "may petition the Department" for such amendments. N.J.A.C. 7:15-3.4(g) neither states nor implies that applicants may petition the designated planning agencies for such amendments.

Where a designated planning agency exists, N.J.A.C. 7:15-3.4(c) expressly limits the Department's responsibility to amendments which address projects or activities that are covered by N.J.A.C. 7:15-3.4(i) or (j) or regulated by the Solid Waste Management Act, and projects or activities of the State or Federal governments. (In addition, N.J.A.C. 7:15-3.4(c) provides that by the mutual consent of the Department and the designated planning agency, the Department may process all other amendments.) The basis for this responsibility is discussed in the Department response to comment number 83. Because N.J.A.C. 7:15-3.4(c) expressly states that such amendments "shall be processed only by the Department", requests for such amendments are submitted directly to the Department under N.J.A.C. 7:15-3.4(g)1, and are not submitted to the designated planning agency.

The Department agrees that the designated planning agency should be notified and given opportunity to comment whenever an amendment to an areawide WQM plan for a designated planning area is processed by the Department under N.J.A.C. 7:15-3.4(c) and (g). Such notice is appropriate because of the direct interest which the designated planning agency has in that plan. Therefore, the Department has changed N.J.A.C. 7:15-3.4(g)3 and 5 to require notification of the designated planning agency. However, N.J.A.C. 7:15-3.4(g) should not require applicants to submit amendment requests to the designated planning agency before submitting them to the Department, or require that endorsements be obtained from the designated planning agencies before such amendments can be adopted. Such requirements would defeat the purpose of having the Department process such amendments under N.J.A.C. 7:15-3.4(c).

N.J.A.C. 7:15-3.4(g) is not applicable to any amendment which, under N.J.A.C. 7:15-3.4(c), is the responsibility of the designated planning agency and is not the responsibility of the Department. Requests for all such amendments shall be submitted directly to the designated planning agency. However, pursuant to N.J.A.C. 7:15-3.4(d)2, the Department shall review such proposed amendments prior to public notice.

101. COMMENT: Four commenters said that the 180 day period allowed in N.J.A.C. 7:15-3.4(g)2 for Department review on WQM plan amendment requests is too long, and should be reduced to 90 days. Three of these commenters made additional statements about this provision. One commenter commended the Department for establishing a deadline, but asked how the 180 day timeframe was calculated; provide the justification, that is, staff hours, etc., for its derivation.

The second commenter said that an amendment request is a document of 20 to 40 pages, and that six months is an excessive time to stop development that is in conformance with local zoning and all other plans, just for an extended review period. The period should be reduced to 90 days, with perhaps an extension if the Department can present a good reason why the review has not been completed, other than lack of effort.

The third commenter urges that a timeframe be established for the Department to determine if additional information is required. The "clock" could hold until the additional information was received.

RESPONSE: The Department agrees that 180 days is too long, and has changed the review period allowed in N.J.A.C. 7:15-3.4(g)2 from 180 days to 90 days. Due to the substantially shorter review period, the phrase "a reasonable time period, not to exceed" is now unnecessary and has been deleted from N.J.A.C. 7:15-3.4(g)2. The 90 day period will provide sufficient time for Department review of unusually complex amendment requests.

With respect to the submission of additional information, N.J.A.C. 7:15-3.4(g)2 already provides (with the change noted above) that one of the actions the Department may take within 90 days is to "return the amendment request to the applicant for additional information". To clarify the procedure which is followed after such Department action, the Department has changed N.J.A.C. 7:15-3.4(g)2ii to provide that if the Department returns an amendment request under N.J.A.C. 7:15-3.4(g)2ii, and if the applicant then submits a revised amendment request, the

Department shall, within 90 days of receiving the revised amendment request, review that request and render a decision under N.J.A.C. 7:15-3.4(g)2i, ii, or iii. The Department would expedite this review provided the revisions were not too significant. In some cases, a single 90 day review period would not provide adequate time for the Department to review the initial amendment request and then review the additional information.

102. COMMENT: In N.J.A.C. 7:15-3.4(g)3, the designated planning agency should also receive a copy of findings as is current practice.

RESPONSE: The Department agrees with the comment, and has changed N.J.A.C. 7:15-3.4(g)3 to require the Department to notify the designated planning agency of the Department's decision.

103. COMMENT: In N.J.A.C. 7:15-3.4(g)3, public notice for a public hearing should be provided at least 30 days prior to any hearing.

RESPONSE: The Department agrees with the comment, and has changed N.J.A.C. 7:15-3.4(g)3 and (g)7 to require the public notice to provide at least 30 days notice of the hearing. The longer notice period helps to satisfy public participation mandates in the Water Quality Planning Act (N.J.S.A. 58:11A-2(b) and 58:11A-8).

104. COMMENT: The provision concerning endorsements of WQM plan amendments should include a sample resolution, acceptable to the Department, for approval of amendments. It could be an appendix to the rules.

RESPONSE: The Department agrees that a sample resolution of endorsement would be useful, and intends to prepare such a resolution, which will be available to the public upon written request to the Bureau of Water Quality Planning at the address provided in N.J.A.C. 7:15-3.4(g)1. However, it is not necessary for this sample resolution to be part of N.J.A.C. 7:15-3.4(g)4, or to be an appendix to the rules.

105. COMMENT: In N.J.A.C. 7:15-3.4(g)4i, the requirement for a 60 day endorsement is acceptable and helps to reduce the time span of the amendment process. However, the rules must specify when the 60 day period begins. The commenter's experience has shown that numerous amendment requests have been initiated without the correct documentation, or that project changes occur while the amendment is under consideration. It should be clear that the 60 day clock begins with the receipt of all necessary documentation and that any changes in the project will be accompanied by a new 60 day clock.

RESPONSE: N.J.A.C. 7:15-3.4(g)4i and iii specify that the 60 day period begins on the date that the request for endorsement is received. Because the Department will review amendment requests for adequate documentation under N.J.A.C. 7:15-3.4(g)2 before endorsements are requested, the Department will generally not require submission of additional documentation after endorsements are requested.

The Department does not agree that "any changes" in the project should require a new 60 day period for endorsements. N.J.A.C. 7:15-3.4(g)9ii provides that the Governor or his designee "may adopt the proposed amendment with minor changes that do not effectively destroy the value of the public notice". The purpose of N.J.A.C. 7:15-3.4(g)9ii is to allow adopted amendments to incorporate minor changes without the need to propose new amendments. Such incorporation eliminates the delays, expense, and paperwork required for proposed new amendments. If the change to the project is of such magnitude that the amendment could not be adopted under N.J.A.C. 7:15-3.4(g)9ii, then the change would be considered a revised amendment request, which would be subject to Department review under N.J.A.C. 7:15-3.4(g)2. If the Department decides under N.J.A.C. 7:15-3.4(g)2 and (g)4i to proceed with the revised amendment request and to require the request of endorsements, then new requests for endorsements would be submitted under N.J.A.C. 7:15-3.4(g)4i, and a new 60 day period would begin on the date that the new request is received.

106. COMMENT: N.J.A.C. 7:15-3.4(g)4ii, which indicates that conditional statements cannot be submitted as endorsements, poses significant problems. The commenter has habitually submitted comments along with endorsements. Conditional statements are the only mechanism available to reflect concerns that may not be incorporated in the amendment proposal.

Amendments received by the designated planning agency (and other local endorsees) have frequently not been seen prior to the submission and may not have been subject to previous comments. The details of the amendments may be acceptable to the Department but not to the endorsees. With a 60 day clock, no opportunity to coordinate additional revisions, and no recourse for submission of a conditional approval statement based on legitimate problems, the designated planning agency and other endorsees must either approve an objectionable project or

recommend disapproval because there is no opportunity to suggest conditions for approval. Such a provision does not seem consistent with the desire to streamline the rules and expedite the comment process.

Conditional statements should be permitted to convey local and areawide concerns to the Department without cycling the project for a new amendment or requiring public hearings because substantive objections cannot be forwarded until the New Jersey Register notice. These concerns should be heard, but do not merit delays in the amendment process.

RESPONSE: N.J.A.C. 7:15-3.4(g)4ii does not prohibit parties from submitting conditional statements as comments on the proposed WQM plan amendment. Although such conditional statements do not constitute "endorsements", such statements are still comments on the proposed WQM plan amendment, and like other comments are entitled to consideration under N.J.A.C. 7:15-3.4(g)8 and (g)9. As discussed in the Department response to comments number 107 and 108, a WQM plan amendment may be adopted by the Governor or his designee even though requested "endorsements" were not obtained.

N.J.A.C. 7:15-3.4(g)3 and (g)4 expedite the WQM plan amendment process by providing that requests for endorsements are made at or near the beginning of the public comment period. This contrasts with past practice, which has been to require endorsements to be requested well in advance of public notice of the proposed WQM plan amendment. One consequence of N.J.A.C. 7:15-3.4(g)3 and (g)4 is that parties from whom endorsements are requested may submit conditional statements or other comments that warrant changes to the proposed WQM plan amendment. If these changes are minor and do not effectively destroy the value of the public notice, they may be adopted under N.J.A.C. 7:15-3.4(g)9ii. Such adoption does not require submission of a new amendment, additional public hearings, or other delays in the WQM plan amendment process. However, if the changes are not minor and effectively destroy the value of the public notice, then it is only proper that the revised version of the proposed amendment be the subject of a new public notice and a new opportunity for a public hearing.

107. COMMENT: N.J.A.C. 7:15-3.4(g)4ii indicates that the endorsement of a WQM plan shall be unequivocal and that "tentative, preliminary, or conditional statements shall not be considered to be endorsements". Such endorsements are often, if not always, political decisions which are the result of discussion and compromise. On the other hand, the applicant is often a private citizen seeking approval by one government agency and endorsement by another. This entire provision should be modified to protect the rights of individual citizens who require WQM plan approval or endorsement. The Department should provide that if endorsements which are necessary under the proposed rules are either unreasonably withheld or delayed, the Department can proceed to approve the WQM plan or an amendment thereto without regard to the lack of such an endorsement.

In an individual case which occurred during the past two years, an individual applicant was delayed more than one year waiting for an endorsement; the delay had nothing to do with the individual project or any water quality related issue. Such a provision would have allowed the Department to rectify that situation in a much more expeditious fashion.

RESPONSE: N.J.A.C. 7:15-3.4(g)4i states that parties identified under that subparagraph shall be requested to endorse the proposed WQM plan amendment "within 60 days of their receipt of the request". N.J.A.C. 7:15-3.4(g)4iii states that the applicant for a WQM plan amendment shall forward to the BWQP a copy of all requests for endorsement sent to parties that did not provide endorsements or comments "within 60 days of their receipt of such requests." N.J.A.C. 7:15-3.4(g)4iv states that where a party identified under (g)4i denies or does not act on an endorsement, the reasons, if known, for that refusal or inaction shall be considered by the Department in deciding whether to take action under N.J.A.C. 7:15-3.4(g)8, and by the Governor or his designee in deciding whether to adopt the WQM plan amendment under N.J.A.C. 7:15-3.4(g)9. Thus, parties that have received a request to endorse a proposed WQM plan amendment have 60 days to respond to that request. If there is no response within 60 days, or if the response is to deny the endorsement, the Department and the Governor or his designee will take into consideration the reasons for such inaction or denial, but the WQM plan amendment may still be adopted regardless of the lack of endorsement, as suggested by the commenter.

108. COMMENT: N.J.A.C. 7:15-3.4(g)4ii needs to be strengthened and clarified, especially the statement that "tentative, preliminary or conditional statements shall not be considered to be endorsements". While the commenter concurs that receipt of a clear and positive endorsement is necessary, potential applicants should not be penalized when

tentative or unclear statements are issued by the commenting body. Comments must provide a clear "yes" or "no" regarding an application within the allowed period of time. The Department should take the necessary steps to ensure that a clear endorsement is received.

RESPONSE: The ability of the Governor or his designee to adopt a proposed WQM plan amendment regardless of the receipt of all requested resolutions of endorsement is explained in the response to comment number 107. As discussed in that response, the Governor or his designee may take into consideration reasons for denial of, or inaction on, endorsement requests in deciding whether or not to adopt a WQM plan amendment. Therefore, while a "tentative, preliminary or conditional statement" will not be considered an "endorsement" under N.J.A.C. 7:15-3.4(g)4, the WQM plan amendment may still be adopted despite the lack of that endorsement. While a "tentative, preliminary or conditional statement" would not qualify as an "endorsement" under N.J.A.C. 7:15-3.4(g)4, such a statement may still convey data, views or arguments that should be considered by the Governor or his designee. The Department has no authority to compel the affected parties to submit "clear endorsements".

109. COMMENT: N.J.A.C. 7:15-3.4(g)4iv should be amended to remove the Department's consideration of any party's inaction or failure to respond in making decisions under N.J.A.C. 7:15-3.4(g)8 and 9.

RESPONSE: N.J.A.C. 7:15-3.4(g)4iv provides that "the reasons, if known" for refusal of or inaction on a WQM plan amendment endorsement request shall be taken into consideration by the Department in its decision to take action under N.J.A.C. 7:15-3.4(g)8 and by the Governor or his designee in the decision to adopt a WQM plan amendment under N.J.A.C. 7:15-3.4(g)9. Such reasons should be considered in these decisions because the reasons for inaction or failure to respond may provide information about the merit of the proposed WQM plan amendment. If the reasons for inaction or failure to respond are not known, such inaction or failure to respond will not enter into these decisions.

110. COMMENT: Five commenters said that proposed N.J.A.C. 7:15-3.4(g)5 suggests that the Department believes it can veto or override a failure of an affected party to endorse. Please provide the reasoning behind this assumption.

RESPONSE: It is assumed that the commenters are referring to N.J.A.C. 7:15-3.4(g)4. The Department views this provision as a means of directly soliciting comments from specific affected parties, not as a delegation of decision-making authority to those parties. Affected parties may refuse to endorse proposed WQM plan amendments for many different reasons, some with great merit, others with little or no merit. It is not the intent of the Department to delegate to the various affected parties the power to veto WQM plan amendments for unspecified and possibly dubious reasons. Neither the Water Quality Planning Act nor any other statute require such delegation. The intent of N.J.A.C. 7:15-3.4(g)4 is for the affected parties to state their arguments on the record in order for the merit of those arguments to be evaluated by those with the proper authority to disapprove or adopt a proposed WQM plan amendment under N.J.A.C. 7:15-3.4(g), namely the Department and the Governor or his designee.

111. COMMENT: In N.J.A.C. 7:15-3.4(g)6, the provisions allowing an extension of the public comment period for up to 30 days should be strengthened to require an affirmative finding by the Department that the reasons raised for the extension are both relevant and compelling.

RESPONSE: As proposed and adopted, N.J.A.C. 7:15-3.4(g)6 states that "extensions may be granted to the extent they appear necessary". This language strikes an appropriate balance between the need to prevent unnecessary delays in the WQM plan amendment procedure and the need to provide opportunities for public participation in that procedure. The Water Quality Planning Act states that opportunities for meaningful public participation shall be provided in the WQM planning process (N.J.S.A. 58:11A-2(b), N.J.S.A. 58:11A-8). In light of that statutory directive, it is reasonable to allow the Department to grant a 30 day extension because of the apparent need for such an extension, rather than to require the affirmative finding requested by the commenter. It is reasonable, in other words, to allow the Department to give the public the benefit of the doubt in this matter. The Department notes, by way of analogy, that the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., does not require "affirmative findings" when State agencies extend public comment periods in rulemaking proceedings under that Act.

112. COMMENT: In N.J.A.C. 7:15-3.4(g)7, notice of public hearings should be sent to municipal clerks, planning boards, and environmental commissions.

RESPONSE: As discussed in the Department response to comment numbers 93 and 103, the Department has changed N.J.A.C. 7:15-3.4(g)7

to require that the notice of a public hearing provide at least 30 days notice of the hearing and be published in the New Jersey Register. N.J.A.C. 7:15-3.4(g)7 also requires that such notice be published in two newspapers and mailed to each party who was requested to endorse the amendment. The Department expects that, as in the past, such parties will generally include municipal governing bodies. With regards to direct notification of municipal planning boards and environmental commissions, the Department has balanced the need for municipal notice and input against the administrative burdens of ensuring such notice and input. The requested addition of a requirement in N.J.A.C. 7:15-3.4(g)7 of direct notice to multiple municipal bodies, all affiliated with the same jurisdiction, was deemed too onerous, and so was not included in the adoption. The publication and mailing requirements in N.J.A.C. 7:15-3.4(g)7 provide adequate notice to municipal governments of public hearings on proposed WQM plan amendments.

The Department has also changed N.J.A.C. 7:15-3.4(g)7 by eliminating the requirement that notice of the public hearing be mailed to each person who responded to the initial public notice of the proposed WQM plan amendment. It has become apparent to the Department that this requirement, which did not exist under expired N.J.A.C. 7:15-3.4(c)4, would be very burdensome in cases where hundreds or thousands of persons respond to the initial public notice. As adopted, N.J.A.C. 7:15-3.4(g)7 provides for adequate notice to the public, including interested persons who respond to the initial public notice.

Because N.J.A.C. 7:15-3.4(g)7 has been changed to require that a public notice providing at least 30 days notice of the public hearing be published in the New Jersey Register, the Department has also changed N.J.A.C. 7:15-3.4(g)7 by eliminating the requirement that the public hearing be held within 45 days of the date on which the public comment period was to have ended. This requirement, which did not exist under expired N.J.A.C. 7:15-3.4(c)4, does not provide sufficient time to review requests for a public hearing and to publish in the New Jersey Register a public notice that provides at least 30 days notice (or even 15 days notice) of the public hearing. (Expired N.J.A.C. 7:15-3.4(c)4i(2) stated that "a public hearing will be held 45 days after the public notice". The "public notice" in that provision referred to the public notice of the hearing, not the initial public notice of the proposed WQM plan amendment.)

113. COMMENT: Five commenters said that proposed N.J.A.C. 7:15-3.4(g)7 limits the request for public hearings to "parties". Please provide a definition for parties. The affected designated planning agency and all persons from whom endorsements were required should be considered to be parties.

RESPONSE: The Department has changed N.J.A.C. 7:15-3.4(g)6, 3.4(g)7, 3.4(h)2, and 3.5(d)2 by replacing the terms "parties" and "interested parties" with "interested persons". The term "interested persons" is used in the Administrative Procedure Act to identify those who shall be afforded opportunity to submit comments on proposed rules (N.J.S.A. 52:14B-4(a)). It is reasonable, by analogy, to use the same term in N.J.A.C. 7:15-3.4(g) and (h) to identify those who may submit comments and request public hearings on proposed amendments to WQM plans. Because the term "interested persons" is already used in N.J.A.C. 7:15-3.4(d)1 and (g)1 to identify those who may submit petitions for such amendments, use of the term "interested persons" in N.J.A.C. 7:15-3.5(d)2 results in more consistent terminology. It is the Department's position that, for purposes of N.J.A.C. 7:15-3.4 and 3.5, the term includes, but is not limited to, designated planning agencies and all parties from whom endorsements are requested.

114. COMMENT: In N.J.A.C. 7:15-3.4(g)7, the commenter objects to the provisions which require the applicant to secure a court stenographer and provide copies of the verbatim transcript of the hearing to the Bureau of Water Quality Planning. The Department has provided this service under current practice to date.

RESPONSE: The Department does not charge any fees to process requests for WQM plan amendments. As the amendment is being proposed by the applicant, it is appropriate that the applicant bear some of the costs associated with the amendment procedure. It is the current practice that applicants for WQM plan amendments pay for the public notices and court stenographer.

115. COMMENT: In N.J.A.C. 7:15-3.4(g)8, clarify that "questions" refer to impacts on water quality.

RESPONSE: "Questions" should not be restricted to impacts on water quality. Questions may properly be raised on many other issues, including social and economic impacts, environmental impacts other than impacts on water quality, and various legal and institutional issues.

116. COMMENT: In N.J.A.C. 7:15-3.4(g)8i, clarify that if the public comment period is extended, it will be for no more than another 30 days.

RESPONSE: The Department agrees with the commenter and has changed N.J.A.C. 7:15-3.4(g)8i accordingly. The 30 day limit will ensure that the public comment periods are not extended indefinitely.

117. COMMENT: In N.J.A.C. 7:15-3.4(g)8iii, clarify the meaning of "reproposal" as it is unclear at what point during the administrative process application for a WQM plan amendment starts or continues.

RESPONSE: The Department has changed N.J.A.C. 7:15-3.4(g)8iii by inserting the word "substantial" before "necessary changes", by deleting the phrase "reproposal under this section", and by inserting language which provides that if an amendment request is returned under N.J.A.C. 7:15-3.4(g)8iii, and if the applicant then submits a revised amendment request, that request is treated in the same manner as a revised amendment request that is submitted under N.J.A.C. 7:15-3.4(g)2ii. In accordance with N.J.A.C. 7:15-3.4(g)2ii, the Department shall review the revised amendment request, and shall either disapprove it, return it to the applicant for additional information or other changes, or decide to proceed further with the amendment request, as provided in N.J.A.C. 7:15-3.4(g)3.

Because N.J.A.C. 7:15-3.4(g)8 is already restricted to instances where "substantial new questions" appear to have been raised, it is appropriate to restrict N.J.A.C. 7:15-3.4(g)8iii to "substantial" changes. Minor changes that do not effectively destroy the value of the public notice can be adopted under N.J.A.C. 7:15-3.4(g)9ii. Such changes are not "substantial", and are therefore not requested under N.J.A.C. 7:15-3.4(g)8iii.

118. COMMENT: One commenter strongly supported the inclusion of N.J.A.C. 7:15-3.4(h). Another commenter, who said they had long urged the need for streamlining the WQM plan amendment process, said the process is indeed streamlined for some kinds of projects which were previously subject to the full amendment process.

RESPONSE: The Department appreciates the commenter's support, but notes that changes to this procedure have been made as discussed in the responses to comments number 125 through 127.

119. COMMENT: In N.J.A.C. 7:15-3.4(h), substitute the word "shall" for "may" to assure a fast-tracked amendment procedure for the listed projects.

RESPONSE: The Department agrees with the commenter and has changed N.J.A.C. 7:15-3.4(h) to replace "may" with "shall" so as to read: "... the Department shall modify the plan amendment procedure. ..." For the same reason, the Department has changed N.J.A.C. 7:15-3.4(h)3 to state that the modified procedure shall be "used", rather than that the modified procedure shall be "available".

120. COMMENT: N.J.A.C. 7:15-3.4(h)1 should specify the potentially interested parties. These should include municipal clerks, planning boards, and environmental commissions, park commissions, and State or Federal agencies where State or Federal lands are affected.

RESPONSE: Because "potentially affected or interested parties" are identified under N.J.A.C. 7:15-3.4(h)1 "in lieu of the endorsement requirements" in N.J.A.C. 7:15-3.4(g)3 and (g)4, the parties that may be identified under N.J.A.C. 7:15-3.4(h)1 are generally the same kinds of parties that may be identified under N.J.A.C. 7:15-3.4(g)4: "governmental entities, sewerage agencies, and BPU-regulated sewer and water utilities" (see the Department response to comment number 91). The term "governmental entity" is defined in N.J.A.C. 7:15-1.5 as "a Federal, state, county or municipal government whose jurisdiction is partially or entirely within New Jersey". Therefore, it is not necessary for N.J.A.C. 7:15-3.4(h)1 to specify Federal, State, county, or municipal government as potentially interested parties. As with requests for endorsements under N.J.A.C. 7:15-3.4(g)4, the list of appropriate governmental entities under N.J.A.C. 7:15-3.4(h)1 should be allowed to vary to some extent depending on the nature of the proposed amendment. Direct notification of multiple municipal bodies, including municipal planning boards, environmental commissions, and park commissions, is deemed too onerous, as discussed in the Department response to comment number 93.

121. COMMENT: N.J.A.C. 7:15-3.4(h)1 and 2 are more reasonable and allow for adequate comment.

RESPONSE: The Department appreciates the commenter's commendation.

122. COMMENT: One commenter said that N.J.A.C. 7:15-3.4(h)2 does not allow adequate time for public response from time of notice. Five other commenters said that the practical effect of the 10 day comment period is to effectively eliminate opportunities for public input. While these five commenters can support the need to streamline the plan amendment process for certain facilities as discussed in proposed N.J.A.C. 7:15-3.4(h), the 10 day comment period in N.J.A.C. 7:15-3.4(h)2i is too restrictive. A 30 or 45 day comment period may be more appropriate. These facilities are usually in the planning process for

a significant time period. It is neither burdensome nor onerous to require them to apply for plan amendments.

RESPONSE: While N.J.A.C. 7:15-3.4(h)2 allows only a 10 day period for response to notices of a proposed WQM plan amendment, N.J.A.C. 7:15-3.4(h)2ii allows interested parties to request an extension of the public comment period for up to an additional 30 days. Therefore, adequate opportunity for public input is provided.

123. COMMENT: N.J.A.C. 7:15-3.4(h)2 should clarify that interested parties must take the listed actions within 10 working days or give up their right to do so.

RESPONSE: No change is required because the rule is clear on its face that the specified actions must be taken within 10 days.

124. COMMENT: Four commenters approved of the availability in N.J.A.C. 7:15-3.4(h)3ii of an expedited WQM plan amendment procedure for projects partially within depicted sewer service areas. One of these commenters said that the commenter is particularly pleased to see this provision. A second commenter said this provision is helpful since these projects frequently get caught in long WQM plan amendment procedures. Almost always, even according to Department staff who administer the program, there was no net environmental impact found with these amendments, yet they still had to go through a tortuous 90-plus day procedure; 90 days was on the short side generally.

A third commenter said this modified procedure should also be extended to projects that are at least particularly within a future sewer service area as it is depicted on a 201 Facilities Plan. These changes should result in substantial improvement over the present program as areawide WQM plans were never meant to be site specific.

RESPONSE: The Department appreciates the commenters' support. The Department notes, however, that N.J.A.C. 7:15-3.4(h)3ii has been changed, as discussed in the Department response to comment number 126. In response to the third commenter, N.J.A.C. 7:15-3.4(h)2 applies to "new sewers or pumping stations to serve a project that is partially within a sewer service area depicted in an areawide WQM plan . . .". Any sewer service area map that is part of a 201 Facilities Plan that has been approved by the Department and USEPA after May 31, 1975, constitutes an amendment to the appropriate areawide WQM plan, pursuant to N.J.A.C. 7:15-3.4(k). Therefore, the modified procedure in this subchapter already includes projects that are partially within a future sewer service area as depicted in these approved 201 Facilities Plans.

125. COMMENT: Under N.J.A.C. 7:15-3.4(h)3ii, new sewers or pumping stations should only be permitted as a modification if they serve areas already in need and do not initiate new growth nor impact environmentally sensitive areas.

RESPONSE: N.J.A.C. 7:15-3.4(h)3ii has been changed, as discussed in the Department response to comment number 126. By reducing the area that can be included in the future sewer service area under this procedure to 10 acres, the Department has substantially reduced the potential impacts on growth or environmentally sensitive areas.

126. COMMENT: N.J.A.C. 7:15-3.4(h)3ii, suspending the endorsement requirement for a sewer or pumping station to serve a project which is partly within a sewer service area if the owner or operator of the domestic treatment works endorses is acceptable only if the project itself has been approved as an amendment. Otherwise, the municipality or the designated planning agency may be left out of the approval process for an objectionable project.

This is a difficult issue. Some projects are only slightly inconsistent with service area boundaries. When the WQM plan was smaller in scale, minor variations could be attributed to mapping accuracy. With the current quadrangle scale plans, more precise boundaries are defined. Consider the circumstance of a large project (700 acres) where 100 acres are in the sewer service area and 600 acres out of the service area. Such a circumstance is clearly a major change and should be considered an amendment requiring municipal and designated planning agency endorsement. The development of more specific criteria is necessary to separate minor revisions which need not be amendments from major revisions which do need amendments.

RESPONSE: The Department agrees with the commenter's concerns about major changes in sewer service areas. N.J.A.C. 7:15-3.4(h)3ii has been changed to limit its scope to projects that are partially within a future sewer service area where the total area of the project that is outside of the depicted sewer service area is less than 10 acres. This change will provide consistency with the 10 acre criterion in N.J.A.C. 7:15-5.1(b)1.

Under N.J.A.C. 7:15-5.1(b)1, a wastewater service area modification that directly affects 10 or more acres represents a significant modification that triggers the requirement for a wastewater management plan. The use of a 10 acre criterion provides a uniform basis for decision-making. Such

modifications do not become less significant merely because part of the project is in a depicted sewer service area.

127. COMMENT: N.J.A.C. 7:15-3.4(h)3ii states that new sewers to serve a project or activity that is partially within a future sewer service area are eligible for an abbreviated plan amendment procedure which does not include the designated planning agency. Department staff have stated that this provision is intended for locations which have no designated planning agency and are under Department control. The provision is vague on this point and requires either clarification or deletion. The provision could possibly be interpreted to allow rampant development of an area of which only a small part is in a future sewer service area.

RESPONSE: N.J.A.C. 7:15-3.4(h)3ii has been changed to limit its scope, as discussed in the Department response to comment number 126. However, it is not true that N.J.A.C. 7:15-3.4(h)3ii is intended only for locations that have no designated planning agency and are under Department control. N.J.A.C. 7:15-3.4(d) requires that WQM plan amendment procedures developed by designated planning agencies be consistent with N.J.A.C. 7:15-3.4. Including the changes discussed above, N.J.A.C. 7:15-3.4(h)3ii is part of N.J.A.C. 7:15-3.4. All designated planning agencies must submit WQM plan amendment procedures for Department approval pursuant to N.J.A.C. 7:15-3.4(e), and will be responsible for developing amendment procedures that are consistent with N.J.A.C. 7:15-3.4(h)3ii and the remainder of N.J.A.C. 7:15-3.4.

128. COMMENT: Five commenters disagree with the proposed automatic exclusion of 201 Facilities Plans from the WQM planning process contained in proposed N.J.A.C. 7:15-3.4(k). While such an automatic exemption may be appropriate for non-designated areas, it is totally inappropriate for designated areas. Section 208 of the Clean Water Act envisioned a process whereby the 201 plans were to be consistent with the overall areawide and basin plans. To automatically revise that and amend the areawide plans to the 201's is inappropriate and renders the areawide planning process meaningless.

RESPONSE: N.J.A.C. 7:15-3.4(k) is not inappropriate for designated areas. Section 208 of the Clean Water Act (33 U.S.C. §1288) requires areawide WQM plans to identify necessary treatment works, but does not prohibit the use of 201 Facilities Plans in meeting that requirement. Although the 201 facilities planning program is now being phased out, that program was, for many years, the principal means by which necessary treatment works were identified in New Jersey under the Clean Water Act. N.J.A.C. 7:15-3.4(k) helps to satisfy the Section 208 requirement for identification of necessary treatment works in an efficient manner, by providing that specified documentation in 201 Facilities Plans approved by the Department and USEPA shall constitute amendments to areawide WQM plans. This policy is consistent with Section 101(f) of the Clean Water Act (33 U.S.C. §1251(f)), which encourages the drastic minimization of paperwork and interagency decision procedures and the best use of staff and funds.

The Water Quality Planning Act requires areawide WQM plans to identify necessary treatment works (see N.J.S.A. 58:11A-5), and requires WQM plans to be integrated with related regional and local functional plans (see N.J.S.A. 58:11A-2b and N.J.S.A. 58:11A-7). For many years, the most important functional plans for treatment works in New Jersey were the 201 Facilities Plans. Thus, N.J.A.C. 7:15-3.4(k) also addresses requirements of the Water Quality Planning Act.

N.J.A.C. 7:15-3.4(k) does not eliminate designated planning agencies from the WQM plan amendment process. Such agencies have had opportunity to comment on 201 Facilities Plans through public participation procedures required by USEPA under the National Environmental Policy Act (40 CFR 6) and under former USEPA construction grants regulations (40 CFR 35.917-5; 43 FR 44061). In addition, designated planning agencies can propose amendments to areawide WQM plans to modify or delete any of the documentation identified in N.J.A.C. 7:15-3.4(k).

N.J.A.C. 7:15-3.4(k) continues, in effect, the "Policy on Incorporation of 201 Facilities Plans" contained in Chapter III of the Statewide WQM Plan, which has been in force since December 5, 1985. Changing N.J.A.C. 7:15-3.4(k) to make it inapplicable to designated areas could create substantial difficulties for persons who received Department permits since December 5, 1985 in reliance on that policy.

129. COMMENT: Two commenters said the Department should be required to make publicly available a list of adopted amendments to WQM plans, just as the proposed rule suggests such publication for revisions. One of these commenters said this requirement should be contained in a new subsection at N.J.A.C. 7:15-3.4(j). The other commenter, who is in the Northeast New Jersey WQM planning area (a State planning area), has no idea what amendments have been added to that

area's WQM plan since 1985. Amendments, revisions, and everything else should be made available so that the planning is more open and the public is better informed.

RESPONSE: As WQM plan amendments are subject to public notification requirements under N.J.A.C. 7:15-3.4, it is not necessary to change N.J.A.C. 7:15-3.4 to require the Department to make available a list of adopted WQM plan amendments. However, as the Department will make available a list of adopted revisions to the WQM plans pursuant to N.J.A.C. 7:15-3.5(d)2, the Department will also make available a list of adopted WQM plan amendments. Either list will be provided by the Department upon receipt of a written request to the Bureau of Water Quality Planning at the address provided in N.J.A.C. 7:15-3.4(g)1.

In response to the second commenter, under expired N.J.A.C. 7:15-3.4(c) and present Department practice, notices of all adopted amendments to the areawide WQM plans (including the Northeast New Jersey WQM plan) have been published twice in the New Jersey Register: first to notify the public that the Department has proposed the WQM plan amendment and to announce the 30 day public comment period (this notice was also published in two newspapers), and second to announce that the Department had adopted the amendment. Thus, notice of all amendments to the Northeast New Jersey WQM Plan adopted since 1985 has been available to the public. A summary list of public notices for WQM plan amendments is published in the New Jersey Administrative Code after the text of N.J.A.C. 7:15-3.4.

The Department has changed proposed N.J.A.C. 7:15-3.4(d)4, (g)3, and (g)5 to require continued publication of notices of proposed WQM plan amendments in the New Jersey Register. As adopted, N.J.A.C. 7:15-3.4(d)4, (g)3, and (g)5 also require publication of notices in newspapers to announce proposed WQM plan amendments and public comment periods. In addition, N.J.A.C. 7:15-3.4(d)3, (g)4, (g)5, and (h)1 provide for direct notification of certain affected or interested parties regarding proposed WQM plan amendments.

With regards to final decisions to adopt or disapprove proposed WQM plan amendments, the Department has changed N.J.A.C. 7:15-3.4(g)10 by deleting the requirement that the Department provide written notification of the decision to each person who submitted comments or requested notice of the final decision. It has become apparent to the Department that this requirement, which did not exist under expired N.J.A.C. 7:15, would be very burdensome in cases where hundreds or thousands of persons submitted comments or requested notice of the final decision. In place of this requirement, the Department has substituted a requirement that notice of the final decision shall be published in the New Jersey Register. This New Jersey Register notice requirement represents a continuation of existing practice. (Unless specified otherwise in the final decision, the effective date of an adopted amendment shall continue to be the date on which the amendment is adopted, not the date on which the adoption notice is published in the New Jersey Register.) As adopted, N.J.A.C. 7:15-3.4(g)10 provides for adequate notice to the public, including persons who expressed interest in the amendment.

Revisions and amendments to WQM plans, as well as all projects reviewed by the Department (except for information treated as confidential pursuant to law), are public information. The files are always available for review if a written request is submitted and an appointment is made to review the specified material.

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

130. COMMENT: In N.J.A.C. 7:15-3.5(a), clarify that the appropriate amendments and revisions under this section only refer to those instances listed in N.J.A.C. 7:15-3.5(b) and that an applicant who has already applied for and received a plan amendment subject to N.J.A.C. 7:15-3.4 would not be subject to an additional petition/amendment process as contained in N.J.A.C. 7:15-3.5(d)2.

RESPONSE: "Amendments" and "revisions" are mutually exclusive terms that are defined in N.J.A.C. 7:15-1.5 and that should not be confused. As is clear from these definitions and from N.J.A.C. 7:15-3.4 and 3.5, amendments to WQM plans may be adopted only under N.J.A.C. 7:15-3.4, and are never adopted under N.J.A.C. 7:15-3.5.

N.J.A.C. 7:15-3.5 does not establish a separate procedure for amendment of WQM plans. Rather, N.J.A.C. 7:15-3.5(a) directs the Department and the designated planning agencies to propose appropriate amendments under N.J.A.C. 7:15-3.4, and N.J.A.C. 7:15-3.5(d)2 provides that WQM plan revisions adopted under N.J.A.C. 7:15-3.5(d)1 may (like many other WQM plan components) be the subject of subsequent amendment petitions under N.J.A.C. 7:15-3.4. As is clear from its wording, the sole function of N.J.A.C. 7:15-3.5(b) is to identify circumstances which require

WQM plan revisions. It is not the function of N.J.A.C. 7:15-3.5(b) to identify circumstances which require WQM plan amendments.

WQM plan components are subject to future amendments and amendment petitions, in accordance with N.J.A.C. 7:15-3.4, even if those components resulted from previously adopted WQM plan amendments. If, however, a WQM plan amendment is adopted in accordance with N.J.A.C. 7:15-3.4, the applicant for that amendment is not subject to additional requirements or obligations under N.J.A.C. 7:15-3.5.

131. COMMENT: In N.J.A.C. 7:15-3.5(d)2, clarify how the list of adopted revisions is to be made publicly available. Would it be through the New Jersey Register?

RESPONSE: The list of adopted WQM plan revisions will not be provided in the New Jersey Register, due to the cost and time involved. However, the Department will keep updated lists of adopted WQM plan revisions and adopted WQM plan amendments. These lists will be available to the public upon written request to the Bureau of Water Quality Planning at the address provided in N.J.A.C. 7:15-3.4(g)1.

7:15-3.8 Validity of water quality management plan amendments

132. COMMENT: Clarify N.J.A.C. 7:15-3.8(a), which is unclear.

RESPONSE: N.J.A.C. 7:15-3.8(a) is clear. It was patterned after N.J.S.A. 52:14B-4(d) in the Administrative Procedure Act, and does not require modification.

133. COMMENT: Proposed N.J.A.C. 7:15-3.8(a) unnecessarily raises the question of standing to challenge a gubernatorial adoption of an amendment to a WQM plan. It further seeks to set a time limit thereon. This establishes a statute of limitations of questionable value and validity.

RESPONSE: N.J.A.C. 7:15-3.8(a) does not raise issues of standing because it does not raise the issue of who can contest WQM plan amendments. Moreover, the commenter does not support the claim that the rule establishes a questionable statute of limitations. The rule establishes a one year deadline so that all parties can rely on the validity of adopted WQM plan amendments without concerns regarding procedural challenges to such amendments raised long after adoption. An analogous provision is found at N.J.S.A. 52:14B-4(d) in the Administrative Procedure Act.

7:15-3.9 Appeals of Department decisions

134. COMMENT: N.J.A.C. 7:15-3.9 provides the process for appeals of Department decisions for an applicant only. It does not provide a process for public intervention. Since the public has not participated in the resolution conference, where does it fit into the 20 calendar day time element? How will the public know what is happening?

RESPONSE: As proposed, N.J.A.C. 7:15-3.9(a) through (e) established a procedure for appeals of two specific categories of Department decisions. One category consisted of Department findings, under N.J.A.C. 7:15-3.1 or 3.2, that projects or activities were inconsistent with a WQM plan or this chapter. Such findings were the only Department decisions that could trigger a "resolution conference" (also called a "conflict resolution conference") under the conflict resolution procedure proposed at N.J.A.C. 7:15-3.3. This was the "resolution conference" referred to in the comment. Under proposed N.J.A.C. 7:15-3.9(a) and (b), the applicant for the project or activity could request an adjudicatory hearing to contest the finding of inconsistency within 20 days from the resolution conference held pursuant to N.J.A.C. 7:15-3.3, or from receipt of notification that the Department had waived the resolution conference under N.J.A.C. 7:15-3.3(a)4.

The other kind of decision that could be appealed under proposed N.J.A.C. 7:15-3.9(a) through (e) was a Department decision, under proposed N.J.A.C. 7:15-3.4(g)2 or (g)8, to disapprove or return a request for a WQM plan amendment. Under proposed N.J.A.C. 7:15-3.9(a), the applicant for the amendment request could request an adjudicatory hearing to contest this Department decision.

As discussed in the Department response to comment number 77, the Department has deleted the conflict resolution procedure proposed at N.J.A.C. 7:15-3.3, and has adopted in its place an informal discussion provision at N.J.A.C. 7:15-3.1(h). The Department has changed N.J.A.C. 7:15-3.9(a) by deleting its reference to the "conflict resolution conference held pursuant to N.J.A.C. 7:15-3.3", as well as its reference to N.J.A.C. 7:15-3.3(a)4. The Department has also changed N.J.A.C. 7:15-3.9(b) by deleting its reference to the "conflict resolution conference". The Department has not replaced these deleted references with references to the informal discussion provision at N.J.A.C. 7:15-3.1(h). Instead, the Department has narrowed the scope of N.J.A.C. 7:15-3.9(a) through (e) to appeals of Department decisions on WQM plan amendments, and has added a provision at N.J.A.C. 7:15-3.9(g), which stipulates that an appeal

of a consistency review decision made by the Department pursuant to N.J.A.C. 7:15-3.1 or 3.2 shall follow whatever statutes or rules govern the particular Department permit that is the subject of the decision. Such an appeal shall not be governed by N.J.A.C. 7:15-3.9(a) through (e). The phrase "finding of inconsistency" has been deleted from N.J.A.C. 7:15-3.9(a). Appeals of such findings are addressed by N.J.A.C. 7:15-3.9(g), and are not governed by N.J.A.C. 7:15-3.9(a) through (e).

In accordance with N.J.A.C. 7:15-3.9(g), an appeal of a consistency review decision made by the Department pursuant to N.J.A.C. 7:15-3.1 or 3.2 shall follow whatever statutes or rules govern the particular Department permit that is the subject of the decision. For such a decision, the access of applicants and other persons to the appeal process will depend entirely on those statutes or rules. (The informal discussion provision at N.J.A.C. 7:15-3.1(h) stipulates that an appeal under N.J.A.C. 7:15-3.9(g) may be made without regard to a discussion under N.J.A.C. 7:15-3.1(h).)

With regards to appeal of a Department decision to disapprove or return a request for a WQM plan amendment, N.J.A.C. 7:15-3.9(a) continues to allow the applicant for the amendment request to request an adjudicatory hearing to contest this Department decision. As discussed in the Department response to comment number 136, the Department has changed N.J.A.C. 7:15-3.9(e) to require the Department to notify the designated planning agency of hearings granted in response to such requests. As discussed in the Department response to comment number 135, the Department has added a provision at N.J.A.C. 7:15-3.9(h), which provides that designated planning agencies as well as applicants for amendment requests may request adjudicatory hearings to contest Department decisions to disapprove or return requests for WQM plan amendment.

In any case where the appeal process under N.J.A.C. 7:15-3.9 is governed by the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, procedures and standards for intervention and participation are set forth at N.J.A.C. 1:1-16.

135. COMMENT: Five commenters noted that proposed N.J.A.C. 7:15-3.9 limits the parties eligible to apply for an adjudicatory hearing to "applicants". This should be expanded to allow appeals by the public parties from whom endorsements were required and/or the affected designated planning agency.

RESPONSE: The Department agrees with part of this comment, and has added a provision at N.J.A.C. 7:15-3.9(h), which provides that designated planning agencies as well as applicants may request adjudicatory hearings to contest Department decisions identified under N.J.A.C. 7:15-3.9(a). This provision is warranted by the direct interest which the designated planning agency has in amendments to the areawide WQM plan.

The Department does not agree that parties from whom endorsements are requested should be allowed to appeal such Department decisions. As noted in the Department response to comment number 110, the endorsement process in N.J.A.C. 7:15-3.4 is a means of soliciting comments on proposed WQM plan amendments from specific affected parties. The degree of interest that warrants requests for endorsement is less than the degree of interest that is required for persons to be entitled to adjudicatory hearings under the Administrative Procedure Act. Further, the opportunities for comment under N.J.A.C. 7:15-3.4 should protect the interests and concerns of parties from whom endorsements are requested.

As discussed in the Department response to comment numbers 77 and 134, the Department has narrowed the scope of N.J.A.C. 7:15-3.9(a) to Department decisions on WQM plan amendments, and has added a provision at N.J.A.C. 7:15-3.9(g), which addresses appeals of Department decisions in the consistency review program. N.J.A.C. 7:15-3.9(g) provides that if, pursuant to N.J.A.C. 7:15-3.1 or 3.2, the Department decides that a project or activity is consistent with, not addressed by, or inconsistent with WQM plans or this chapter, an appeal of that decision shall follow whatever statutes or rules govern the particular Department permit that is the subject of the decision. The ability of designated planning agencies and other parties to appeal such Department decisions will depend entirely on those statutes or rules.

136. COMMENT: In N.J.A.C. 7:15-3.9(a), the designated planning agency should be notified of any adjudicatory hearings which impact projects in their areas.

RESPONSE: The Department has changed N.J.A.C. 7:15-3.9(e) to require the Department to notify the designated planning agency of hearings granted in response to requests made under N.J.A.C. 7:15-3.9(a). This notice is warranted by the direct interest which the designated planning agency has in amendments to the areawide WQM plan.

As discussed in the Department response to comment numbers 77 and 134, the Department has narrowed the scope of N.J.A.C. 7:15-3.9(a) to Department decisions on WQM plan amendments, and has added a provision at N.J.A.C. 7:15-3.9(g), which addresses appeals of Department decisions in the consistency review program. N.J.A.C. 7:15-3.9(g) provides that if, pursuant to N.J.A.C. 7:15-3.1 or 3.2, the Department decides that a project or activity is consistent with, not addressed by, or inconsistent with WQM plans or this chapter, an appeal of that decision shall follow whatever statutes or rules govern the particular Department permit that is the subject of the decision. Whether designated planning agencies receive notice of adjudicatory hearings on such Department decisions will depend entirely on those statutes or rules.

137. COMMENT: Insert at the end of N.J.A.C. 7:15-3.9(b) the following language, "unless the applicant can demonstrate that the reason for this delay was beyond their control".

RESPONSE: The commenter has not provided reasoning as to why the suggested change is appropriate, and the Department has not adopted the suggested change.

#### SUBCHAPTER 4. WATER QUALITY AND WASTEWATER MANAGEMENT POLICIES AND PROCEDURES

##### 7:15-4.1 Permittees for new or expanded domestic treatment works

138. COMMENT: N.J.A.C. 7:15-4.1 codifies an existing requirement promulgated in 1985 in the Statewide WQM Plan. As outlined in that Plan, the existing requirement "is designed to provide accountability in the construction and long-term accountability of domestic wastewater facilities and to eliminate or mitigate potential problems with these facilities". This reasoning is mirrored in the portion of the summary to proposed N.J.A.C. 7:15-4.1. The proposed rule on co-permittees is clearly a formal extension of an existing policy requirement. Therefore, the Department can review the impact of the existing requirement in deciding whether to continue this requirement without modification.

RESPONSE: The Department agrees with this comment, but does not believe that the impact of the existing requirement warrants modification of proposed N.J.A.C. 7:15-4.1 other than the addition of N.J.A.C. 7:15-4.1(c)3 (see the Department response to comment number 154) and the deletion of the requirement in N.J.A.C. 7:15-4.1(a) that the sole permittee or co-permittee be identified in an areawide WQM plan (see the Department response to comment number 189).

139. COMMENT: Cite existing rules or clarify the proposed rules to address the following questions: What are the specific responsibilities of the co-permittees? If responsibilities differ, what are the lines of demarcation? Could a municipal co-permittee be held liable for Department penalties or other financial liabilities? Would a municipal co-permittee be required to improve or even acquire a sewer system that violates Department regulations? Would a co-permittee be held accountable for all actions or inactions of the other co-permittee, even if it had no knowledge or responsibility?

RESPONSE: N.J.A.C. 7:15-4.1 provides that the Department shall not issue a permit under N.J.A.C. 7:14A for certain new or expanded DTW unless a governmental entity or sewerage agency is either the sole permittee or co-permittee for that DTW. (In the Department response to this comment and other comments on N.J.A.C. 7:15-4.1, a permittee or co-permittee that is a governmental entity or sewerage agency is referred to as a "public co-permittee" or "agency", and the other co-permittee or party seeking the DTW, which is usually a private entity, is referred to as the "applicant".) The terms "governmental entity" and "sewerage agency" are defined in N.J.A.C. 7:15-1.5, and are not limited to municipalities. Thus, municipalities are not the only governmental bodies that may serve as public co-permittees.

A public "co-permittee" is a "permittee" as that term is used in the NJPDES rules (N.J.A.C. 7:14A). The specific responsibilities of a permittee are set forth at length in those rules (for example, in N.J.A.C. 7:14A-2.5) and need not be repeated in this response or in N.J.A.C. 7:15-4.1. As permittees, both the applicant and the public co-permittee are responsible for meeting these responsibilities. To prevent confusion and duplication of effort, the applicant and the public co-permittee may enter into a contract that identifies which of these responsibilities will be met by the applicant and which will be met by the public co-permittee. The "lines of demarcation" are up to the contracting parties. It is not appropriate for the Department to supervise the division of these responsibilities, so long as all of the responsibilities are met. However, notwithstanding any contract or other agreement between the applicant and the public co-permittee, the Department will hold the applicant and

the public co-permittee jointly and severally liable for all violations of the permit. If the applicant owned and operated the DTW, the Department would generally consider initiating enforcement proceedings against the public co-permittee after the applicant was given some opportunity to correct the permit violation. If necessary, however, the public co-permittee will be required to undertake whatever action is necessary to bring a DTW into compliance with its permit.

Public agencies and private applicants have significant flexibility in choosing an institutional arrangement that is satisfactory to both parties. This arrangement can range anywhere from total ownership and operation of DTW by a public agency, to ownership and operation by a private entity (for example, a developer, homeowners association, or sewer utility) with oversight by the public agency (similar to a party co-signing a loan). Bonding or other maintenance guarantees can be arranged between the applicant and the public agency.

The public co-permittee can be held liable for violations of permits issued under N.J.A.C. 7:14A. In practice, however, the financial liabilities and other expenses to public co-permittees may be addressed between the permittee and public co-permittee to address the potential financial burdens on public co-permittees and on their taxpayers and customers. However, notwithstanding any contract or other agreement between the applicant and the public co-permittee, the Department will hold the applicant and the public co-permittee jointly and severally liable for all violations of the permit. Also, as noted above, if the applicant owned and operated the DTW, the Department would generally consider initiating enforcement proceedings against the public co-permittee after the applicant was given some opportunity to correct the permit violation. If necessary, however, the public co-permittee will be required to undertake whatever action is necessary to bring a DTW into compliance with its permit. In some cases this may include direct action to improve or acquire the DTW. It is incumbent upon the public co-permittee to oversee the actions of the applicant and to ensure that the DTW is operated in a manner that complies with its permit.

140. COMMENT: Two commenters said that once the insurance industry evaluates the significant new legal exposure with N.J.A.C. 7:15-4.1, municipal insurance premiums will increase alarmingly. The economic consequence of the proposed rule has thus not been adequately evaluated in the "economic impact" statement supporting the proposal. Given the climate of municipal insurance and the premiums being paid, it is unconscionable to force the co-permittee requirement on a municipality. The economic analysis of these proposed rules must consider their devastating impact. One township's insurance premiums increased 248 percent between 1980 and 1988. This rule will add to the burden of municipalities even if they choose not to act as co-permittee, because the rule foists a new potential liability on all municipalities where sewer service is not available. Forcing municipalities to act as co-permittees places them in an unconscionable dilemma, which automatically generates long term exposure and prohibitive costs much greater than the perceived risk which is speculative at best. Any cost/benefit analysis dictates elimination of the proposed rule.

RESPONSE: As noted in the Department response following comment number 174, the Department does not agree that N.J.A.C. 7:15-4.1 creates excessive legal exposure for municipalities. As noted in comment number 160, N.J.A.C. 7:15-4.1 continues an existing Department policy that has been in effect since 1985. By now, the insurance industry has had ample opportunity to evaluate the co-permittee requirement. If municipal insurance premiums were going to increase alarmingly due to this requirement, some solid evidence of such an increase should by now be apparent. No such evidence was presented in the comment. (The statement that one township's premiums increased 248 percent between 1980 and 1988 does not identify what fraction, if any, of the increase was due to the co-permittee requirement.) If the risk of environmental problems is as low as the comment suggests, then the economic risk to municipalities that choose to be public co-permittees should not be excessive, and such municipalities should not face prohibitive costs or alarming increases in insurance premiums. More importantly, as noted in the Department response to comment number 139, the financial liabilities to public co-permittees may be addressed between the permittee and the public co-permittee to address the potential financial burdens on public co-permittees and on their taxpayers and customers. However, notwithstanding any contract or other agreement between the applicant and the public co-permittee, the Department will hold the applicant and the public co-permittee jointly and severally liable for all violations of the permit.

141. COMMENT: N.J.A.C. 7:15-4.1 should be deleted because it places a great, unfair burden on local governments by requiring them

to subsidize private commercial ventures or other private projects with taxpayer's money. Municipalities might refuse to be a co-permittee for reasons relating to development, but the basic reason municipalities often give is that the requirement is unfair. They do not want to raise taxes, user fees, or other revenues to support private projects.

**RESPONSE:** The purpose of N.J.A.C. 7:15-4.1 is not to subsidize private projects but to prevent or minimize environmental damage that is a direct threat to the public health, safety, or welfare. As noted in the Department response to comment number 139, financial expenses to public co-permittees may be addressed between the permittee and the public co-permittee to address the potential financial burdens on public co-permittees and on their taxpayers and customers. However, notwithstanding any contract or other agreement between the applicant and the public co-permittee, the Department will hold the applicant and the public co-permittee jointly and severally liable for all violations of the permit. In general, municipalities and other governmental bodies should not have to raise taxes or other revenues as a result of being a public co-permittee.

**142. COMMENT:** The Department statement about N.J.A.C. 7:15-4.1 acknowledges "adverse impacts" on some NJPDES applicants and that "a few applicants may be unable to obtain permits or related WQM Plan amendments". This understates the hardship. Numerous responsible, otherwise qualified entities, faced with wastewater management agencies who refuse to serve as co-permittee under any circumstances, will be prevented from proceeding with environmentally sound projects which require a DTW NJPDES permit. Their property uses can be severely restricted and even eliminated. Such applicants have no recourse from these harsh effects.

The commenter's experience is an object lesson in these effects. The Department has a relatively long-standing co-permittee policy. The commenter sought to expand its alcohol/substance abuse treatment facility, and has been frustrated for well over a year by the refusal of either the county or municipal wastewater management agency to act as co-permittee. Despite the environmental soundness of the proposed DTW expansion, the commenter's willingness to post substantial financial assurances to guarantee the long-term viability and operation of the DTW, and the project's obvious social utility, it has been completely blocked by the Department's existing policy. N.J.A.C. 7:15-4.1 would codify this unfortunate policy and should be withdrawn as ill considered and inappropriate.

**RESPONSE:** Apart from the commenter's experience, which is limited to one project, the comment includes no evidence to support its contention that "numerous" parties will be prevented from proceeding with projects. The Department has found that in some instances there is an initial reluctance on the part of governmental entities or sewerage agencies to become public co-permittees. However, after these entities and agencies clearly understand the benefits and responsibilities associated with the concept, much of the initial reluctance diminishes. Many valid State and Federal statutes and regulations restrict a property owner's use of land.

The purpose of N.J.A.C. 7:15-4.1 is to ensure long term accountability and responsibility in the provision of wastewater treatment. Even DTW that are carefully designed may become environmentally unsound due to events that occur after the DTW is designed. For example, the DTW may be improperly maintained, and the owner of the DTW may, for financial or other reasons, be unable or unwilling to remedy the deficiencies regardless of Department enforcement proceedings against that owner. While N.J.A.C. 7:15-4.1 allows for private construction and operation of DTW, it also provides a commitment to the Department by a public agency whose long term existence and fiscal viability is assured. (For reasons discussed in the Department response to comment number 148, financial assurances from applicants are not an adequate substitute for N.J.A.C. 7:15-4.1.) Until such time as equally effective mechanisms to ensure long term accountability and responsibility in the operation and maintenance of DTW are established, the Department believes that N.J.A.C. 7:15-4.1, in conjunction with other wastewater management requirements, is necessary to protect the waters of the State.

**143. COMMENT:** The Department should promulgate regulatory guidance for financial responsibility between co-permittees and permittees on DTW applications. One of the shortcomings in N.J.A.C. 7:15-4.1 is the lack of standards for what the municipality may or should require as an inducement to execute the application as co-permittee. The present system is patently inequitable and results in great variation between municipalities. If the Department places this burden on potential applicants then it should also draft guidelines for the type of assurances required and the obligations of municipal permittees.

**RESPONSE:** In order to provide maximum flexibility to the parties involved, the Department has specifically refrained from establishing standards for co-permittee agreements. Experience has shown that while there are some common features in these agreements, many agreements contain unique clauses that apply only to specific situations. The Department's principal concern is that a public co-permittee sign the NJPDES permit application. How agreements are structured, and associated financial provisions, are not appropriate for Department review. However, notwithstanding any contract or other agreement between the applicant and the public co-permittee, the Department will hold the applicant and the public co-permittee jointly and severally liable for all violations of the permit. If the applicant owned and operated the DTW, the Department would generally consider initiating enforcement proceedings against the public co-permittee after the applicant was given some opportunity to correct the permit violation. If necessary, however, the public co-permittee will be required to undertake whatever action is necessary to bring a DTW into compliance with its permit.

**144. COMMENT:** The Department's stated purpose for N.J.A.C. 7:15-4.1 "is to ensure long term accountability and responsibility in the operation of specified new or expanded domestic treatment works". This purpose can best be served by the Department's existing process governing permit applicants, monitoring and renewal of NJPDES permits. These procedures are designed to protect both the Department's interests and the applicant's rights. N.J.A.C. 7:15-4.1 should be withdrawn as ill considered and inappropriate.

**RESPONSE:** The Department instituted the co-permittee policy in response to situations in the past where owners of DTW were unable to meet their responsibilities (usually for financial reasons), and the DTW was allowed to fall into disrepair. For example, in the case of one sewer company which filed for bankruptcy, it took the Department several years to resolve a serious pollution problem. During much of this period the DTW was discharging virtually untreated sewage into the water. Unfortunately, the Department's existing NJPDES permit application and enforcement process cannot adequately handle such situations if the private entity is bankrupt or otherwise unable or unwilling to meet its responsibilities. Having a public agency as a public co-permittee provides the long term responsibility and accountability which enables the permit enforcement process to successfully resolve the problem.

**145. COMMENT:** N.J.A.C. 7:15-4.1 was proposed because the Department wants long term accountability and responsibility if something happens to the wastewater system. This concern can be adequately met without this rule. For both commercial and residential developments, there are strong economic considerations that satisfy this concern without the necessity of a co-permittee.

The rule is not applicable to one-family single detached houses on large lots, which usually have single septic systems. But most of the residential developments which this rule will affect, or which seek to use package treatment plants until sewerage systems come on line, are townhouse or condominium developments. The developer is long gone once the developer sells out, but each member of the condominium association certainly has a strong economic interest to keep that plant going. Otherwise, the condominium could not be sold. It is the same as when condominium associations provide garbage disposal or otherwise function as self-contained entities; they will be there. Local taxpayers at large should not be responsible for upkeep of group residential sewerage systems.

Perhaps a distinction can be made between a business and a residence. If there is a problem with a residence that cannot raise the money, maybe the total community should help persons who live where there is a housing shortage. But certainly that justification is not prevalent for private businesses. Such businesses are willing to maintain the treatment plant by themselves, and there is no long term accountability issue. Commercial properties are leased to tenants. Leases usually govern and designate the responsible parties for property upkeep. It is usually the landlord or the tenant, depending on the rent and type of lease. If the wastewater system fails, either a mortgagee or a tenant will take it over, to be certain that it can operate the business. A municipality would ask, is it fair to have its taxpayers pay for a problem which commercial tenants could handle themselves?

**RESPONSE:** Experience has shown that economic considerations are not strong enough to provide long term assurance of adequate DTW operation. Homeowner associations are particularly vulnerable since they do not have the powers and authorities of a governmental entity or sewerage agency, primarily with regard to raising funds. In addition, these associations are generally composed of residents having little or no knowledge of the technical requirements of wastewater treatment and disposal.

The example of other utility services such as garbage disposal, as a present function of homeowner associations, is significantly different than wastewater disposal, in that wastewater disposal requires a significantly higher level of oversight. Although unpleasant, garbage can "back up" for even weeks at a time, whereas sewage must be treated daily or major health hazards will result. The idea of landlords or tenants having sole responsibility for wastewater disposal is unsatisfactory because both landlords and tenants are subject to bankruptcy, or may for other reasons be unable or unwilling to meet their responsibilities. As noted in the Department response to comment number 144, the Department has found it impossible to get financially unsound private entities to operate and maintain their malfunctioning DTW in a timely and adequate manner.

146. COMMENT: With respect to the basis for the "co-permittee" concept, the Department has not recognized that many private institutions such as churches, schools and single owner developments offer an adequate longevity and institutional stability to respond to the unstated problem which prompted the co-permittee concept in the first instance. Technically competent and financially sound private corporations can also fulfill this need.

RESPONSE: All of the private organizations identified in this comment are subject to bankruptcy or other financial difficulties. The present financial soundness of a private corporation is no guarantee that the corporation will be financially sound in the future. As noted in the Department response to comment number 144, the Department has found it impossible to get financially unsound private entities to operate and maintain their malfunctioning DTW in a timely and adequate manner.

147. COMMENT: One commenter said the Department, project developers, industries constructing domestic treatment works (DTW), and private citizens face new, enormous practical difficulties in obtaining a governmental entity willing to act as a "co-permittee". The new Department penalty schedule, effective August 1, 1988, makes no provision for more lenient status for a governmental entity "co-permittee" where a private citizen is the real permittee. It is highly unlikely that any governmental entity will agree to subject itself to the Department's enormous proposed penalties. Even with strict agreements between applicants and governmental entity "co-permittees" and vigilant monitoring by the government, the nature of wastewater technology, the variations in wastewater flow and the complexity of the wastewater management regulatory program make it virtually impossible for a DTW to operate violation-free. Coupled with the Department's new emphasis on enforcement and the type of legislation (mandatory civil and criminal penalties for Water Pollution Control Act violations) now pending in the legislature (S-2787), it is difficult to imagine why a governmental entity would act as a "co-permittee". These practical considerations, if left unaddressed, will render the concept unworkable.

A second commenter said the Department should delete proposed N.J.A.C. 7:15-4.1 and issue permits under N.J.A.C. 7:14A to any persons meeting the technical requirements of either the NJPDES or treatment works approval programs. At the very least, the language should be modified to allow a private entity to be a co-permittee, if that entity can raise funds and accumulate reserves, assume real and environmental liability, and assure sound facility management. (This comment should not be construed as endorsing this proposal.) This request, already discussed with the Department but not received favorably, is more important in light of the penalty schedules and pending legislation mentioned above, as it is unlikely that governmental entities will agree to be co-permittees.

RESPONSE: The co-permittee requirement is part of the Department's comprehensive approach to wastewater management. Contrary to an assertion in the comment, the co-permittee requirement may eliminate future penalties by applying active oversight at the local level. This oversight may lead to improved wastewater management in anticipation of future changes in State and Federal law.

There are now approximately 25 facilities in the State with public co-permittees. To date, there has been no indication of any increased unwillingness to be a public co-permittee resulting from the increased penalties available to the Department. The Department has found that in some instances there is an initial reluctance on the part of governmental entities or sewerage agencies to become public co-permittees. However, after these entities and agencies clearly understand the benefits and responsibilities associated with the concept, much of the initial reluctance diminishes. Financial liabilities to public co-permittees may be addressed between the permittee and the public co-permittee to address the potential financial burdens on public co-permittees and on their taxpayers and customers. The Department would generally consider initiating enforcement proceedings against the public co-permittee after the applicant who

owned and operated the DTW was given some opportunity to correct the permit violation.

The need for the co-permittee requirement is discussed in the Department response to comments number 142 and 144. The use of private co-permittees instead of public co-permittees is unsatisfactory because such private co-permittees would be subject to bankruptcy or other financial difficulties and would not have the legal powers that public co-permittees have to raise funds.

148. COMMENT: N.J.A.C. 7:15-4.1 should be withdrawn as ill-considered and inappropriate. To ameliorate the harshest, unnecessary effects, the proposed regulations should at the very least be amended to allow for Administrative Consent Orders (ACO) on the Department's terms. The amendment would require a responsible applicant to demonstrate that: its project is environmentally sound; it exhausted every reasonable avenue of negotiation; and it made every reasonable offer of financial assurance to secure the cooperation of a wastewater management agency. If an ACO was demonstrated to be appropriate, the Department would negotiate for an ACO backed by appropriate financial assurances. Under the ACO, the Department would waive the proposed co-permittee requirement and the applicant would be bound by the Department's terms. The Department's common practice of entering into ACOs backed by financial assurances would seem an appropriate mechanism to ameliorate the harsh, unfair results which N.J.A.C. 7:15-4.1 would produce for prospective applicants who, through no fault of their own, are unable to secure a co-permittee. This mechanism would address the Department's interest in ensuring the long term viability and operation of domestic treatment works, and the dilemma of innocent applicants who would be "trapped" under the proposed rules.

RESPONSE: The need of the co-permittee requirement is discussed in the Department response to comments number 142 and 144. If financial assurances from applicants were an adequate substitute for that requirement, such assurances could be required without adopting the commenter's suggested amendment to N.J.A.C. 7:15-4.1. Under N.J.A.C. 7:14A-2.6(c)1, "the Department may establish conditions for financial assurance in any NJPDES permit. Instruments that the Department may approve include, at a minimum, letters of credit, insurance, surety bonds, and trust funds." Separate provisions in N.J.A.C. 7:15-4.1 for financial assurances through administrative consent orders are unnecessary.

Unfortunately, financial assurances from applicants are not an adequate substitute for the co-permittee requirement. Such assurances would not provide the Department with a local party with long term accountability and responsibility for the DTW. Instead, such financial assurances would make the Department a de facto public co-permittee, responsible for direct oversight, and potentially for long-term operation and maintenance, of DTW scattered throughout the State. This would be an inappropriate position for the Department, which in the field of domestic wastewater management is a regulatory agency rather than an operational agency (except in parks or other State property administered by the Department).

149. COMMENT: N.J.A.C. 7:15-4.1 is not the right vehicle to achieve its laudable objective, which is to ensure protection of water resources in perpetuity. A different vehicle is needed. Given the Legislature's willingness to adopt environmental protection statutes, the Department should seek the necessary statutory authority, consistent with the Municipal Land Use Law, to mandate such protection.

If a municipality has zoned land which cannot accept a standard or alternative septic system, then some type of public or community sewerage system is needed, or in essence the land is zoned as a preservation area, which involves another realm of legal problems. Municipal authorities and sewerage authorities are formed all the time for the very purpose of providing and managing sewerage facilities. Perhaps a municipality which has zoned an area that requires sewer service should be required to form such an authority (or something similar). That would in essence provide a co-permittee without the tremendous legal risks of N.J.A.C. 7:15-4.1. This will be very expensive, but that is the nature of the land and of protecting the environment in perpetuity. A permanent vehicle is needed, not free-floating management. Even authorities and industries with NJPDES permits do not have the best records of treatment plant operation. To presume that a homeowner's association will fund a treatment plant for 30 or 50 homes in perpetuity in good working order, in headwaters and small and medium-sized streams, is ridiculous.

RESPONSE: The purpose of N.J.A.C. 7:15-4.1 is to ensure long term accountability and responsibility in the provision of wastewater treatment. N.J.A.C. 7:15-4.1 is an adequate vehicle to accomplish that purpose. The passage of specific legislation to accomplish the same

purpose would be welcome to the Department. However, in the absence of such legislation, and given the Department's existing statutory authority, the Department has provided in N.J.A.C. 7:15-4.1 a reasonable solution to the problem of long term wastewater management. Legal objections to N.J.A.C. 7:15-4.1 are addressed in the Department response following comment number 174.

Often, a municipality will create a sewerage authority or a municipal authority to construct or operate DTW. However, while the Department encourages the establishment of such authorities, the Department does not believe that it is appropriate to delete N.J.A.C. 7:15-4.1 and instead require the creation of such authorities. Authorities are established under N.J.S.A. 40:14A-1 et seq. or 40:14B-1 et seq., and may be created only by counties or municipalities. The decision to create an authority is a decision that is generally more appropriate to the local level. The mere creation of an authority does not guarantee that the authority will be accountable and responsible for all DTW in the authority's district. Whether or not a municipality creates an authority to act as a public co-permittee, the benefits and responsibilities are generally the same.

150. COMMENT: There is no reason why a municipal authority should be charged with increased insurance and liability costs because of a Department requirement. If the authority does not design or build a facility needing a discharge permit, then the authority's customers should not have to pay for fines or remedial action due to pollution, or face increased insurance costs because the authority may be sued as a co-permittee.

RESPONSE: N.J.A.C. 7:15-4.1 provides that the Department shall not issue a permit under N.J.A.C. 7:14A for certain new or expanded DTW unless a governmental entity or sewerage agency is either the sole permittee or co-permittee for that DTW. N.J.A.C. 7:15-4.1 does not force a municipal authority or any other sewerage agency or governmental entity to be a sole permittee or co-permittee against its will. However, if a municipal authority chooses to be a public co-permittee, that authority and the applicant may address the potential financial burdens on the authority's customers. Also, if the applicant owned and operated the DTW, the Department would generally consider initiating enforcement proceedings against the authority after the applicant was given some opportunity to correct the permit violation.

150A. COMMENT: The Department formulated the co-permittee requirement for a problem that the Department imagines. There is no reason why a private entity should not be allowed to obtain a permit issued directly to that entity. The Department, if it is worried about who will clean up any pollution caused by the discharge, could require the permittee to supply a Performance Surety or other Surety to assure adequate funds for clean-up.

RESPONSE: The need for the co-permittee requirement is discussed in the Department response to comments number 142 and 144. N.J.A.C. 7:15-4.1 addresses problems that are real, not imaginary. For reasons discussed in the Department response to comment number 148, surety bonds or other financial assurances from applicants are not an adequate substitute for N.J.A.C. 7:15-4.1.

151. COMMENT: Two commenters questioned N.J.A.C. 7:15-4.1 for similar reasons. (Where their statements differ, this paragraph uses the stronger or more comprehensive statement.) The stated purposes of N.J.A.C. 7:15-4.1, which are to ensure that permit provisions are met and that environmental damage is prevented or minimized, are undeniably Department responsibilities which N.J.A.C. 7:15-4.1 abdicates. Under this provision, permit issuance will turn, in the first instance, not on the project's environmental worth but on whether an applicant persuaded a governmental entity or sewerage agency to be a co-permittee. For many reasons, governmental entities are usually extremely reluctant to be a co-permittee. Many comments on the rule bear this out and make it clear that the reluctance is not due to environmental concerns. No explicit statutory authority exists for N.J.A.C. 7:15-4.1. Yet the Department unconscionably establishes this requirement while admitting that "applicants may be unable to obtain permits or related WQM Plan amendments because no governmental entity or sewerage agency agrees to be a co-permittee" and "applicants may secure such co-permittees or wastewater management plans only after significant delays or concessions".

The first commenter said the Department should seek creative solutions to the problems this provision fails to face. The Department fears permitting facilities which may violate permit provisions or be abandoned. However, if the Department placed more emphasis on enforcement, combined with creative solutions to ensure continued operation, these facilities could effectively resolve many water quality management problems.

The second commenter said the Department must seek solutions to any perceived deficiencies in the statutory and regulatory framework. Any concern that a permittee will abandon operation of its facility should be addressed directly by Department regulation of the permittee and not foisted on the local governmental entity by a co-permittee requirement. Transferring frustration does not solve the problem. If a mechanism is needed to ensure that facilities operate in accordance with their permits and if that mechanism cannot be created under existing statutory authority, then the Department should seek the necessary authority from the Legislature. Perhaps a nonlapsing, revolving fund should be created to assure that money is available to continue operation of the facilities.

RESPONSE: The project's environmental worth depends not only on the project's initial design and construction, but also on the adequacy of the project's operation and maintenance. The Department has the responsibility to issue permits for DTW, but does not have the direct responsibility to operate and maintain those DTW. Through N.J.A.C. 7:15-4.1, the Department protects the environmental worth of projects by ensuring that governmental entities or sewerage agencies will, if necessary, take direct responsibility for DTW that are not adequately operated and maintained by applicants. N.J.A.C. 7:15-4.1 is a proper exercise, not an abdication, of the Department's environmental protection responsibility.

The comments on N.J.A.C. 7:15-4.1 have not demonstrated that numerous applicants are unable to secure public co-permittees. The Department has found that in some instances there is an initial reluctance on the part of governmental entities or sewerage agencies to become co-permittees. However, after these entities and agencies clearly understand the benefits and responsibilities associated with the concept, much of the initial reluctance diminishes. The delays and concessions that are sometimes required in securing co-permittees are not unreasonable given the importance of proper DTW operation and maintenance, and given the legitimate interests which governmental entities and sewerage agencies have in negotiating contractual agreements that are not unduly burdensome to those entities and agencies, and that enable those entities and agencies to carry out their duties as permittees under N.J.A.C. 7:14A.

Sole reliance on direct Department regulation of, and enforcement actions against, private applicants produces unsatisfactory results. As noted in the Department response to comment number 144, the Department has found it impossible to get bankrupt private entities to operate and maintain their malfunctioning DTW in a timely and adequate manner. By arranging for governmental entities or sewerage agencies to be directly responsible for meeting permit conditions, N.J.A.C. 7:15-4.1 provides a means for solving pollution problems that cannot be adequately solved by the Department and private applicants alone. Thus, N.J.A.C. 7:15-4.1 solves problems and does not merely transfer frustration.

For reasons discussed in the Department response to comment number 148, financial assurances from applicants are not an adequate substitute for N.J.A.C. 7:15-4.1. The purpose of N.J.A.C. 7:15-4.1 is to ensure long term accountability and responsibility in the provision of wastewater treatment. The Department feels that N.J.A.C. 7:15-4.1 is an adequate vehicle to accomplish that purpose. The passage of specific legislation establishing other means to accomplish that purpose would be welcome to the Department. However, in the absence of such legislation, and given the Department's existing statutory authority, the Department has attempted in N.J.A.C. 7:15-4.1 to provide a reasonable solution to the problem of long term wastewater management.

152. COMMENT: Two commenters said the potential litigation costs and insurance premiums of the co-permittee requirement may be avoided by practical alternatives that achieve the purpose of the rule. The "social impact" statement indicates the requirement will help ensure that NJPDES permit provisions are met and that environmental damages are prevented or minimized. But neither that statement nor the "economic impact" statement address the economic consequences of exposing municipalities to responsibilities and potential liabilities by forcing the co-permittee requirement on them. The commenter does not say that the Department does not have a legitimate reason in trying to regulate septic systems. However, all development should not be stopped in order to prevent speculative future failures of State and locally approved septic systems.

Practical, more sensible alternatives exist to prevent or minimize environmental damage from projects that cause such damage. Applicants should be required to provide environmental liability insurance for the domestic treatment works (DTW), and produce annual receipts for premium payments as a condition precedent to continued operation of a DTW. If the insurance industry would not provide such insurance (and

that industry is now generally refusing to insure against environmental claims), rules establishing an escrow fund for DTW could replace such insurance. For example, landowners could be required to charge as part of the wastewater treatment fees a reasonable amount to be placed in a fund similar to the Sanitary Landfill Contingency Fund and/or Spill Fund. This fund would be dedicated solely to remedy contamination caused by DTW. Another alternative is to use wastewater treatment grant bond money. Try to get regulatory authority from that to create this fund. The potential of having to collect against this fund is so remote that full funding is not needed. An early detection system for potential contamination is another means of minimizing environmental damage and can also minimize losses through this fund. Adequate monitoring requirements would achieve this end without the need for municipal co-permittee involvement.

Private developers the commenter deals with have no objection to having their systems insured if they can find insurance, or to posting performance guarantees or maintenance bonds which may be perpetually renewed, if the market will bear it. Municipalities that the commenter has been associated with, however, do not want to get into this area because the theory is that if the development fails, the State will not bother looking for bonding from the bonding agency or insurance from the insurance company. The State will simply leave the problem with the municipal co-permittee. That is the heart of the trouble with N.J.A.C. 7:15-4.1.

RESPONSE: As discussed in the Department response to comments number 139 and 140, the Department believes that this comment substantially overstates the economic consequences of N.J.A.C. 7:15-4.1 to municipalities that serve as co-permittees. This comment also places undue emphasis on septic systems. Individual subsurface sewage disposal systems that do not serve more than one property, dwelling unit, commercial unit, or other premises, and that do not require a NJPDES discharge permit, are outside the scope of N.J.A.C. 7:15-4.1. Conversely, the scope of N.J.A.C. 7:15-4.1 includes DTW besides septic systems, including DTW whose treatment processes require continuous professional operation and maintenance for satisfactory performance. DTW that receive State and local approval may still malfunction as a result of inadequate operation and maintenance.

For reasons discussed in the Department response to comment number 148, insurance, trust funds, surety bonds, or other financial assurances from applicants are not an adequate substitute for N.J.A.C. 7:15-4.1. For the same reasons, public bond money is also not an adequate substitute. Regardless of whether funds are provided by applicants or taxpayers, the Department should not be responsible for direct management of DTW scattered throughout the State.

153. COMMENT: N.J.A.C. 7:15-4.1 would limit the State's future options. For example, if a sewer utility discontinues service, it appears that the co-permittee municipality would automatically be left with the system and all of its problems. While some municipalities may be capable of repairing such systems, many others lack the necessary resources. For this reason, an investor-owned utility should have the option of acquiring and operating the ailing system. The proposed regulations should be clarified or amended to include this option.

RESPONSE: N.J.A.C. 7:15-4.1 does not affect the ability of an investor-owned utility to acquire an ailing DTW from a municipality or from another sewer utility, and to operate that DTW, so long as a governmental entity or sewerage agency is the sole permittee or co-permittee for that DTW.

154. COMMENT: While the proposed rules do not appear to apply to BPU-regulated water purveyors, they may affect BPU-regulated sewer systems. The BPU currently regulates eight sewer utilities which collect waste and 14 which have their own treatment facilities. The Department should seriously consider the potential economic impact of N.J.A.C. 7:15-4.1 on these existing utilities and their ratepayers. The BPU offers its assistance in making the necessary changes. Under N.J.A.C. 7:15-4.1, it appears that a co-permittee would be mandated when a utility expands its domestic treatment works, or when franchise renewal is required upon expiration of the current franchise. If a sewer utility has been and continues functioning properly, it should be exempt from this mandate.

RESPONSE: N.J.A.C. 7:15-4.1 does not require a co-permittee whenever a utility's franchise is renewed or expanded. Rather, N.J.A.C. 7:15-4.1 applies only to the issuance of permits under N.J.A.C. 7:14A for certain kinds of new or expanded DTW. N.J.A.C. 7:15-4.1 includes no references to franchise renewals or franchise expansions, and the renewal or expansion of a utility's franchise does not trigger the requirements of N.J.A.C. 7:15-4.1. Instances may arise where a sewer utility can

serve an expanded franchise area without using new or expanded DTW subject to N.J.A.C. 7:15-4.1.

In response to BPU's concerns about the potential economic impact of N.J.A.C. 7:15-4.1 on existing utilities and their ratepayers, the Department has added N.J.A.C. 7:15-4.1(c)3, which identifies an additional class of DTW that are not subject to the requirements of N.J.A.C. 7:15-4.1. Specifically, N.J.A.C. 7:15-4.1(c)3 provides that if a BPU-regulated sewer utility owns a DTW prior to the effective date of N.J.A.C. 7:15-4.1, then that utility may replace or expand that DTW without being subject to N.J.A.C. 7:15-4.1, so long as the discharge location does not change. The addition of N.J.A.C. 7:15-4.1(c)3 is warranted by BPU's extensive knowledge of the economic condition of these existing utilities. The Department has added a definition of "BPU-regulated sewer or water utilities" to N.J.A.C. 7:15-1.5. The provision added at N.J.A.C. 7:15-4.1(c)3 applies only to BPU-regulated sewer utilities.

155. COMMENT: Cite existing rules or clarify the proposed rules to address this question: Does mandating a municipal co-permittee in any way impact upon the franchise of a public utility?

RESPONSE: N.J.A.C. 7:15-4.1 pertains to the issuance of permits under N.J.A.C. 7:14A, not to the franchises of public utilities. Under N.J.A.C. 7:14A-2.10(b), "the issuance of a permit does not convey any property rights of any sort, or any exclusive privilege". As proposed and adopted, N.J.A.C. 7:15-4.1 includes no references to the franchises of public utilities. Such franchises are sufficiently different from permits under N.J.A.C. 7:14A that no such references are necessary. N.J.A.C. 7:15-4.1 does not change the franchise of any public utility. However, if a public utility seeks new or expanded DTW that are subject to N.J.A.C. 7:15-4.1, the Department shall not issue a permit under N.J.A.C. 7:14A for such DTW except in accordance with N.J.A.C. 7:15-4.1. Like numerous other Department rules concerning DTW (for example, many provisions in N.J.A.C. 7:14A), N.J.A.C. 7:15-4.1 may impact upon the plans of public utilities to construct and operate new or expanded DTW. As discussed in the Department response to comment number 154, the Department has added N.J.A.C. 7:15-4.1(c)3, which provides that existing BPU-regulated sewer utilities may replace or expand their existing DTW at existing discharge locations without being subject to N.J.A.C. 7:15-4.1.

156. COMMENT: BPU-approved public utilities should be exempt from N.J.A.C. 7:15-4.1 because of its effect on utility rates. A March 1, 1988 Department letter said it is up to the applicant and the local government co-permittee to arrange financial responsibility (the Department will not take an active role), and that many forms of financial responsibility could be arranged including bonds and escrow accounts. For a public utility, this will duplicate requirements which may or may not be imposed by the BPU. The BPU would usually not require bonds or escrow accounts because the BPU would not grant a franchise to an entity of doubtful standing that had to bond its obligations. In the commenter's experience, the municipality required corporate guarantees and an escrow account. To the extent these financially obligate the utility, the cost, which will be passed to the ratepayer, is for maintenance of an unnecessary, useless obligation due to "artificial" regulation. The municipality will never be held accountable for its co-permittee obligations because the utility can always offset financial shortfalls by requesting rate increases from the BPU.

RESPONSE: Experience has demonstrated that the ability of public utilities to request rate increases does not ensure that such utilities will have sufficient financial resources to provide adequate wastewater treatment. For example, in the case of one sewer utility that became the subject of lengthy Department enforcement proceedings, over two years elapsed between the utility's request for a rate increase in 1976 and the grant of that increase in 1979. In the meantime, a group of customers refused to pay any rates. This refusal lasted over a year until it was ruled that payment was required in order to receive service. The delays and costs of these actions severely weakened the utility's ability to provide proper maintenance. In 1983 the utility filed for bankruptcy in Federal court. The bankruptcy proceedings ended more than three years later in 1987, when the utility was sold to a municipal authority. At times, the utility was discharging virtually untreated sewage into the stream.

The other examples may be given of BPU-regulated sewer utilities that claim to have financial difficulties and that are still the subject of lengthy Department enforcement proceedings. In one case, a sewerage company stated in 1985 that the company had applied for a rate increase so that the company could borrow money to correct deficiencies identified by the Department. In 1987, the company stated that the company intended to apply for a new rate increase to correct these deficiencies, that it had been five years since their last rate increase, and that over a period of

many years the utility had incurred substantial losses. In another case, a 1988 letter from another sewerage company cited extreme financial difficulties and massive operating deficits since 1984 as reasons why the company is unable to pay large fines at this time for violations of the Water Pollution Control Act.

See also the decision in *State v. East Shores, Inc.*, 154 N.J. Super. 57 (Ch. Div. 1977), *aff'd* 164 N.J. Super. 530 (App. Div. 1979), which further illustrates that BPU-regulated utilities (in that case, a water utility rather than a sewer utility) can experience serious financial difficulties despite their ability to request rate increases.

As discussed in the Department response to comment number 154, the Department has added N.J.A.C. 7:15-4.1(c)3, which provides that existing BPU-regulated sewer utilities may replace or expand their existing DTW at existing discharge locations without being subject to N.J.A.C. 7:15-4.1. The Department added this provision because of concerns expressed by BPU about the potential economic impact of N.J.A.C. 7:15-4.1 on existing utilities and their ratepayers.

157. COMMENT: BPU-approved public utilities should be exempt from N.J.A.C. 7:15-4.1 because of its chilling effect, shown by the commenter's experience with the existing co-permittee requirement in the Statewide WQM Plan, on entry by large utility companies into the small utility business. If the goal is accountability in the construction and maintenance of domestic wastewater facilities, then this "chilling" effect should somehow be alleviated. The public interest would be better served by responsible, fiscally sound, well-regulated, BPU-approved operators rather than by municipal co-permittees joined with developer-formed ad-hoc utility companies. The proposed rule would frustrate that goal, not foster it.

RESPONSE: Because N.J.A.C. 7:15-4.1 is applicable to DTW owned by "developer-formed ad-hoc utility companies" as well as to DTW owned by "large utility companies", the Department does not agree that N.J.A.C. 7:15-4.1 favors developer-formed utility companies over large utility companies. Indeed, if large utility companies are more fiscally sound than developer-formed utility companies, large utility companies may find it easier to secure public co-permittees. Also, most, if not all, developer-formed utility companies require the same BPU approvals that are required for large utility companies. As discussed in the Department response to comment number 154, the Department has added N.J.A.C. 7:15-4.1(c)3, which provides that existing BPU-regulated sewer utilities may replace or expand their existing DTW at existing discharge locations without being subject to N.J.A.C. 7:15-4.1. N.J.A.C. 7:15-4.1(c)3 applies to all existing BPU-regulated sewer utilities, and does not distinguish between developer-formed utility companies and large utility companies.

NOTE: Eleven commenters expressed one or more legal objections to N.J.A.C. 7:15-4.1, which is sometimes referred to as "the co-permittee requirement". These objections, which are based on the United States Constitution, Federal statutes, the New Jersey Constitution, or New Jersey statutes, are summarized below in seventeen comments. The Department response to these comments is provided after the last of these comments (comment number 174).

158. COMMENT A: For NJPDES applicants that cannot secure the cooperation of a Wastewater Management Agency to be a co-permittee, refusal by the Department to consider an application constitutes an arbitrary and capricious Departmental decision. N.J.A.C. 7:15-4.1 would give municipal wastewater agencies unfettered discretion as to whether to join as co-permittee and thus unlimited power over an applicant's ability to obtain a NJPDES permit. Placing applicants at the caprice of local Wastewater Management Agencies raises substantial due process issues. These agencies have little or no incentive to act as co-permittee, and a strong disincentive given the obligations and potential risks that accompany a NJPDES permit. There are no procedural requirements that these agencies evaluate an applicant's request in good faith, provide a hearing, or even consider the request. Some agencies refuse as a matter of policy to serve as a co-permittee. N.J.A.C. 7:15-4.1 should be withdrawn as ill considered and inappropriate.

156. COMMENT B: One commenter said that property uses of NJPDES applicants who are unable to secure a co-permittee can be severely restricted and can even be eliminated altogether. These would-be applicants suffer a property taking without procedural safeguards, the availability of appeal or recompense. N.J.A.C. 7:15-4.1 should be withdrawn as ill considered and inappropriate.

A second commenter said N.J.A.C. 7:15-4.1 should be deleted because it gives local governments the power to stop commercial development completely, which amounts to condemnation of the property. The commenter is developing a shopping center which is a permitted use, but which needs its own private package sewage treatment plant because the

area is unsewered. This plant will clearly exceed Department permitting requirements; the effluent would be potable if chlorinated. However, the township and municipal authority refused to be a permittee or co-permittee. Because the commenter cannot apply for a Department permit, the commenter cannot get the building permit and is essentially precluded from developing the site, which essentially has been condemned. The commenter has not received compensation.

Two other commenters said municipal refusal to act as co-permittee constitutes a "temporary taking" of private property for which just compensation must be paid under the Fifth and Fourteenth Amendments of the United States Constitution. Co-permittee status being thrust on municipalities will result in many such municipal refusals. In effect, local government will have a "veto" over projects, especially commercial development, to which N.J.A.C. 7:15-4.1 applies. Moreover, this "veto" power would only be exercised over projects that comply with current local land use restrictions. The only basis for denial, therefore, will be refusal to act as co-permittee. That is not a regulatory taking which may be defended against as a police power action. It is an absolute prohibition.

For example, the zoning may allow commercial development, but no sewer may be available and the municipality simply refuses to act as a co-permittee. Such a municipality is subject to inverse condemnation because the person is not allowed to make reasonable use of his or her land, as there is no indication that the septic system could not be implemented with adequate guarantees to protect the environment.

Refusal to act as co-permittee will immediately trigger the need to pay just compensation. This obligation will not be eliminated by later judicial declaration that the refusal was arbitrary, capricious and unreasonable. Executive Order 12360, signed by President Reagan on March 15, 1988, imposes upon governmental agencies a new duty to protect rights in administering Federal regulatory programs, including the Clean Water Act. The Executive Order notes the management principle that government should not undertake programs without planning for their potential costs and effects on constitutionally protected property rights. Agencies should review their actions carefully to prevent unnecessary takings and account for those takings necessitated by statutory mandate. N.J.A.C. 7:15-4.1 fails to recognize the just compensation claims exposure to municipalities. Moreover, the "social impact" and "economic impact" statements in the proposal do not adequately address the management principles that should be considered in rulemaking. N.J.A.C. 7:15-4.1 should be deleted.

160. COMMENT C: One commenter said N.J.A.C. 7:15-4.1 raises serious equal protection concerns and should be withdrawn as ill considered and inappropriate. By limiting the class of permit applicants to those able to secure the cooperation of a Wastewater Management Agency, the Department will deny permits based not upon the applicant's responsibility or the environmental soundness of a DTW, but upon whether a local government entity refuses to act as co-permittee. Another commenter said that before the Department proceeds with legislation to correct the lack of statutory authority for the "co-permittee" concept, insurmountable constitutional obstacles must be addressed. The Department should not restrict private entities and individual citizens from a permit program that is readily available to all citizens of all other states and in turn limit the privilege of applying for a discharge permit solely to governmental entities.

161. COMMENT D: Two commenters said N.J.A.C. 7:15-4.1 should be deleted because it would expose municipalities to civil rights discrimination claims if they choose between competing developments. The Civil Rights Act, 42 U.S.C. §1983, provides that every "person" who, under color of state law, subjects anyone to deprivation of rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the injured party. Local governing bodies (and local officials in their official capacities) may be sued directly as "persons" for monetary, declaratory, and injunctive relief when the allegedly unconstitutional action implements on official policy statement, ordinance, regulation, or decision. Because the municipality is not entitled to qualified immunity from suit, there is no "good faith" defense.

If a municipality decides to act as co-permittee for one competing project, but not the other, it will be subject to discrimination claims. Moreover, the prevailing party in a section 1983 suit is entitled to attorney's fees. Since there are no standards upon which the "discrimination" can be rationally based, a municipality will have no defense for discriminating against a competing project which satisfied all other Municipal Land Use Law requirements.

162. COMMENT E: Two commenters said N.J.A.C. 7:15-4.1 should be deleted because it could expose the municipality which chooses between competing developments to the charge that it has violated the

Sherman Anti-Trust Act (15 U.S.C. §1), which provides that every contract or conspiracy in restraint of interstate commerce is illegal. N.J.A.C. 7:15-4.1 also denies developers the freedom to compete guaranteed under the anti-trust laws. Instead of competing fairly and uniformly in terms of ability to satisfy the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., competitors must now attempt to convince a municipality to act as their co-permittee without any standards for convincing a municipality to act in such capacity. The rules clearly do not establish such standards. A municipality is subject to substantial economic exposure should it refuse to endorse every competing project within its borders.

163. COMMENT F: Two commenters said N.J.A.C. 7:15-4.1 violates the prohibition in article 8, section 3, paragraphs 2 and 3 of the New Jersey Constitution against lending of public credit for the benefit of a private enterprise. To avoid this prohibition, the private project must serve a clear public purpose. N.J.A.C. 7:15-4.1 is not limited to projects such as hospitals and transportation facilities, but applies to every commercial enterprise. A shopping center, motel, fast-food restaurant, etc. is not sufficiently steeped in the "public interest" to avoid the prohibition. Nevertheless, municipalities must stand behind such private projects when acting as co-permittee.

164. COMMENT G: N.J.A.C. 7:15-4.1 contravenes the New Jersey Constitution because it compels municipalities to raise their taxes. Neither the New Jersey Constitution nor the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., authorizes the Department to compel this, without direct legislative authority.

165. COMMENT H: Seven commenters said N.J.A.C. 7:15-4.1 is not authorized by statute and should be deleted. One of these commenters said it is clear that this ill considered, inappropriate requirement (described by a second commenter as "somewhat notorious") is not authorized by any of the statutes invoked by the Department, specifically, N.J.S.A. 13:1D-1 et seq., N.J.S.A. 58:10A-1 et seq., and N.J.S.A. 58:11A-1 et seq. A third commenter said there is no specific statutory promulgation to support the requirement. A fourth commenter said no explicit statutory authority exists for N.J.A.C. 7:15-4.1. A fifth commenter said the co-permittee requirement is not required by the Federal Clean Water Act or any New Jersey law. A sixth commenter said the proposed co-permittee requirement is not in the Federal or state laws relative to discharge permits. It seems the Department regulations add to what the legislature has allowed. If this requirement is necessary, new legislation should be introduced for that purpose; the requirement should not be established by rule. (Additional comments about the absence of authority under specific statutes are summarized separately below.)

166. COMMENT I: The Department of Environmental Protection Act, N.J.S.A. 13:1D-1 et seq., provides no basis for imposing the proposed co-permittee requirement on otherwise eligible permit applicants. N.J.S.A. 13:1D-9f and g, broadly referring to administration and supervision of "programs of conservation and environmental protection," provide no such basis. N.J.S.A. 13:1D-9k, the only provision referring to sanitary engineering facilities and sewerage systems, authorizes the Department to make "rules and regulations concerning plans and specifications". It does not authorize a Department regulation limiting the class of persons who can apply for a NJPDES permit to only those who apply in conjunction with a Wastewater Management Agency. The proposed co-permittee requirement cannot be reasonably construed as a "plan" or "specification" for sewerage systems.

167. COMMENT J: The Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq. does not grant authority to limit the class of persons that can apply for a DTW NJPDES permit to those who apply in conjunction with Wastewater Management Agencies. N.J.S.A. 58:10A-6f, which sets forth a permittee's obligations in applying for and maintaining a NJPDES permit, and N.J.S.A. 58:10A-5, which defines the powers of the Department under the Act, contain no such authority. In giving approved Wastewater Management Agencies an effective monopoly on issuance of these permits, N.J.A.C. 7:15-4.1 impermissibly attempts to amend the Act via rulemaking, and is an administrative usurpation of legislative and executive functions.

168. COMMENT K: N.J.A.C. 7:15-4.1 directly conflicts with the statutory provisions governing issuance of permits for wastewater discharges. The Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., provides that a discharge by any "person" is unlawful, unless it is in conformance with a NJPDES permit. This Act defines "person" (N.J.S.A. 58:10A-3(1)) as "any individual, corporation, company, partnership, firm, association, owner or operator of a treatment works, political subdivision of this state and any state or interstate agency". Nowhere does this statute discuss or suggest that a governmental entity must be

the sole permittee or "co-permittee" for a permitted discharge. The statutory definition of "person" makes clear that the legislature contemplated and directed the Department to control all types of entities through the NJPDES permit program. The inescapable conclusion is that all such entities are entitled to obtain NJPDES permits.

Furthermore, the Water Pollution Control Act was adopted to enable New Jersey to fully implement the permit system pursuant to the Federal Clean Water Act. The legislative findings of the statute and the parallel statutory language in both laws speak for themselves. The Federal program allows all entities meeting the technical requirements of the National Pollutant Discharge Elimination System permit program to obtain NJPDES permits. Thus, it may well be impossible for the New Jersey Legislature to create a "governmental entity only" program where Congress has clearly specified the manner in which all entities can obtain the right to discharge wastewater. The Department has not addressed this question of Federal pre-emption.

169. COMMENT L: One commenter said the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq. is focused on planning and does not authorize the proposed co-permittee requirement. N.J.S.A. 58:11A-2(b), which directs the Department to establish a continuing planning process, does not give it authority to preclude eligible applicants who cannot obtain the cooperation of a Wastewater Management Agency in apply for a permit. N.J.S.A. 58:11A-7, which outlines the elements of the continuing planning process, does not implicitly or explicitly contemplate the proposed co-permittee requirement. Instead, it authorizes the Department to develop standards, schedules of compliance, priorities and methods for controlling residual waste from wastewater treatment processing.

A second commenter said N.J.A.C. 7:15-4.1 should be deleted because it certainly goes beyond the mandate of the Water Quality Planning Act. The Department derives its authority to regulate water quality and wastewater management from that Act, which provides for consultation with local planning boards and public participation. But nowhere does that Act contain the co-permittee requirement or provide for the total local control essentially given to localities by that requirement.

170. COMMENT M: An applicant who sees modifications to an existing sewerage system which would have the effect of bringing it within the NJPDES program, increasing capacity for example, will be subject to the strict discharge standards of a NJPDES permit. Inability to obtain the cooperation of a wastewater management agency to serve as co-permittee would have the effect of preventing modifications resulting in a more environmentally sound system with reduced discharges of pollutants. Thus, N.J.A.C. 7:15-4.1 will prevent improvements and produce results opposite to the stated purposes of the Water Quality Planning Act, and should be withdrawn as ill considered and inappropriate.

171. COMMENT N: Two commenters said N.J.A.C. 7:15-4.1 should be deleted because it contravenes the policy of the New Jersey Tort Claims Act which immunizes government entities from liability for issuance or failure to issue a permit (N.J.S.A. 59:2-5). The Legislature, in enacting this statute, recognized that "while an entrepreneur may readily be held liable for negligence within the chosen ambit of his activity, the area within which government has the power to act for the public good is almost without limit; and therefore, the government should not have the duty to do everything that might be done". This immunity is absolute and pervasive and applies to all phases of licensing, whether the governmental activities be discretionary or ministerial.

The co-permittee requirement ignores this entire legislative history. While the requirement does not force liability directly upon the municipality for the issuance or denial of a permit, N.J.A.C. 7:15-4.1 undermines and circumvents immunity by requiring a municipality to act as a co-permittee and assume all the obligations and liabilities associated with the private domestic treatment works. Such broad-based exposure clearly contravenes the clearly expressed legislative concern for the dire economic consequences of foisting such general liability on a municipality.

172. COMMENT O: Two commenters said N.J.A.C. 7:15-4.1 should be deleted because it usurps the policies, procedures, and performance guarantees of the Municipal Land Use Law, which is pre-emptive in the area of land use development. Any master plan includes a utility service plan element under N.J.S.A. 40:55D-28(b)(5). The statute expressly provides for performance guarantees, as defined at N.J.S.A. 40:55D-6, and requires performance bonds and maintenance guarantees to protect public health, safety and welfare. To require a municipality to go further and become a co-permittee violates the intent and purpose of the Municipal Land Use Law.

According to the co-permittee requirement, the municipality no longer looks to whether the proposed project is an appropriate "use of development" of land, or will "promote the public health, safety, morals and general welfare" (the first purpose of the Municipal Land Use Law, at N.J.S.A. 40:55D-2(a)). Instead, a municipality is forced to speculate on whether potential exposure, however, remote, is being thrust upon it because it is being called upon to assume wastewater treatment responsibility for the project. N.J.A.C. 7:15-4.1 places all municipalities in an unconscionable dilemma. Municipalities that refuse to act as co-permittees will be subject to payment of "just compensation" under the Fifth and Fourteenth Amendment. Municipalities which discriminate between competing projects that passed Municipal Land Use Law review will be subject to Sherman Anti-Trust and civil rights discrimination claims. Municipalities that act as co-permittees for all projects passing Municipal Land Use Law requirements will assume new obligations that will generate a tremendous increase in insurance premiums.

The last scenario above is the least likely to occur. Local governing bodies will not act as surety for private development that has passed the Municipal Land Use Law process and expose the taxpayer to potential liability, regardless of its remoteness; therefore, N.J.A.C. 7:15-4.1 casts a "chilling effect" on all land use development where the co-permittee requirement applies. Such a scenario clearly conflicts with the intent, spirit, and purpose of the Municipal Land Use Law, which is to encourage the reasonable use of land in a way that promotes public health, safety, and general welfare, and will amount to a "no growth" policy in many municipalities.

A third commenter said the co-permittee requirement should be deleted because it circumvents the local planning and zoning board process under the Municipal Land Use Law. The requirement allows a governmental agency to halt all development on the sewer issue alone, without any regard for proper permit procedure by these boards.

A fourth commenter said N.J.A.C. 7:15-4.1 is unacceptable. The municipality is put in the untenable position of either denying co-permittee status and subjecting itself to litigation for refusal to take on an obligation for which it may be unsuited, lack resources or simply doubt the wisdom of; or rezoning to avoid the problems. The commenter's township was recently required to take over a poorly functioning, out-of-compliance treatment plant and understands well the problems which can result when the township is forced to be a co-permittee. When a developer seeks to develop an unsewered area, the township is forced into a dilemma: either allow the development to go forward and serve as co-permittee, or rezone. Neither solution is attractive. The commenter has strong reservations about the Department's ability to invade the traditional role of municipalities under the Municipal Land Use Law, to control their growth in accordance with the master plan. Zoning represents a long term consideration of growth and development. Sewer service relies on appropriate technology, which varies as technology advances. Sewer service must be an element of land use planning, not the other way around.

173. COMMENT P: Board of Public Utilities (BPU) approved public utilities should be exempt from N.J.A.C. 7:15-4.1 because it conflicts with BPU statutes and regulations. While it would first appear that N.J.A.C. 7:15-4.1 would ensure accountability in the construction and operation of domestic wastewater facilities, the practical effect on a public utility subject to the Public Utility Act, N.J.S.A. 48:2-1 et seq. is to add to the regulatory burden and invade traditional BPU jurisdiction. Domestic wastewater facilities, depending on the type of service, must seek franchise and rate approval from the BPU, the only state agency authorized to give such approval (N.J.S.A. 48:2-13, 14).

The BPU has long been the regulatory authority for all "public utilities" defined in N.J.S.A. 48:2-13, including persons who operate sewer systems. Entities intending to operate sewer utilities must seek BPU approval to construct, operate and maintain the sewer system and provide proof of financial capability (see N.J.S.A. 48:2-14; 48:3-9 and 48:2-21(a), and must have municipal consent before the BPU grants a franchise (see N.J.S.A. 48:2-14). After initial approval the utility must provide safe, adequate, and proper service, and may not discontinue or reduce service without prior BPU approval (see N.J.S.A. 48:2-23, 24). Utilities must document their continuing soundness in annual financial reports (see N.J.S.A. 48:2-11, 16.1, and 19). Statutory rate adjustment readily provides for unforeseen costs due to regulatory changes, such as updated wastewater treatment requirements, or emergencies, such as plant breakdowns. Utilities can seek rate increases from the BPU after documenting the reasons. Because franchise areas can include many municipalities or an entire county, the power to seek rate adjustment often exceeds the municipal power to tax, which appears to be the impetus behind N.J.A.C. 7:15-4.1.

Where a public utility is the permittee, N.J.A.C. 7:15-4.1 is virtually meaningless and even redundant to pervasive BPU regulation, and adds to the burden on ratepayers where municipalities have demanded financial assurances such as bonding to alleviate concerns over shared responsibility. (Such bonding may be prohibited by N.J.S.A. 40:55D-53(a)(12)). The municipal co-permittee invariably is not a part of the BPU application. There is little or no necessity for additional assurances through municipal participation as a "co-permittee".

174. COMMENT Q: BPU-approved public utilities should be exempt from N.J.A.C. 7:15-4.1 because of concerns about its enforceability. Even if the original public utility somehow failed in its obligations under its Department permit, the co-permittee could not automatically assume those obligations, at least not without satisfying the public utility requirements by petitioning the BPU to allow the municipality to assume those obligations.

RESPONSE: After evaluating the above comments, it is the Department's position that the co-permittee requirement does not contravene the rights and privileges identified by the commenters, does not contravene statutes or constitutional provisions, and does not create undue legal exposure to municipalities.

The Department has several sources of statutory authority to impose the co-permittee requirement, specifically N.J.S.A. 13:1D-1 et seq., in the Department of Environmental Protection Act of 1970, N.J.S.A. 58:10A-1 et seq., the Water Pollution Control Act, and N.J.S.A. 58:11A-1 et seq., the Water Quality Planning Act. These statutes afford the Department broad authority to take actions in order to protect the environment and to regulate and improve wastewater management.

N.J.S.A. 13:1D-9, Powers of Department, provides that "The Department shall formulate comprehensive policies for the conservation of the natural resources of the State, the promotion of environmental protection and the prevention of pollution of the environment of the State." N.J.S.A. 13:1D-9(f) empowers the Department to "Prepare, administer and supervise Statewide, regional and local programs of conservation and environmental protection". N.J.S.A. 13:1D-9(g) empowers the Department to "Encourage, direct and aid in coordinating State, regional, and local plans and programs concerning conservation and environmental protection in accordance with a unified Statewide plan which shall be formulated, approved, and supervised by the Department". N.J.S.A. 13:1D-9(k) empowers the Department to "Supervise sanitary engineering facilities and projects within the State . . . and shall, in the exercise of such supervision, make and enforce rules and regulations concerning plans and specifications, or either, for the construction, improvement, alternation or operation of all public water supplies . . . and of sewerage systems and disposal plants for treatment of sewage, wastes and other deleterious matter . . ."

N.J.S.A. 58:10A-1 et seq., the Water Pollution Control Act, provides broad Departmental powers concerning the regulation of water pollution issues. N.J.S.A. 58:10A-2, Legislative findings and declarations, provides that "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 . . ." Moreover, the Federal Clean Water Act, 33 U.S.C. §1251 et seq., requires that permits to regulate discharges of pollutants will be issued by the Federal government or by states with adequate authority and programs to implement the provisions of the Federal Clean Water Act.

N.J.S.A. 58:10A-4, Codes, rules, and regulations, provides that the Commissioner shall have the power to make rules to prevent, control, or abate water pollution and to carry out the intent of the act. N.J.S.A. 58:10A-5(a), Powers of Department, states that the Department is empowered to exercise general supervision of the administration and enforcement of this act and all rules promulgated thereunder. N.J.S.A. 58:10A-5(b) empowers the Department to "assess compliance of a discharger with applicable requirements of State and Federal law pertaining to the control of pollutant discharges and the protection of the environment . . ." N.J.S.A. 58:10A-6(e)(4) provides that the Commissioner shall not issue any permit for any discharge which conflicts with an areawide plan adopted pursuant to law. Moreover, N.J.S.A. 58:10A-6(f) provides that a permit shall require the permittee to conform to water quality standards and areawide plans adopted pursuant to law.

N.J.S.A. 58:11A-1 et seq., the Water Quality Planning Act, mandates at N.J.S.A. 58:11A-2(b), Legislative Findings, that the Department shall "establish a continuing planning process which will encourage, direct, supervise and aid areawide planning and which will incorporate water quality management plans into a comprehensive and cohesive Statewide

program . . ." N.J.S.A. 58:11A-7, Continuing Planning Process of Commissioner, provides that the Commissioner shall conduct a continuing planning process and sets forth detailed criteria and requirements of the planning process. Included among these criteria are N.J.S.A. 58:11A-7(a), which requires the process to integrate and unify the statewide and areawide water quality management planning processes, and N.J.S.A. 58:11A-7(e), which requires that the Commissioner develop a Statewide implementation strategy to achieve water quality standards. N.J.S.A. 58:11A-9, Rules and regulations, empowers the commissioner to "adopt rules and regulations for the preparation and adoption of areawide plans by the areawide planning agencies and in order to effectuate the purposes of this act".

A review of the above statutory provisions demonstrates that statutory authority for the co-permittee requirement exists as part of the Department's mandate to protect the environment and to foster sound wastewater management practices.

175. COMMENT: In N.J.A.C. 7:15-4.1(a)1, clarify the definition of the term "commercial unit".

RESPONSE: In order to clarify the rule and provide consistency with the definition of "commercial unit" that the Department has adopted in N.J.A.C. 7:9A-2.1 (21 N.J.R. 2534(a)), the Department has added a definition of "commercial unit" to N.J.A.C. 7:15-1.5.

176. COMMENT: The commenter concurs with promulgation of a rule requiring a municipality to be a co-permittee. The basic responsibility of municipal officials is to ensure that anything they approve protects the public health, safety and welfare. Such officials do have to consider numerous factors when an applicant proposes a wastewater management facility not within their plan. Many persons are concerned that municipalities in many cases are co-signing and endorsing permits because of fear of lawsuits by the applicant. Municipalities should not have to fear such lawsuits. This threat would not exist if areawide WQM planning were more open to the public.

RESPONSE: The Department appreciates the commenter's support of N.J.A.C. 7:15-4.1. Public participation in WQM planning is discussed in the Department response to comment number 6.

7:15-4.2 Projects and activities deemed to be consistent with WQM plans and this chapter

177. COMMENT: Five commenters said N.J.A.C. 7:15-4.2(a)1 should also be limited to the flow specified in the existing WQM plan.

RESPONSE: The Department agrees with this comment and has changed N.J.A.C. 7:15-4.2(a)1 accordingly. Moreover, the Department has also changed N.J.A.C. 7:15-4.2(a)1 to make it clear that the scope of that paragraph is also limited to upgrades that do not exceed existing flow. The term "upgrade" is defined in N.J.A.C. 7:15-1.5 as "a modification of a domestic or industrial treatment works to improve the quality of effluent discharged to surface water or ground water". The purpose of an upgrade is to improve effluent quality, not to accommodate additional flow. By expressly limiting the scope of N.J.A.C. 7:15-4.2(a)1 to upgrades that do not exceed existing flow, the Department has made N.J.A.C. 7:15-4.2(a)1 more clearly consistent with N.J.A.C. 7:15-4.2(a)2, whose scope is limited to "treatment works whose sole purpose is to abate an existing pollution problem".

178. COMMENT: Five commenters said N.J.A.C. 7:15-4.2(a)2 is far too broad and should be narrowed and provided specific examples. Otherwise, the Department could use this to find most applications "not inconsistent".

RESPONSE: The Department does not agree that N.J.A.C. 7:15-4.2(a)2 is too broad, or that most applications for treatment works approval would be covered by this provision. N.J.A.C. 7:15-4.2(a)2 applies only to "treatment works whose sole purpose is to abate an existing pollution problem". Most applications are for approval of treatment works that have other purposes, such as providing service to new development. N.J.A.C. 7:15-4.2(a)2 is not applicable to such treatment works.

It is not in the public interest to delay, any longer than necessary, the construction of treatment works whose sole purpose is to abate existing pollution problems. By deeming such treatment works to be consistent with areawide WQM plans and this chapter, N.J.A.C. 7:15-4.2(a)2 eliminates the need to obtain WQM plan amendments for such treatment works. This serves the public interest by eliminating the delays and uncertainties associated with the WQM plan amendment process. To address a wider range of pollution abatement projects, the Department has changed N.J.A.C. 7:15-4.2(a)2 to include treatment works required by the USEPA as well as treatment works required by the Department.

179. COMMENT: N.J.A.C. 7:15-4.2 deems plant expansions identified in areawide WQM plans to be not inconsistent. This raises concern.

Department staff has stated that the wastewater management plan projected 20 year flows determine the allowable immediate expansion of the treatment plant since the flows are adopted into the areawide WQM plan. That is, the levels indicated by the projection may be realized at any time by the treatment plant. Therefore, plant expansion can take place at an uncontrolled rate. This Department position conflicts with the Water Quality Planning Act which requires the Department to "coordinate and integrate water quality management plans with . . . relevant planning activities, programs and policies". Phasing schedules for needed plant capacity should be required in wastewater management plans. This would allow municipalities and designated planning agencies to coordinate future development and planning in a comprehensive manner consistent with local and regional plans. The wastewater management plan is a "plan" and should be used by the treatment plant authority to "plan" expansions. Treatment plants are part of the WQM plans, and treatment plant expansions should require amendments to those plans.

RESPONSE: The Department has deleted the language in N.J.A.C. 7:15-4.2(a)3 which referred to expansions of treatment works, because this language is no longer necessary. The Department had proposed this language in order to resolve problems caused by differences between flows identified in areawide WQM plans and flows allowed in some NJPDES permits that were in effect when the Statewide WQM Plan was adopted in 1985. As a result of changes to areawide WQM plans and NJPDES permits, these problems generally no longer exist. (In place of the proposed language, N.J.A.C. 7:15-4.2(a)3 now addresses removal or remedial actions for hazardous substances, as discussed in the Department response to comment number 58.)

Although the Department has deleted the "expansion" provision that was proposed at N.J.A.C. 7:15-4.2(a)3, a close relationship remains between the identification of future wasteflows in areawide WQM plans, and the review of proposed treatment works expansions for consistency with those plans. It is the Department's position that if the future increased wastewater flow of a treatment works is identified in an areawide WQM plan, then that plan has in fact identified an "expansion" of that treatment works, and that unless the areawide WQM plan includes express provisions to the contrary, such expansion can occur at any time without there being any conflict with the flow identified in the areawide WQM plan. However, if the expansion conflicts with other provisions of the areawide WQM plan (that is, provisions other than the identified flow value), the Department will find the expansion to be inconsistent with the areawide WQM plan. The Department will interpret N.J.A.C. 7:15-4.3(a)1 and 5.1(a), which regulate the "expansion" of treatment works, accordingly.

The Department does not agree that every treatment works expansion should require its own separate areawide WQM plan amendment. Such a policy would duplicate the treatment works approval process under N.J.A.C. 7:14A-12 for these expansions, increase the amount of uncertainty associated with obtaining approvals for expansions, and require the review of excessive numbers of WQM plan amendment requests. To prevent these difficulties, those areawide WQM plans that identify substantial future flow increases should identify at least some treatment works expansion that can occur without separate WQM plan amendments.

The Department does recognize, however, that in some instances the 20-year planning period in wastewater management plans should be supplemented by shorter or longer periods. Through the use of shorter periods, phasing schedules for treatment works expansion can be established without requiring a separate WQM plan amendment for each expansion. The Department has changed N.J.A.C. 7:15-5.18(a) to stipulate that in addition to the required 20-year period, wastewater management plans may include descriptions of wastewater service areas and DTW for shorter or longer periods. The Department has also made corresponding changes to N.J.A.C. 7:15-5.18(c), (d), and (e), and to N.J.A.C. 7:15-5.20(b)2. Descriptions for shorter or longer periods could serve, for example, to coordinate and integrate the wastewater management plan with development schedules specified in zoning ordinances or master plans used in preparing the wastewater management plan. Because many zoning ordinances and master plans do not include such development schedules, the need for such coordination and integration does not warrant a requirement that all wastewater management plans address time periods shorter than 20 years.

180. COMMENT: Five commenters said N.J.A.C. 7:15-4.2(a)4 should define the term "interim".

RESPONSE: The word "interim" in N.J.A.C. 7:15-4.2(a)4 has its ordinary meaning of "temporary". N.J.A.C. 7:15-4.2(a)4 uses the word "interim" merely to reinforce the concept that the treatment works being

constructed, expanded, or connected with are temporary because they will be abandoned or incorporated at a definite time into other treatment works that meet the criteria in N.J.A.C. 7:15-4.2(a)4i, ii, or iii. No further definition of "interim" is necessary. The Department has changed N.J.A.C. 7:15-4.2(a)4ii by deleting the award of Federal or State financial assistance as one of the criteria. Experience has shown that the construction of treatment works may be delayed for prolonged and indefinite periods after financial assistance is awarded.

181. COMMENT: Five commenters said N.J.A.C. 7:15-4.2(b) should define the term "initial performance of emergency activities".

RESPONSE: The term "emergency activities" is defined in N.J.A.C. 7:15-1.5 as "activities that are necessary to be performed in response to sudden or unexpected occurrences or conditions, in order to prevent loss of life, personal injury, severe property damage, or severe environmental damage". The words "initial performance" are used in N.J.A.C. 7:15-4.2(b) to distinguish the first actions that are necessary and adequate to respond to the emergency from the indefinite or permanent continuation of those actions. When an emergency is first discovered, it is appropriate for N.J.A.C. 7:15-4.2(b) to allow for prompt and adequate response without regard to areawide WQM plans or this chapter. However, this does not mean that the results of that response should be allowed to be continued indefinitely. The emergency may pass, or alternative remedial actions may become practicable with the passage of time. Because of the great variations among emergencies and appropriate response actions, it would not be desirable for N.J.A.C. 7:15-4.2(b) to establish a specific, uniform time limit on "initial performance". A separate definition of the term "initial performance of emergency activities" is not necessary.

#### 7:15-4.3 Treatment works not identified in Water Quality Management Plans

182. COMMENT: One commenter said that the limit of 2,000 gallons in N.J.A.C. 7:15-4.3 is much too low. As the Department allows subdivisions of up to 50 units, or flows of 20,000 gallons per day (gpd) without consistency determinations and/or Department review, then the 20,000 gallon limit should also apply to treatment plants. A building as small as 16,000 square feet could develop 2,000 gpd of flow. Many times, in unsewered areas, the exact size of individual buildings is not known when planning is being completed. To require the long, drawn out process of preparing an amendment every time a building of 16,000 square feet or more is proposed in an unsewered area would result in a continuous amendment procedure by many planning agencies for the foreseeable future.

A second commenter said the 2,000 gpd limit was too small because there are many possibilities for small commercial development, in areas not designated for sewage collection, which will need a treatment facility that might discharge to ground waters. A cut-off of 20,000 gallons or more should be used. A third commenter said that because domestic or industrial treatment works with a design capacity of 2,000 gpd or larger result from individual site development projects or lack of locally available treatment works, they are never anticipated and are always plan amendments under N.J.A.C. 7:15-4.3(a)1ii. While such facilities have not been widely used, the low threshold of 2,000 gpd prompt a significant number of amendments if this technology is widely applied.

RESPONSE: As stated in N.J.A.C. 7:15-4.3(c)1, N.J.A.C. 7:15-4.3 applies only to treatment works that require treatment works approval under N.J.A.C. 7:14A-12. With regards to such treatment works, the first commenter's statement that a 20,000 gpd or 50 unit limit exists for consistency determinations or Department review is incorrect. Under N.J.A.C. 7:15-3.1(b)2, consistency determination review by the Department is required for all treatment works that require treatment works approval under N.J.A.C. 7:14A-12. The 2,000 gpd limit in N.J.A.C. 7:15-4.3(a)1ii is consistent with the 2,000 gpd limit in N.J.A.C. 7:14A-12.4(a). N.J.A.C. 7:15-3.4 provides a more streamlined procedure for WQM plan amendments than had previously been available, particularly with respect to endorsement requirements. The requirement in N.J.A.C. 7:15-4.3 for WQM plan amendments should not be unduly burdensome for applicants, the Department, or other agencies. Under N.J.A.C. 7:15-5.1(b)2ii, WQM plan amendments for DTW that have a design capacity of under 20,000 gpd, and that have a ground water discharge, do not require the preparation of a wastewater management plan.

To reduce the number of WQM plan amendments required by N.J.A.C. 7:15-4.3, and to make N.J.A.C. 7:15-4.3 more consistent with depictions of service areas under N.J.A.C. 7:15-5.18(c)6 and identification of similar areas in existing wastewater management plans, the Department has

changed N.J.A.C. 7:15-4.3(c) by identifying at N.J.A.C. 7:15-4.3(c)4 an additional category of treatment works that are exempt from N.J.A.C. 7:15-4.3. Under N.J.A.C. 7:15-4.3(c)4, DTW that meet the criteria in N.J.A.C. 7:15-5.18(c)6ii do not require WQM plan amendments if such DTW would provide service only in areas depicted under N.J.A.C. 7:15-5.18(c)6, or in areas identified as "on-site groundwater disposal areas" in previously adopted or submitted wastewater management plans. As a result of N.J.A.C. 7:15-4.3(c)4, the 2,000 gpd limit in N.J.A.C. 7:15-4.3(a)1ii should not result in excessive numbers of WQM plan amendments.

183. COMMENT: Two commenters noted that N.J.A.C. 7:15-4.3 exempts industrial treatment works that do not handle process wastewater or domestic waste, and wondered what wastes would these treatment works handle if it is not a process waste or domestic waste. One of these commenters said that all waste would seem to be a process waste or a domestic waste, except possibly for waste hauled in from other locations.

RESPONSE: Because the Department has proposed to amend N.J.A.C. 7:14A-1.9 to define the term "domestic wastewater" as "the liquid waste or liquid borne wastes discharged into a domestic treatment works" (21 N.J.R. 707(a)), it is not now appropriate for N.J.A.C. 7:15-4.3(c)3, which applies only to industrial treatment works, to use the term "domestic wastes". Therefore, the Department has changed N.J.A.C. 7:15-4.3(c)3 to replace the term "domestic wastes" with "sanitary sewage".

Non-contact cooling water (as defined in N.J.A.C. 7:14A-1.9) is one example of an industrial wastewater that is neither "process waste water" or "sanitary sewage", as those terms are defined in N.J.A.C. 7:14A-1.9.

184. COMMENT: In N.J.A.C. 7:15-4.3(d)1, what criteria does the Department use to determine whether it is "appropriate" to use an existing regional DTW?

RESPONSE: The Department has changed the first sentence of N.J.A.C. 7:15-4.3(d)1 to state that "existing regional DTW shall be used where such use is cost-effective, environmentally sound, and feasible from an engineering standpoint". These criteria are similar to the criteria contained in proposed N.J.A.C. 7:15-4.3(d)2 and N.J.A.C. 7:15-5.18(a)1.

The Department has also added N.J.A.C. 7:15-4.4(c), which provides that certain DTW shall not be constructed in the sewer service area of a facility which is under a sewer connection ban unless such construction would, even in the absence of the ban, be cost-effective, environmentally sound, and feasible from the engineering standpoint. This provision clarifies the fundamental policy, reflected in the language proposed and adopted at N.J.A.C. 7:15-4.3(d)2, that DTW should not be constructed in such a sewer service area unless such construction would be appropriate even in the absence of the sewer connection ban. N.J.A.C. 7:15-4.3(d) and N.J.A.C. 7:15-4.4(c) are closely related provisions whose common purpose is to prevent inappropriate proliferation of wastewater discharges.

#### 7:15-4.4 Individual subsurface sewage disposal systems and other small domestic treatment works in sewer service areas

185. COMMENT: One commenter said that N.J.A.C. 7:15-4.4 incorporates the laudable concept that where sewerage treatment services are planned but not yet available, individual septic systems can be used. This proposal should be preserved in any adopted rules. However, N.J.A.C. 7:15-4.4(b) must define the term "adequate guarantees". In doing so, the Department should recognize that for many individual septic systems, the applicant is an individual citizen, ill-equipped for prolonged legal and technical dialogue with the state government. A second commenter said how an applicant provides an "adequate guarantee" needs to be clarified.

RESPONSE: The Department appreciates the commenter's support. Here and elsewhere in N.J.A.C. 7:15, in order to be consistent with terminology in proposed N.J.A.C. 7:9A (20 N.J.R. 1790(a)), the Department has replaced the phrase "individual septic systems" with "individual subsurface sewage disposal systems". The Department has also changed N.J.A.C. 7:15-4.4(b) by deleting the term "adequate" and replacing it with the term "legally enforceable". An example of legally enforceable guarantees would be conditions specified in a permit for the facilities.

186. COMMENT: The commenter applauds the connection guarantees.

RESPONSE: The Department appreciates the commenter's support.

### SUBCHAPTER 5. WASTEWATER MANAGEMENT PLANNING REQUIREMENTS

187. COMMENT: One commenter said that the proposed rules perform a much needed function. They clarify the role and function of

wastewater management plans and ensure consistency among plans submitted by the many different governing bodies which are subject to the laws.

A second commenter said that with all the elements for the creation of plans by the counties and/or the authorities, it seems as though the 201 process is being re-created. The format is clear, and such plans should only need to be periodically updated.

**RESPONSE:** The Department appreciates the first commenter's support of N.J.A.C. 7:15-5. With regard to the statements made by the second commenter, wastewater management plans are not to be confused with 201 Facilities Plans. N.J.A.C. 7:15-5.3(e) makes a clear distinction between wastewater management plans and 201 Facilities Plans. USEPA regulations (40 CFR 35.2030) required the preparation of 201 Facilities Plans prior to the award of Clean Water Act grants for wastewater treatment works. This USEPA grant program was largely phased out under the 1987 amendments to that Act (P.L. 100-4). The required contents of a wastewater management plan under N.J.A.C. 7:15-5.15 through 5.20 differ to some extent from the required contents of a 201 Facilities Plan under 40 CFR 35.2030(b). Wastewater management plans provide the Department, other governmental units, and the public with more current wastewater planning information than is provided in most existing 201 Facilities Plans. Periodic updating of wastewater management plans is expressly required by N.J.A.C. 7:15-5.23 (proposed at N.J.A.C. 7:15-5.24).

188. **COMMENT:** The Department estimate that the average cost of preparing a wastewater management plan will be between \$5,000 and \$15,000 is perhaps a little low. The commenter (a municipal authority) has been attempting to prepare such a plan for the past two and a half years. It has cost them more than \$20,000, and the commenter is not a large authority.

**RESPONSE:** The cost of preparing a wastewater management plan, as estimated in the Economic Impact statement, represents an estimate of the average cost, not of the range of costs, of preparing a wastewater management plan in accordance with N.J.A.C. 7:15-5. There are many factors, such as delays and litigation, that may cause the cost of a particular wastewater management plan to exceed the average cost. Indeed, the term "average cost" implies that the cost of some wastewater management plans will exceed the average cost. That the cost of the commenter's particular wastewater management plan is somewhat higher than the estimated average cost does not demonstrate that the Department estimate of the average cost is too low.

#### 7:15-5.1 Wastewater management plan requirement for water quality management plan amendments

189. **COMMENT:** One commenter said there is no statutory basis for the requirement in N.J.A.C. 7:15-5.1(a) that an applicant prepare a wastewater management plan. The Department should delete this requirement, and pursue the necessary statutory authority to require municipalities to prepare wastewater management plans immediately.

A second commenter said the requirement in N.J.A.C. 7:15-4.1(a) and 5.1 that an individual DTW be specifically included in a WQM plan as a wastewater management agency, and that the WQM plan include a wastewater management plan, should be withdrawn as far exceeding the Department's statutory authority. The Water Quality Planning Act provides that the Department cannot approve an individual permit which is inconsistent with a WQM plan. The Department's long-standing WQM planning rule and the Statewide WQM Plan correctly state the statutory principle adopted in that Act. Namely, that unless a project is specifically precluded by a provision of an adopted WQM plan, it must be found to be consistent or at least "not inconsistent" therewith.

The Department has extrapolated from this relatively benign statutory provision into an elaborate regulatory program which includes creation of a new vehicle for water quality planning, the wastewater management plan, which must be adopted in a prescribed format and in a certain procedural manner and must include specifically all new or expanded DTW or permit applications, or those DTW applications cannot proceed. The Department has no statutory authority to shift the legal test from one of exclusion, where a project is inconsistent, to one of mandatory inclusion in a document which may not exist until a project developer is forced to produce it to have the permit application reviewed. If the legislature intended the Department to have an all-inclusive list of DTW in a given area, as a condition precedent to permit applications, it would have said so. Instead, it merely instructed the Department to not approve those permit applications which are inconsistent with a WQM plan. Since there is no statutory basis for the wastewater management planning program as a prerequisite to a permit application, it should be eliminated.

**RESPONSE:** N.J.A.C. 7:15-5.1 does not require the applicant to prepare a wastewater management plan. Rather, N.J.A.C. 7:15-5.1 stipulates that certain WQM plan amendments cannot be adopted unless the amendment consists of or includes a wastewater management plan or an amendment to a wastewater management plan. Under N.J.A.C. 7:15-5.3, "wastewater management plan responsibility", which includes the duty to prepare wastewater management plans, is limited to "wastewater management planning agencies" that are governmental units (see the Department response to comment number 209). Under N.J.A.C. 7:15-5.3(c), however, a wastewater management planning agency may submit a wastewater management plan prepared by a private applicant on behalf of that agency.

As discussed in the Department response to comment number 192, the Department already has statutory authority to require municipalities and other governmental units to prepare wastewater management plans. Requiring only municipalities to prepare wastewater management plans would inappropriately fail to recognize the extensive statutory sewerage-related powers and functions of the Passaic Valley Sewerage Commissioners, sewerage authorities, municipal authorities, and joint meetings. Requiring all wastewater management plans to be prepared immediately would be inappropriate for reasons discussed in the Department response to comment number 242.

In order to promote speed and efficiency in the issuance of permits under N.J.A.C. 7:14A, the requirement in N.J.A.C. 7:15-4.1(a) that the sole permittee or co-permittee be identified in an areawide WQM plan has been deleted. The requirement in N.J.A.C. 7:15-5.1 for a wastewater management plan does not create a "new vehicle for water quality planning" or reverse a long-standing Department interpretation of the Water Quality Planning Act. Rather, N.J.A.C. 7:15-4.3 and 5.1 continue, in modified form, certain policies contained in Chapter III of the Statewide WQM Plan that was adopted on December 5, 1985 (see 18 N.J.R. 110 (b)), specifically, the "Policy on Interim Construction, Expansion, Upgrade and Unplanned Wastewater Treatment Facilities", the "Policy on Wastewater Management Plans", and the "Policy on Permitting Domestic Wastewater Treatment Facilities".

N.J.A.C. 7:15-5.1 does not require a wastewater management plan for "all new or expanded DTW". On the contrary, N.J.A.C. 7:15-5.1(b) expressly limits the wastewater management plan requirement to certain new or expanded DTW that require a NJPDES discharge permit, and to "wastewater service area modifications" of a specified magnitude. Many new or expanded DTW are outside the scope of N.J.A.C. 7:15-5.1(b)2. The phrase "wastewater service area modifications" in N.J.A.C. 7:15-5.1(b)1 is directly related to the phrase "modifies a wastewater service area delineation in the existing WQM plan" in N.J.A.C. 7:15-5.1(a). Many wastewater service area delineations in WQM plans allows for substantial extension of sewerage service to locations where such service does not presently exist. Construction of DTW to provide such service is not a "wastewater service area modification" under N.J.A.C. 7:15-5.1(b)1.

In those instances where wastewater management plans are required under N.J.A.C. 7:15-5.1, such plans are not required to include "all new or expanded DTW". Rather, the only new or expanded DTW that shall be described in such plans are those specified in N.J.A.C. 7:15-5.18(c)1 and (c)3.

Under the Water Quality Planning Act, two of the basic functions of areawide WQM plans are to identify treatment works necessary to meet anticipated waste treatment needs, including the necessary collection systems (see N.J.S.A. 58:11A-5a), and to regulate the location, modification, and construction of any facilities which may result in discharges (see N.J.S.A. 58:11A-7c(2)). New Jersey's 12 areawide WQM plans perform these functions by establishing wastewater service areas and identifying the more significant individual treatment works.

Each areawide WQM plan depicts wastewater service areas for the entire areawide WQM planning area. Proposed DTW may conflict with these wastewater service areas in various ways. One example is when the applicant proposes to provide sewer service in a location not designated to receive sewer service. Another example is when the areawide WQM plan specifies that wastewater in a sewer service area is to be transmitted to one particular DTW for final treatment and discharge, and the applicant proposes to provide sewer service using a different DTW. Such proposed DTW conflict with the areawide WQM plan, and, under N.J.S.A. 58:11A-10, cannot receive a Department permit unless the wastewater service area delineations are changed by amending the WQM plan. This policy is reflected in N.J.A.C. 7:15-4.3(a), which stipulates that "new DTW that would conflict with or be outside of future sewer service areas depicted in the areawide WQM plan" are considered to be inconsistent

with that plan, and shall require an amendment to that plan. If the proposed wastewater service area modification is of the magnitude specified in N.J.A.C. 7:15-5.1(b)1, the amendment must consist of or include a wastewater management plan or an amendment to a wastewater management plan.

Areawide WQM plans generally do not attempt to identify every individual treatment works necessary to meet anticipated needs (for example, every individual pipe in a sewage collection system, or every individual subsurface sewage disposal system). However, such plans do identify the more significant individual treatment works, especially treatment works that discharge wastewater directly into surface waters or onto the land surface, or that discharge to ground water or otherwise process wastewater and have a design capacity of 2,000 gpd or larger (an important threshold in the NJPDES rules at N.J.A.C. 7:14A-12.4). Together with delineations of wastewater service areas, the identification of such individual treatment works constitutes a fundamental statement about how wastewater is to be managed in the WQM planning area.

The Department's position is that when applicants propose significant DTW of this kind that are not identified in the areawide WQM plan, the applicants are proposing DTW that conflict with the wastewater management program contained in that plan. Such proposed DTW conflict with the areawide WQM plan, and, under N.J.S.A. 58:11A-10, cannot receive a Department permit unless the WQM plan is amended to include such DTW. This policy is contained in N.J.A.C. 7:15-4.3(a), which stipulates that new or expanded treatment works, of the kind specified in N.J.A.C. 7:15-4.3(a)1, that "are not identified in the existing areawide WQM plan" are considered to be inconsistent with that plan, and shall require an amendment to that plan. If a proposed DTW is also of a kind specified in N.J.A.C. 7:15-5.1(b)1, the amendment must consist of or include a wastewater management plan or an amendment to a wastewater management plan.

As indicated in N.J.A.C. 7:15-5.1(a) and stated in proposed N.J.A.C. 7:15-5.23(d) and adopted N.J.A.C. 7:15-5.3(f), wastewater management plans are "amendments to areawide WQM plans". Under the Water Quality Planning Act at N.J.S.A. 58:11A-9, the Department has statutory authority to adopt rules that prescribe the format of amendments to areawide WQM plans and procedures for the adoption of such amendments.

190. COMMENT: The wastewater management plan requirement in N.J.A.C. 7:15-5.1 is excessive because it goes beyond the legislative intent of WQM planning. The WQM planning process, as established in the Federal Water Pollution Control Act Amendments of 1972 and New Jersey's subsequent Water Quality Planning Act, was generally to regulate non-point sources of pollution and identify carrying capacity of streams for future waste treatment systems. The shape or size of a sewer service area is of no environmental consequence. The Legislature and Congress did not intend that there be a sewer service area map in every municipality and that a State agency know precise service area boundaries, because the key control point is the NJPDES permit at the treatment plant. Whether a town decides on one or two thousand acres of sewer service area is of no practical consequence to the WQM planning process.

A municipal wastewater management plan with fixed service areas, which will be locked in for six years and which requires a tortuous process to get it undone and get the endorsements needed for a little change in the map, exceeds the purpose of the Federal Clean Water Act and the Water Quality Planning Act because, as Department staff have acknowledged, almost all WQM plan amendments are granted because there is no environmental issue. If the treatment plant is meeting its NJPDES permit, the WQM plan amendment is virtually always granted.

RESPONSE: The commenter cited no specific statutory language, formal legislative history, case law, USEPA regulations or guidelines, or other documents to support the commenter's assertion that the wastewater management plan requirement goes beyond the legislative intent of WQM planning. The commenter's description of the WQM planning process, as established in P.L. 91-500 and the Water Quality Planning Act, is quite incomplete. The WQM planning requirements in these statutes were not limited to regulation of nonpoint sources and identification of the carrying capacity of streams. For example, Section 208(b)(2) of the Clean Water Act (33 U.S.C. §1288(b)(2)) and N.J.S.A. 58:11A-5 expressly require areawide WQM plans to include "the identification of treatment works necessary to meet the anticipated municipal and industrial waste treatment needs of the area over a twenty-year period . . . including . . . the necessary waste water collection . . . systems". (The term "treatment works" is also expressly defined in Section 212 of the Clean Water Act (33 U.S.C. §1292) and N.J.S.A. 58:10A-3s as including "intercepting sewers" and "sewage collection systems".) Section 208(b)(2) of

the Clean Water Act and N.J.S.A. 58:11A-5 also expressly require areawide WQM plans to include "the establishment of a regulatory program to . . . regulate the location, modification, and construction of any facilities within such area which may result in any discharge in such area".

The shape and size of sewer service areas is of great consequence to the identification of treatment works and to the regulation of facilities which may result in discharges. The shape and size of sewer service areas determines, to a substantial degree, the basic type of treatment works used in a geographic region (for example, regional sewerage facilities versus "package" treatment plants or individual subsurface sewage disposal systems), the physical layout and capacity of such treatment works (including sewage collection systems), the number and location of wastewater discharges in the region, and the amount of wastewater discharged to surface or ground waters at each discharge location. Mapping of sewer service areas is essential to the comprehensive WQM planning process required by the Clean Water Act and the Water Quality Planning Act, and to the "development of comprehensive regional sewerage facilities" under the Water Pollution Control Act (see N.J.S.A. 58:10A-6(j)) Chapter 8.3 of the USEPA "Guidelines for State and Areawide Water Quality Management Program Development" (November 1976) expressly recommended that WQM plans delineate service areas and evaluate regionalization options.

Sewer service area mapping is an integral part of wastewater planning. Pressures for land development will require that certain areas be sewered in order for the wastewater to be managed appropriately. If these pressures are not addressed through the wastewater management planning process, then local governments as well as the Department will be forced to make decisions on a project-by-project basis in response to development pressures, rather than providing the more long-range, cost-effective and environmentally sound decisions that are needed to protect our environment.

Petitions to amend wastewater management plans (including petitions to amend sewer service areas mapped in such plans) may, in accordance with N.J.A.C. 7:15-3.4, be submitted at any time. N.J.A.C. 7:15-3.4 provides a more streamlined process for WQM plan amendments than had previously been available, particularly with respect to endorsement requirements. The commenter's concerns regarding being "locked in" due to the "tortuous" WQM plan amendment process are unfounded. Finally, WQM plan amendments are approved when environmental issues are addressed adequately, not because there are no environmental issues to consider.

191. COMMENT: The wastewater management plan requirement in N.J.A.C. 7:15-5.1 is excessive because it provides no environmental benefit. Locking in sewer service areas in a municipal wastewater management plan, so that an applicant must get that plan changed before it will get a WQM plan amendment, serves no environmental protection objective set forth in these rules. An elaborate amendment procedure is required for simple redrawing of a service area boundary without addressing whether the development will threaten water resources. This is an awful waste of time. When the WQM plan amendment is adopted as much as two years later, the project is the same as when it was submitted.

For simple expansion of a sewer area, where the treatment plant has existing or planned capacity, there is no reason for the requirement in N.J.A.C. 7:15-5.1, because a person has to follow other regulatory processes and will not get sewer service if that will violate water quality standards through the treatment plan, or if that plant cannot be expanded. So there is definitive protection of water resources. Expansion of a sewer service area may be a Pyrrhic victory for an applicant who finds that sewer service is unavailable because the river does not have carrying capacity. Instead of spending a huge amount of time working with all of these wastewater management plans, the Department should determine if rivers can take additional effluent. Let the towns manage sewer service areas, because the towns will either have to use tertiary treatment to expand treatment plant capacity, or they will not be able to provide additional sewer service. Those are the real issues in a water resources effort, not the shape of sewer service areas.

RESPONSE: N.J.A.C. 7:15-1.3 identifies the purpose of this chapter. The wastewater management plan requirement in N.J.A.C. 7:15-5.1 serves a number of objectives identified in N.J.A.C. 7:15-1.3. For example, one objective of this chapter is to "implement the Water Quality Planning Act" (see N.J.A.C. 7:15-1.3(a)1). As discussed in the Department response to comment number 190, the Water Quality Planning Act requires areawide WQM plans to identify treatment works and regulate facilities which may result in discharges, and the mapping of sewer service areas is of great consequence to such identification and regulation. A

second objective of this chapter is to "coordinate and integrate WQM plans with related . . . regional and local comprehensive land use, functional and other relevant planning activities, programs and policies" (see N.J.A.C. 7:15-1.3(a)8). A third objective is to "encourage the development of comprehensive regional sewerage facilities that serve the needs of the regional community" (see N.J.A.C. 7:15-1.3(a)14).

Objectives such as these cannot be satisfied through the mere determination of effluent limitations and total maximum daily loads under N.J.S.A. 58:11A-7(c)(1) and (2). (As defined in N.J.A.C. 7:15-1.5, a "wasteload allocation" is a portion of a "total maximum daily load".) The comment seems to be based on the mistaken impression that, as regards sewerage facilities, the sole function of WQM planning is to determine effluent limitations and wasteload allocations. If such were the case, N.J.S.A. 58:11A-7(c)(1) and (2) would be adequate by themselves, and such other statutory provisions as N.J.S.A. 58:11A-5a and N.J.S.A. 58:10A-6(j) would be unnecessary. The determination of effluent limitations and wasteload allocations is an important part of the WQM planning program, but does not constitute the whole WQM planning program as regards sewerage facilities.

Through provisions in the NJPDES rules and the Surface Water Quality Standards (for example, N.J.A.C. 7:14A-10.4, which sets forth environmental assessment requirements, and N.J.A.C. 7:9-4.6(c)3, which requires applicants for water quality based effluent limitations to submit stream analysis), the Department has an active program whereby the resources of applicants are used under Department supervision to identify water quality based effluent limitations. The wastewater management plan requirement in N.J.A.C. 7:15-5.1 does not impair the Department's administration of these provisions.

The comment that an applicant must get a wastewater management plan changed before it will get a WQM plan amendment is erroneous. An adopted wastewater management plan is an integral part of the areawide WQM plan, and wastewater management plans are changed through the WQM plan amendment process. An applicant's request for a WQM plan amendment may include a request to change the wastewater management plan that is part of the areawide WQM plan. Only one administrative proceeding is required. The WQM plan amendment procedures in N.J.A.C. 7:15-3.4 are significantly modified from the previous procedures in order to eliminate unnecessary delays in the WQM plan amendment process, particularly with respect to endorsement requirements. As provided in N.J.A.C. 7:15-5.1(b), sewer service area modifications that affect less than 10 acres and less than 20,000 GPD of wastewater do not require the preparation of a wastewater management plan under N.J.A.C. 7:15-5.1(a).

192. COMMENT: There is clearly no statutory authority in the planning legislation for requiring a municipal wastewater management plan and binding the regulated public until such plans are prepared. N.J.A.C. 7:15-5.1 puts the regulated public in a difficult position. If a town does not want to prepare a municipal wastewater management plan, and asserts that the Department has no statutory authority to compel the town to prepare the plan, land development subject to this rule ceases outside the existing sewer service area. There could be significant due process problems with the regulated public not knowing who will complete the plan or if the plan will ever be completed, or if the municipality only submits an incomplete plan. There is no provision to appeal this process or logically attack it to force a conclusion.

The Department should seek statutory authority to require municipalities to prepare municipal wastewater management plans. The original intent of the WQM planning process was that a WQM plan was to target water quality management issues and identify potential administrative agencies to carry out the plan's recommendations. If a municipal wastewater management plan is essential to accomplish these objectives, then the original vision was to set up administrative agencies to handle these different functions and ensure they had the corresponding statutory authority. The Department should declare that legislation is needed to require towns to prepare these plans in a specified time period and then provide (as in N.J.A.C. 7:15-5) guidelines as to plan content. But the Department should not penalize the regulated public by requiring these plans before the legislation is enacted and the towns comply; especially when the Department can use a simple checklist to distinguish simple administrative changes to a sewer service area boundary from violation of a water quality standard or best management practice in the Statewide WQM Plan.

RESPONSE: As N.J.A.C. 7:15-5.4 through 5.7 and N.J.A.C. 7:15-5.8(a) and (e) make clear, not all wastewater management plans are prepared by municipalities, and not all municipalities are required to prepare wastewater management plans. Under N.J.A.C. 7:15-5.8, a mu-

nicipality has wastewater management plan responsibility only if the municipality performs "sewerage-related functions" as defined in that section, and only if some other governmental unit does not have such responsibility for that location under N.J.A.C. 7:15-5.4 through 5.7.

The Department has several sources of statutory authority to require WQM plan amendments and wastewater management plans under N.J.A.C. 7:15-4.3 and 5.1, and to require municipalities and other governmental units to prepare wastewater management plans under N.J.A.C. 7:15-5.4 through 5.13. Specifically, N.J.S.A. 13:1D-1 et seq., in the Department of Environmental Protection Act of 1970, N.J.S.A. 58:10A-1 et seq., the Water Pollution Control Act, and N.J.S.A. 58:11A-1 et seq., the Water Quality Planning Act afford the Department broad authority and courses of action in order to protect the environment, regulate and improve wastewater management, and foster sound wastewater planning.

Pertinent provisions of these statutes were cited in the Department response which appears after comment number 154. Also, in the Water Quality Planning Act, N.J.S.A. 58:11A-2, Legislative findings, provides that "the people of the State have a paramount interest in the restoration, maintenance and preservation of the quality of the waters of the State", that "the severity of the water pollution problem in the State necessitates continuing water quality management planning in order to develop and implement water quality programs in concert with other social and economic objectives", and that "the Department of Environmental Protection through the continuing planning process and the planning agencies through the areawide planning process shall coordinate and integrate water quality management plans with related . . . regional and local comprehensive land use, functional and other relevant planning activities, programs and policies".

N.J.S.A. 58:11A-5 requires the areawide WQM plan to include, among other components, "the identification of treatment works necessary to meet the anticipated municipal and industrial waste treatment needs of the area over a twenty-year period, . . . including . . . the identification of the necessary waste water collection systems" and the "establishment of a regulatory program . . . to regulate the location, modification, and construction of any facilities within such area which may result in any discharge in such area". N.J.S.A. 58:11A-7, Continuing planning process of commissioner, authorizes the Commissioner to "delegate aspects of the continuing planning process to other . . . interstate or local agencies", and directs the Commissioner to "coordinate and integrate the continuing planning process with related . . . regional and local comprehensive, functional and other relevant planning activities, programs and policies".

A review of the above statutory provisions, as well as those cited in the Department response which appears after comment number 154, demonstrates that statutory authority for the wastewater management planning requirements exists as part of the Department's mandate to protect the environment and to foster sound wastewater planning and management.

193. COMMENT: The wastewater management plan requirement in N.J.A.C. 7:15-5.1 puts the regulated public in a difficult position because of long delays in completing these plans. The rules shorten the WQM plan amendment process, but greatly delay the initiation of that process by requiring the township, municipal authority or some regional agency to prepare a wastewater management plan. If all 567 towns submitted such plans tomorrow, the Department could not process the plans for years because the Department could not adequately address all the issues identified in the rules. Thus, the rules have a staggered, multi-year submission schedule; some plans are not due for five years.

What does the person do who is waiting for a municipal wastewater management plan which is not due for five years, and who cannot apply for the WQM plan amendment for sewer service area expansion until the municipal plan is completed? This is a tremendous inequity. Sewer service area expansions are virtually always granted if the sewage treatment plant has capacity. So the person is waiting for this cumbersome process to end even though abundant protection already exists at the sewage treatment plant when the decision is made to serve or not serve the particular parcel depending on plant capacity. The Department must consider the submission schedule for these plans, and not force persons to wait for one to five years for this planning process to end.

RESPONSE: Not all WQM plan amendments to expand sewer service areas require the submission of a wastewater management plan. As provided in N.J.A.C. 7:15-5.1(b), sewer service area modifications that affect less than 10 acres and less than 20,000 GPD of wastewater do not require the submission of a wastewater management plan under N.J.A.C. 7:15-5.1(a). Moreover, N.J.A.C. 7:15-5.23 contains three provisions under which wastewater management plans may be submitted ahead of the multi-year schedule established in N.J.A.C. 7:15-5.23(b) and (c). The first

such provision is N.J.A.C. 7:15-5.23(f), which provides that alternative schedules may be adopted as amendments to areawide WQM plans. Interested persons may submit petitions for such amendments under N.J.A.C. 7:15-3.4. N.J.A.C. 7:15-5.23(f) also refers to the second provision, N.J.A.C. 7:15-5.23(g), which provides that with the consent of the Department and the wastewater management planning agency, an alternative schedule may be adopted as a revision to an areawide WQM plan. Finally, the Department has added a provision at N.J.A.C. 7:15-5.23(j), which stipulates that at the request of a person who seeks a WQM plan amendment that requires a wastewater management plan under N.J.A.C. 7:15-5.1, a wastewater management planning agency may submit a wastewater management plan at any time prior to the period when such submission is required under N.J.A.C. 7:15-5.23(b) through (g), without requiring the establishment of an alternative schedule under N.J.A.C. 7:15-5.23(f) or (g).

194. COMMENT: The wastewater management plan requirement in N.J.A.C. 7:15-5.1 puts the regulated public in a difficult position because it allows the WQM planning process to be misused for objectives other than water quality management. The delineation of sewer service areas in areawide WQM plans was a highly variable process. Some towns are partly in sewer service areas, some have no sewer service areas, and others are wholly in sewer service areas. For example, all of Camden County is a sewer service area, so no WQM plan amendments were needed there. In some counties, conversely, wastewater management planning is used purely as a land use planning manipulation tool unrelated to water quality. Mercer County is manipulating land use in these sewer service areas, and has trapped persons into this supposedly environmental non-point or point source pollution planning process which never gets to those environmental issues. The county sets forth a series of obstacles to be overcome before a sewer service area can be expanded.

By tying the wastewater regulatory process to requiring a municipality to prepare a wastewater management plan, the rule gives the municipality another tool to manipulate land use, perhaps beyond what the municipality is statutorily permitted to do in its own zoning and planning, by simply not mapping a sewer service area, not permitting a particular wastewater treatment area or whatever. They can either not do it or just delay the whole process at their own whim, through no act of the legislature, in a very soft, unpenalized way.

The objective of the Clean Water Act and Water Quality Planning Act is water quality management, and these statutes should not be subtly misused for other purely administrative or political purposes. (An example of a proposed rule provision which tends to prevent such misuse is the WQM plan amendment procedure, which allows the Department to ignore municipal comments not substantiated by some water quality concern. The provision establishes this policy, although not very clearly. If the municipalities choose not to comment within 60 days, then the amendment process can proceed and is not halted indefinitely, as it was before in some cases.) Such misuse, which could occur under N.J.A.C. 7:15-5, does the public no good, and should be prevented by carefully structured rules or additional legislation.

RESPONSE: Many of the commenter's concerns are addressed at length in the responses to comments numbered 190 through 193, above. The remaining concerns are addressed as follows. The requirements of N.J.A.C. 7:15-5 were carefully constructed to provide for appropriate wastewater management planning. The Water Quality Planning Act expressly states at N.J.S.A. 58:11A-2 and N.J.S.A. 58:11A-7 that the Department and the designated planning agencies shall "coordinate and integrate" WQM planning with "related . . . regional and local comprehensive land use, functional and other relevant planning activities, programs and policies". A direct relationship between WQM planning and land use management is thus expressly contemplated by that Act. Requiring municipalities (among other governmental units) to prepare wastewater management plans helps to coordinate and integrate areawide WQM plans with local land use management. Because land use policies and sewerage arrangements vary considerably from one municipality or county to another, and because areawide WQM planning is the responsibility of the Department and seven designated planning agencies, it is not surprising or unreasonable to find considerable variation in the way sewer service areas are delineated.

In accordance with N.J.A.C. 7:15-5.18(b), wastewater management plans must, to the maximum extent practicable, provide adequate wastewater service for land uses allowed in existing zoning ordinances or shown in municipal or county master plans. The wastewater management plan is not to be used as a tool to manipulate land use independently of zoning ordinances or master plans, but is to identify wastewater service areas and DTW based on existing land use and currently authorized or planned

development. If a proposed wastewater management plan did not provide appropriate wastewater service (for example, public sewer systems) in accordance with the existing zoning or master plan, then the wastewater management plan would not meet the requirements of N.J.A.C. 7:15-5.18(b), and would not be adopted under N.J.A.C. 7:15-3.4.

195. COMMENT: Suppose that a municipality is located in two or more wastewater management plan areas due to the existence of watershed divides and two or more regional sewerage authorities. If a wastewater management plan is adopted for only one of those areas, and if a project is in that area, would the wastewater management plan requirement be satisfied for that project, or would the project be delayed until plans were adopted for all of the areas?

RESPONSE: If a municipality is located in two or more wastewater management plan areas, and if a project is located within a portion of the municipality for which a wastewater management plan has already been adopted and is in effect, then the status of the wastewater management plan being prepared for the remaining portion of the municipality has no bearing on the project.

196. COMMENT: If a project in one county is served by sewers in a second county and a sewage treatment plant in a third county, does the project need three municipal wastewater management plans or just one?

RESPONSE: If a project does not need a WQM plan amendment that requires a wastewater management plan under N.J.A.C. 7:15-5.1, then the project may receive a permit without the preparation of any wastewater management plan. If the project does require a wastewater management plan, then the only wastewater management plan that is required for the project is the wastewater management plan for the wastewater management plan area in which the project is located. The boundaries of wastewater management plan areas shall be established in accordance with N.J.A.C. 7:15-5.3 through 5.13, and need not be limited to single municipalities or counties. For example, the planning areas of some designated planning agencies, the Passaic Valley Sewerage District and the districts of some regional authorities, and the membership of some joint meetings cross county boundaries. As a result of N.J.A.C. 7:15-5.9(d)l(iii) and N.J.A.C. 7:15-5.11, the Department expects that, over time, the boundaries of many wastewater management plan areas will be adjusted so that such areas include the entire service areas of sewage treatment plants, even if such service areas extend into two or more counties.

197. COMMENT: Suppose the Federal Government wanted a visitors' center in their wildlife refuge, and had to wait for that center's DTW to be included in a municipal wastewater management plan. What would happen if the municipality opposed the Federal Government because the municipality did not want the visitors' center for whatever reason, and the municipality simply did not include the DTW in the plan?

RESPONSE: As discussed in the Department response to comment number 198, the Department has added a provision at N.J.A.C. 7:15-5.1(c), which stipulates that the requirements of N.J.A.C. 7:15-5.1(a) do not apply to WQM plan amendments whose specific purpose is to address projects that are proposed by the Federal government. Thus, a WQM plan amendment whose specific purpose is to include a Federally-owned DTW does not require a wastewater management plan or an amendment to a wastewater management plan.

198. COMMENT: Are Federal and State agencies exempt from the requirement for wastewater management plans? What is the environmental or water quality rationale for that exemption?

RESPONSE: The Department has added a provision at N.J.A.C. 7:15-5.1(c), which stipulates that the requirements of N.J.A.C. 7:15-5.1(a) do not apply to WQM plan amendments whose specific purpose or effect is to address projects or activities that are either proposed, constructed, operated or conducted by the State or Federal government, or that are regulated by the Solid Waste Management Act (N.J.S.A. 13:1E-1 et seq.). This exemption is consistent with N.J.A.C. 7:15-3.4(c), which stipulates that such WQM plan amendments shall be processed only by the Department. Federal and State agencies are exempted from the wastewater management plan requirement in recognition of the fact that State and Federal facilities are generally not subject to the jurisdictional authority of the wastewater management planning agency; it would be inappropriate to require a wastewater management plan to be prepared by an entity which generally does not bear any legal or planning responsibility for these facilities. State and Federal facilities are different from the construction of private or substate facilities which are subject to approval by substate government agencies. State and Federal facilities still must provide site-specific wastewater planning through the WQM plan amendment process. Exemption of solid waste activities from the

wastewater management plan requirement prevents fragmentation and duplication of responsibility over subject matter that is pervasively supervised by the Department, and that has long been recognized to require uniform, integrated Statewide treatment.

N.J.A.C. 7:15-5.1(c) also stipulates that the requirements of N.J.A.C. 7:15-5.1(a) do not apply to projects identified under N.J.A.C. 7:15-3.4(h)3. This exemption is consistent with N.J.A.C. 7:15-3.4(h), which stipulates that such projects shall be processed under a special expedited amendment procedure. Because of the time needed to prepare wastewater management plans, requiring such plans would defeat the purpose of having an expedited amendment procedure for such projects.

199. COMMENT: In N.J.A.C. 7:15-5.1(b)1, clarify the words "directly affect 10 or more acres" and give examples. Does the 20,000 or more gpd refer to influent or effluent? Certain systems, that is, Cycle-Let Systems, may treat 20,000 gpd influent with only 2,000 gpd effluent. Please comment on how the Department plans to treat these alternative DTWs.

RESPONSE: In N.J.A.C. 7:15-5.1(b)1, the phrase "directly affect 10 or more acres" means that the 10 acre criterion applies to the total acreage of the parcel or parcels of land that are the direct subject of the wastewater service area modification, not the total acreage of a wastewater service area which is being modified. For example, if a proposed WQM plan amendment would add a five-acre parcel of land to an existing wastewater service area that already contains 5,000 acres, such an amendment would not "directly affect 10 or more acres". What matters (in this example) is the acreage of the parcel being added, not the total acreage of the wastewater service area which is being modified. In applying the 10 acre criterion, the acreage of each parcel will not be double-counted. For example, if a proposed WQM plan amendment would transfer an eight-acre parcel from one wastewater service area to another, such an amendment would not "directly affect 10 or more acres". Although such an amendment might be viewed in one sense as a 16-acre modification (adding eight acres to one area and removing eight acres from the other), in reality only eight acres of land would be directly affected.

The 20,000 GPD limit in N.J.A.C. 7:15-5.1(b)1 refers to neither the influent nor the effluent of particular DTW. Rather, this 20,000 GPD limit refers to the amount of wastewater that is or will be generated on the parcel of land that is the subject of the wastewater service area modification. In contrast, N.J.A.C. 7:15-5.1(b)2 refers to a particular DTW. In this provision, the 20,000 GPD limit refers to design capacity and, therefore, to influent. Thus, alternative DTW that receive 20,000 GPD or more, but discharge less than 20,000 GPD, would be subject to the same requirements as conventional DTW that both receive and discharge 20,000 GPD or more.

#### 7:15-5.2 Validity of previously adopted or recently prepared wastewater management plans

200. COMMENT: In N.J.A.C. 7:15-5.2(b), substitute the word "shall" for "may" to assure that existing wastewater management plans are adopted thereby providing predictability for the regulated public.

RESPONSE: Because the Department is a State agency under the supervision of the Governor, it is not appropriate to restrict the Governor or his designee regarding the adoption of wastewater management plans. However, the Department will seek to have plans that are submitted prior to the effective date of the rule approved in accordance with the technical resource document that was used for the preparation of the plans.

201. COMMENT: The greatest problem with implementation of these rules is that it would cause very long, costly delays for persons who initiated the planning program as previously allowed and now are faced with completely new rules. The rules should be revised to allow any planning agency which has initiated a WQM plan in conformance with previous requirements to be allowed to complete the program.

RESPONSE: This comment is addressed in the Department response to comment number 200.

#### 7:15-5.3 Wastewater management plan areas and wastewater management planning responsibility: general statement

202. COMMENT: In all the sections related to the responsibilities of institutions and agencies handling wastewater, no directive is provided regarding the public participation component.

RESPONSE: The assignments of wastewater management plan responsibility set forth in N.J.A.C. 7:15-5.4 through 5.8 are based on sewerage-related functions and responsibilities which the governmental units identified in those sections have under existing statutes. Through this rulemaking proceeding, the public had opportunity to comment on those assignments and on the provisions concerning alternative assignments in N.J.A.C. 7:15-5.9 through 5.13. If alternative assignments are

proposed as amendments to areawide WQM plans, public participation is provided through the WQM plan amendment process (N.J.A.C. 7:15-3.4). Under N.J.A.C. 7:15-5.9 and N.J.A.C. 7:15-3.4, members of the public may submit petitions to adopt alternative assignments as amendments to areawide WQM plans.

Public participation in the preparation and adoption of wastewater management plans is provided through input at the local level during the preparation of these plans, and through the WQM plan amendment process (N.J.A.C. 7:15-3.4), under which wastewater management plans are proposed as amendments to areawide WQM plans. As N.J.A.C. 7:15-5.3(f) states, wastewater management plans and amendments thereof are valid only upon their adoption as amendments to areawide WQM plans.

#### 7:15-5.4 Responsibility of designated planning agencies

203. COMMENT: As the Cape May County Planning Board is preparing the wastewater management plans for Cape May County and has submitted two plans for approval, the commenter assumes that responsibility under N.J.A.C. 7:15-5.4.

RESPONSE: The Cape May County Board of Chosen Freeholders is the designated planning agency for all of Cape May County. Pursuant to N.J.A.C. 7:15-5.4, the Cape May County Board of Chosen Freeholders will have wastewater management plan responsibility for all or part of its designated planning area (depending on what is requested) if that Board adopts and submits to the BWQP a resolution requesting such responsibility within 60 calendar days of the effective date of this subchapter.

204. COMMENT: What happens under N.J.A.C. 7:15-5.4 if a designated planning agency does not submit a resolution within 60 days?

RESPONSE: If a designated planning agency does not submit a resolution requesting wastewater management plan responsibility within 60 days of the effective date of this subchapter, then wastewater management plan responsibility is assigned to another governmental unit in accordance with N.J.A.C. 7:15-5.5 through 5.8.

205. COMMENT: Five commenters said N.J.A.C. 7:15-5.4 seems to provide for some involvement for the designated planning agency; however, it appears to be an "all or nothing" approach. There should be an alternative arrangement whereby the designated planning agency would perform the function if the municipal authority fails to fulfill its duty, or delegates said duty to that agency.

RESPONSE: The rules do not provide an "all or nothing" approach as regards the assignment of wastewater management plan responsibility to designated planning agencies. A designated planning agency may obtain wastewater management plan responsibility for all or part of its planning area by submitting a resolution in accordance with N.J.A.C. 7:15-5.4. If a designated planning agency does not submit a resolution within 60 days under that section, that agency may still obtain wastewater management plan responsibility for all or part of its planning area at a later date through an alternative assignment of wastewater management plan responsibility under N.J.A.C. 7:15-5.9. The Department has changed N.J.A.C. 7:15-5.9(d)2iv to clarify that the Department will oppose an amendment that assigns wastewater management plan responsibility to a designated planning agency if that agency does not want such responsibility at the time the amendment is proposed.

#### 7:15-5.6 Responsibility of sewerage authorities and municipal authorities

206. COMMENT: Five commenters said N.J.A.C. 7:15-5.6(a) is unclear as to the relationship between a regional sewerage authority and the municipality. The phrase, "authority's entire district", should be defined. The rule should differentiate between actual service area and future service area. Further, the municipality should have the option of performing the planning work even if there is a regional sewerage authority, as long as there is some consistency requirement.

RESPONSE: The terms "authority" and "district" are defined in N.J.A.C. 7:15-1.5. In accordance with these definitions, the phrase "authority's entire district" means the entire area that comprises a sewerage authority's district under N.J.S.A. 40:14A-3(6) or a municipal authority's district under N.J.S.A. 40:14B-3(6). A separate definition of the phrase "authority's entire district" is unnecessary.

There is no relationship between regional sewerage authorities and municipalities under N.J.A.C. 7:15-5.6(a). This subsection refers only to sewerage authorities and municipal authorities. The relationship between municipalities and other governmental units (including sewerage authorities) regarding wastewater management plan responsibility is directly addressed in N.J.A.C. 7:15-5.8. Under N.J.A.C. 7:15-5.8(a) and (e), a municipality that performs sewerage-related functions (as defined

in N.J.A.C. 7:15-5.8) in at least part of the municipality has wastewater management plan responsibility for the entire municipality, except in any portions of the municipality that are located within the wastewater management plan area of another governmental unit (for example, a regional sewerage authority) that has wastewater management plan responsibility under N.J.A.C. 7:15-5.4 through 5.7.

N.J.A.C. 7:15-5.6 and 5.8 place sewerage authorities (including regional sewerage authorities) ahead of municipalities in the initial assignment of wastewater management plan responsibility because of the extensive powers which sewerage authorities have in their districts under the Sewerage Authorities Law, N.J.S.A. 40:14A-1 et seq. Alternative assignments of wastewater management plan responsibility, different from those set forth in N.J.A.C. 7:15-5.6 and 5.8, are possible under N.J.A.C. 7:15-5.9 and the sections cited therein. For example, if the regional sewerage authority, the municipality, and the Department agreed to the transfer, wastewater management plan responsibility could be transferred from the regional sewerage authority to the municipality under N.J.A.C. 7:15-5.13 and 7:15-3.5. As another example, the municipality (or another interested person) could submit a petition under N.J.A.C. 7:15-5.9 and 7:15-3.4, requesting that the areawide WQM plan be amended to transfer wastewater management plan responsibility from the regional sewerage authority to the municipality. N.J.A.C. 7:15-5.9(d) provides, however, that the Department shall generally support alternative assignments that establish regional wastewater management plan areas, and shall generally oppose alternative assignments that would break up such areas into smaller areas. This is because regional wastewater management plan areas provide a geographic scale that is more consistent with areawide WQM planning, and more likely to encourage the development of comprehensive regional sewerage facilities in accordance with N.J.S.A. 58:10A-6(j).

N.J.A.C. 7:15-5.6 bases the initial assignment of wastewater management plan responsibility on an authority's legally established district, which does not necessarily have any relationship to its "service area", as that term is used in N.J.A.C. 7:15. (The term "service area" has a different, specialized meaning in N.J.S.A. 40:14A-4(m); N.J.A.C. 7:15 does not use the term "service area" in this sense.) This avoids the difficult effort of always having to distinguish between existing and future sewer service areas in order to determine initial wastewater management planning boundaries and responsibilities. The distinction between existing and future service area is made in the wastewater management plan itself, as provided in N.J.A.C. 7:15-5.15 through 5.20. N.J.A.C. 7:15-5.11(b) expressly requires automatic future expansion of wastewater management plan areas to include future sewer service areas identified in adopted wastewater management plans, and future sewer service areas may also serve as a basis for other alternative assignments of wastewater management plan responsibility (see N.J.A.C. 7:15-5.9(d)iii and 5.11(a)).

207. COMMENT: One commenter requested modification of the provision in N.J.A.C. 7:15-5.6(e)2 concerning assignment of wastewater management plan responsibility to regional sewerage authorities. The commenter is a small sewerage authority which services a relatively small number of homes in its municipality. The municipality is part of a regional sewerage authority's 201 facilities planning area. There have been problems between that regional authority and the communities it represents.

In the early 1970's, the municipality had decided to build infrastructure and participate in a regional authority. Now there is new planning and new thinking. The municipality is designated as a conservation area in both the former State Development Guide Plan and the new State Development and Redevelopment Plan, and thus is very leery of adding infrastructure. The municipality believes it can handle its own wastewater needs, allow the land to support whatever treatment the land can support, and thereby help govern development.

Because the regional authority does not serve the municipality, the new rules give undue control to that authority. For over a year without success, the commenter has asked that authority for rules and regulations governing submission of plans and specifications. It took the commenter approximately two years and five submitted plans to obtain an endorsement of their wastewater management plan from that regional authority. Very importantly, the plan designates the municipal sewerage authority as the wastewater management planning agency and gives it local control of wastewater requirements and planning within the municipality. The commenter assumes that under the new rules this plan gives the commenter the planning responsibility in the municipality. However, the commenter is concerned that under these rules, a simple request from the regional authority would reopen this issue of wastewater management plan responsibility. N.J.A.C. 7:15-5.6(e)2 provides that where districts

overlap, and none of the authorities is a county utilities authority, and only one of the authorities is a regional sewerage authority, only that regional sewerage authority has wastewater management plan responsibility in the overlap. The commenter realizes that the rules also include provisions to assign the responsibility to other agencies. However, the rules should stipulate that the regional authority must provide service in the overlap to have automatic planning responsibility.

The commenter has actively taken responsibility for wastewater in the municipality. The commenter has established a procedure to be co-permittee, has established monitoring programs for all NJPDES permits, and has done what is necessary to protect the municipality's ground and surface waters. The commenter does not want to become the political pawn of the regional authority, which, by nature, like all regional authorities, must expand to serve new users. If that authority is given the opportunity to dictate the planning needs and the infrastructure that will go into the municipality, then the commenter is sure that some day there will be a regional sewer system in the municipality, and that is not acceptable to the municipality at this time.

RESPONSE: While N.J.A.C. 7:15-5.6(e)2 does provide regional sewerage authorities with priority wastewater management plan responsibility over sewerage authorities created by single municipalities, this does not give undue control to the regional sewerage authorities. Under N.J.A.C. 7:15-5.18, all wastewater management planning agencies must submit wastewater management plans that, to the maximum extent practicable, provide adequate wastewater service for land uses allowed in existing zoning ordinances or shown in municipal or county master plans. A proposed wastewater management plan that did not meet the requirements of N.J.A.C. 7:15-5.18 would not be adopted under N.J.A.C. 7:15-3.4.

The assignment of wastewater management plan responsibility pursuant to N.J.A.C. 7:15-5.4 through 5.13 supersedes any previous designations of wastewater planning responsibility in WQM plans or amendments thereto adopted prior to the effective date of N.J.A.C. 7:15-5. Therefore, wastewater management plan responsibility for the wastewater management planning area would be initially assigned in accordance with N.J.A.C. 7:15-5.4 through 5.8, notwithstanding any wastewater management plan approved prior to the effective date of N.J.A.C. 7:15-5.

Alternative assignments of wastewater management plan responsibility, different from those set forth in N.J.A.C. 7:15-5.6(e)2, are possible under N.J.A.C. 7:15-5.9 and the sections cited therein. For example, if a regional sewerage authority, a municipal sewerage authority, and the Department agreed to the transfer, wastewater management plan responsibility could be transferred from the regional sewerage authority to the municipal sewerage authority as a WQM plan revision under N.J.A.C. 7:15-5.13 and N.J.A.C. 7:15-3.5. As another example, a municipal sewerage authority (or another interested person) could submit a petition under N.J.A.C. 7:15-5.9 and N.J.A.C. 7:15-3.4, requesting that the areawide WQM plan be amended to transfer wastewater management plan responsibility from the regional sewerage authority to the municipal sewerage authority.

N.J.A.C. 7:15-5.9(d) provides, however, that the Department shall "generally" support alternative assignments that establish regional wastewater management plan areas, and shall generally oppose alternative assignments that would break up such areas into smaller areas. This is because regional wastewater management plan areas provide a geographic scale that is more consistent with areawide WQM planning, and more likely to encourage the development of comprehensive regional sewerage facilities in accordance with N.J.S.A. 58:10A-6(j). The Department does not believe that N.J.A.C. 7:15-5.6(e)2 should be changed to limit its scope to regional sewerage authorities that already provide wastewater service in the overlap. By itself, the mere absence of present service does not indicate that service will not or should not be provided in the future. Also, limiting the scope of N.J.A.C. 7:15-5.6(e)2 would tend to increase the number of special proceedings that would be necessary under N.J.A.C. 7:15-5.6(e)4 to establish initial assignments of wastewater management plan responsibility.

The word "generally" in N.J.A.C. 7:15-5.9(d)1 and (d)2 implies, of course, that exceptions may be warranted in particular circumstances. It would not be appropriate to change N.J.A.C. 7:15-5.6(e)2 to accommodate a specific situation in one municipality. That situation would more appropriately be explored in a WQM plan amendment proceeding, under N.J.A.C. 7:15-5.9 and 3.4, that could focus on that situation and solicit comments from interested persons.

## 7:15-5.8 Responsibility of municipalities

208. COMMENT: Requiring municipalities to create municipal wastewater management plans is an excellent idea which provides for predictable land use management.

RESPONSE: The Department appreciates the commenter's support. As N.J.A.C. 7:15-5.4 through 5.7 and N.J.A.C. 7:15-5.8(a) and (e) make clear, not all wastewater management plans are prepared by municipalities, and not all municipalities are required to prepare wastewater management plans.

209. COMMENT: While the proposed rules do not appear to apply to BPU-regulated water purveyors, they may impact BPU-regulated sewer systems. The BPU currently regulates eight sewer utilities which collect waste and 14 which have their own treatment facilities. The Department should seriously consider the potential economic impact of wastewater planning responsibilities on these existing utilities and, concomitantly, their ratepayers. The BPU offers its assistance in making the necessary changes.

In N.J.A.C. 7:15-5.8(b)11, the commenter is concerned about assigning wastewater management plan responsibility to municipalities for a specific "wastewater management plan area" pursuant to N.J.S.A. 48:1-1 et seq. If a municipality has an ordinance requiring sewer connections and subdivision approvals, has sewerage facilities standards, or has a utility service plan element in a master plan, it would have wastewater management plan responsibility unless another government agency already has the responsibility. Granting a franchise, in addition to these other actions, would be considered "sewerage-related functions" under these rules. Thus, the rules would require all municipalities (except those served entirely by septic systems or cesspools) to prepare a plan unless a larger government agency does so.

BPU-regulated sewer utilities are an integral part of any wastewater management plan which encompasses the utilities' franchise area. Thus, these utilities should have clear role in developing such plans and any amendments thereto. Since the utility is often better able to provide the specifics required in the plan, it would be more beneficial for the utility to prepare the plan (or relevant sections) than for the government unit responsible for the plan to confer with that utility. Municipalities that do not have a sewer system would have little expertise in this area. Properly operating sewer utilities which have long-term responsibility to own or operate DTW should be assigned wastewater management plan responsibility, especially when no government entity has requested the authority. Does N.J.A.C. 7:15-5.9(a) allow accountable sewer utilities to be assigned this responsibility? N.J.A.C. 7:15-5.13 may allow utilities to receive this responsibility voluntarily. If so, that intention should be clearly stated. At the very least, the rules should be amended to give joint responsibility for the plan to these utilities and a government entity.

RESPONSE: N.J.A.C. 7:15-5.9 and 5.13 allows "private persons", including BPU-regulated sewer utilities, to receive wastewater management plan responsibility. However, N.J.A.C. 7:15-5.9(d)1 and (d)2 provides that the Department will generally support the assignment of such responsibility to governmental units rather than to private persons. In order to simplify the terminology used in the wastewater management planning program, N.J.A.C. 7:15-5.3, 5.11, and other sections of N.J.A.C. 7:15-5 have been changed to use the term "Wastewater management planning agency", defined in N.J.A.C. 7:15-1.5 and 5.3(a) as a governmental unit or other person that has wastewater management plan responsibility.

The duty to prepare and update wastewater management plans is, by its nature, a governmental responsibility which generally should be performed through elected officials or their appointees. The Water Quality Planning Act expressly authorizes the Department to "delegate aspects of the continuing planning process to other State, Federal, interstate or local agencies" (N.J.S.A. 58:11A-7), but does not specifically provide for delegation to private persons. In the particular instance of BPU-regulated sewer utilities, the franchise areas of these utilities often include only portions of municipalities. Such franchise areas would be too small to serve effectively as wastewater management plan areas, which should be at a municipal or regional scale.

The Department does not agree that it should be presumed that municipalities that do not have sewer systems would not have sufficient expertise to prepare wastewater management plans. Such a presumption is not supported by New Jersey statutes such as the Municipal Land Use Law, which authorizes municipal planning and regulation of sewerage facilities (for example, N.J.S.A. 40:55D-28.b(5), 40:55D-38.b(3), and 40:55D-65(d)). Where necessary, municipalities can hire personnel or consultants to supply technical expertise. Also, under N.J.A.C.

7:15-5.3(c), a municipality may submit a wastewater management plan prepared by a BPU-regulated sewer utility on behalf of that municipality.

## 7:15-5.10 Wastewater management plan responsibility as condition for financial assistance

210. COMMENT: N.J.A.C. 7:15-5.10 should be amended to allow a government unit to apply for financial assistance to expand necessary wastewater treatment facilities in the franchise area of a BPU-regulated sewer utility. This would be a rational approach in assisting the utility's new and current ratepayers by lessening the rate increase caused by additional capital construction. To do otherwise would be to unfairly discriminate against residents who live in the franchise area. The utility's shareholders would receive no additional "benefit" from such financial assistance since new sewer connections in the franchise area would be made to that utility's system in any case.

RESPONSE: It is not the function of N.J.A.C. 7:15-5.10 to identify the kinds of wastewater facilities for which governmental units may apply for financial assistance. Rather, this section allows WQM plan amendments to assign wastewater management plan responsibility to a governmental unit as a condition of that unit applying for or receiving financial assistance. The type of wastewater facilities for which such assistance may be received is the subject of other Department rules (see N.J.A.C. 7:22), and the commenter should submit comments on those rules.

## 7:15-5.15 Contents of wastewater management plans: general statement

211. COMMENT: A new subsection should be added at N.J.A.C. 7:15-5.15(c) to require discussion of alternative plans and to require environmental assessments of these alternatives so the least environmentally damaging plan is selected.

RESPONSE: N.J.A.C. 7:15-5.18(a)2 stipulates that on a case-by-case basis, the Department may require wastewater management planning agencies to examine specific wastewater management alternatives, and to analyze environmental and other factors pertaining to such alternatives. The Department agrees that examination and environmental assessment of alternatives in wastewater management plans is an important goal. However, at this early stage in the implementation of the wastewater management planning program, it is not appropriate to require all wastewater management plans to examine alternatives and include environmental assessments. As the wastewater management planning program matures, the Department may propose to establish such requirements.

The Department does not agree that N.J.A.C. 7:15-5.15 should require the selection of the least environmentally damaging alternative. Such a policy would require that alternative to be selected with absolutely no regard to the social and economic impact of that alternative. In contrast, the Water Quality Planning Act calls for the development of water quality programs "in concert with other social and economic objectives", and calls for the coordination and integration of water quality management plans with related land use and other relevant planning programs (see N.J.S.A. 58:11A-2).

212. COMMENT: Five commenters said that N.J.A.C. 7:15-5.15 should provide a general statement to indicate that the designated planning agency considering a wastewater management plan for adoption as an amendment to an areawide WQM plan can request or require submittal of additional information beyond that information specifically required in these rules and as needed to determine consistency or compliance with the WQM plan.

RESPONSE: All designated planning agencies must submit their proposed WQM plan amendment procedures to the Department for approval in accordance with N.J.A.C. 7:15-3.4(e). Pursuant to that provision, designated planning agencies should specify what additional information they would require of applicants that is not addressed under N.J.A.C. 7:15-3.4. It is more appropriate for this issue to be addressed in the implementation of N.J.A.C. 7:15-3.4(e) than through changes to N.J.A.C. 7:15-5.15.

## 7:15-5.16 Existing jurisdictions, wastewater service areas, and domestic treatment works

213. COMMENT: N.J.A.C. 7:15-5.16(a)8i should be changed to read "Areas of individual septic system for individual residences;" to avoid the implication that the location of each septic system must be mapped.

RESPONSE: As proposed, N.J.A.C. 7:15-5.16(a)8 required maps of "Any areas . . . served only by . . . individual septic systems for individual residences . . ." Therefore, proposed N.J.A.C. 7:15-5.16(a)8 already provided for mapping of areas served by individual septic systems, rather than the location of individual septic systems.

## 7:15-5.17 Mapping of environmental features

214. COMMENT: The commenter questions whether all of the counties and authorities will have the capability to provide the kinds of information being required in the plans. Certainly, the data exist, but certain requirements would be better served by creating a base map of New Jersey with a series of overlays from the appropriate section of the Department, instead of putting mapped wetlands, for example, together on a piecemeal basis.

RESPONSE: Because of its reference to wetlands, this comment appears to be directed at N.J.A.C. 7:15-5.17. All of the information required under that section is readily available to wastewater management planning agencies. The objective of that section is not to create general purpose maps of environmental features, but to provide information about such features to those who prepare, review, and use wastewater management plans. As discussed in the Department response to comments number 215 and 216, the Department has changed N.J.A.C. 7:15-5.17(a)2 to clarify and simplify the requirements for mapping of freshwater wetlands.

215. COMMENT: In N.J.A.C. 7:15-5.17(a)2i and iii, when wetlands mapping is available from the Freshwater Wetlands Protection Act mapping effort, that mapping should replace the very general National Wetlands Inventory mapping. There should be no need to map both wetlands sources.

RESPONSE: The Department agrees with the commenter. N.J.A.C. 7:15-5.17(a)2 has been clarified to require wetlands mapping based on maps prepared by the Department under the Freshwater Wetlands Protection Act (N.J.S.A. 13:9B-25c), or if such Department maps are not available, the National Wetlands Inventory maps prepared by the U.S. Fish and Wildlife Service.

216. COMMENT: The rules require municipal wastewater management plans to include several pieces of unnecessary or otherwise inappropriate information. For example, a town must provide wetlands mapping using on-site delineations verified by the Army Corps of Engineers or the Fish and Wildlife Service. These delineations are generally prepared at 1:2,400 or similar scale, and the Department will receive, in profusion, rolls of maps that the Department cannot use, because wastewater management plans are generally prepared at 1:24,000 scale. The Department is collecting data which will have no regulatory use, and which will be unmanageable to administer.

RESPONSE: Because of its reference to wetlands, this comment appears to be directed at N.J.A.C. 7:15-5.17. Specifications for maps in wastewater management plans are set forth in N.J.A.C. 7:15-5.20(b), which requires mapping of environmental features at 1:24,000 scale, and does not require mapping at any other scale. Therefore, N.J.A.C. 7:15-5.17 does not require submission of maps at unmanageable scales. Because N.J.A.C. 7:15-5.20(b)3 stipulates that the mapping of environmental features in wastewater management plans is for general information purposes only, the Department agrees that such mapping will have no direct regulatory use. However, such mapping will still provide useful information to those who prepare, review, and use wastewater management plans.

Because the general information purpose is adequately served by the other maps identified in N.J.A.C. 7:15-5.17(a)2, the Department agrees that the mapping of freshwater wetlands in wastewater management plans should not be required to incorporate on-site delineations. N.J.A.C. 7:15-5.17(a)2 has been changed to eliminate references to such delineations.

217. COMMENT: A new subparagraph at N.J.A.C. 7:15-5.17(a)2iv should be added listing the County Soil Surveys, delineating hydric soils. In many areas, these maps are more accurate than the National Wetlands Inventory.

RESPONSE: N.J.A.C. 7:15-5.20(b)3 stipulates that the mapping of environmental features in wastewater management plans is for general information purposes only. Because these purposes are adequately served by the maps identified in N.J.A.C. 7:15-5.17(a)2, the Department does not agree that the mapping of freshwater wetlands in wastewater management plans should be required to incorporate County Soil Surveys. In this respect, N.J.A.C. 7:15-5.17(a)2 is consistent with the Freshwater Wetlands Protection Act, which requires the Department to distribute National Wetlands Inventory maps, but not County Soil Surveys (see N.J.S.A. 13:9B-26). N.J.A.C. 7:15-5.20(b) requires mapping of environmental features, including wetlands, at 1:24,000 scale. National Wetlands Inventory maps are already published at that scale, whereas County Soil Survey maps are published at a different scale.

218. COMMENT: In N.J.A.C. 7:15-5.17(a)7, mapping of surface waters should also include their classification by the Department, that is, trout production, trout maintenance, non-trout.

RESPONSE: The Department has changed N.J.A.C. 7:15-5.17(a)6 to require mapping of trout production and trout maintenance waters designated in the Department's Surface Water Quality Standards, based on the Department's maps of such waters. This change promotes the "Trout Waters Protection" strategy discussed in Chapter II of the Statewide WQM Plan.

219. COMMENT: Five commenters said N.J.A.C. 7:15-5.17(a) should be expanded to include mapping or discussion of steep slope areas, historical sites, and other features.

RESPONSE: Unlike the two specific features named by the commenters, the environmental features presently listed in N.J.A.C. 7:15-5.17(a) generally have broad Statewide statutory or regulatory protection. The Department is willing to consider the inclusion of environmentally sensitive features in addition to those identified in N.J.A.C. 7:15-5.17(a). As the wastewater management planning process evolves, the Department will evaluate the advisability of mapping other features in the future.

220. COMMENT: The public, who must bear the liability for these wastewater facilities, are also the recipients of the result of these wastewater treatment plants. Without proper delineation of aquifers, outcrops, drainage basins, flood fringes, watershed boundaries, and implementation of wetland and floodplain regulations, there are no protections for potable water supplies. The Department has been severely remiss in this area, resulting in misleading and fabricated submissions by applicants for permits for these facilities.

RESPONSE: The Department agrees that there is a need for the proper delineation of aquifers and their outcrops, drainage basins, flood fringe areas, watershed boundaries, and for the implementation of wetlands and floodplain regulations. However, it is not the function of N.J.A.C. 7:15 to perform these delineations or implement these regulations. The issues raised by the commenter are more appropriately addressed through other rules or programs currently administered or being developed by the Department, such as the aquifer recharge area mapping program (see N.J.S.A. 58:11A-12 et seq.), the flood hazard area delineation program (see N.J.A.C. 7:13-7), the freshwater wetlands permit program (see N.J.A.C. 7:7A), the stream encroachment permit program (see N.J.A.C. 7:13), and the NJPDES rules concerning permit application requirements for wastewater facilities (see N.J.A.C. 7:14A).

The comment included no specific recommendations about how N.J.A.C. 7:15 should be changed to address the commenter's concerns. As stated in N.J.A.C. 7:15-5.20(b)3, depiction of environmental features under N.J.A.C. 7:15-5.17 is for general information purposes only, and does not define the geographic jurisdiction of regulatory programs. This policy prevents the establishment in wastewater management plans of regulatory boundaries that could conflict with regulatory boundaries established under statutes or rules governing specific environmental features.

## 7:15-5.18 Future wastewater jurisdictions, service areas, and domestic treatment works

221. COMMENT: In N.J.A.C. 7:15-5.18(a)2, the suggestion that the Department "may" require examination of alternatives as part of the preparation of the wastewater management plan should be mandatory and should include cost comparisons of alternatives.

RESPONSE: N.J.A.C. 7:15-5.18(a)2 stipulates that on a case-by-case basis, the Department may require wastewater management planning agencies to examine specific wastewater management alternatives, and to analyze economic and other factors pertaining to such alternatives. The Department agrees that examination and economic assessment of alternatives in wastewater management plans is an important goal. However, at this early stage in the implementation of the wastewater management planning program, it is not appropriate to require all wastewater management plans to examine alternatives and include economic assessments. As the wastewater management planning program matures, the Department may propose to establish such requirements.

222. COMMENT: In N.J.A.C. 7:15-5.18(a)2, the Department will require, as part of plan preparation, examination of specific wastewater alternatives which may include analysis of critical economic factors. If a plan involves a BPU-regulated public utility, the BPU should have input in the process.

RESPONSE: The BPU may directly contact those agencies with wastewater management plan responsibility for areas that contain BPU-regulated utilities, in order to provide BPU input during the preparation of

the wastewater management plans. The wastewater management planning agencies and the schedules for submitting wastewater management plans are identified under N.J.A.C. 7:15-5.4 through 5.3 and under N.J.A.C. 7:15-5.23, respectively. Also, the public comment periods under N.J.A.C. 7:15-3.4 for proposed WQM plan amendments, including wastewater management plans, are open to the BPU. The public participation requirements in the wastewater management planning process are discussed in more detail in the Department response to comment number 235.

223. COMMENT: N.J.A.C. 7:15-5.18 requires wastewater management plans to address DTW needs on a 20-year horizon. This requirement in itself is acceptable and needed, but the anticipated Department interpretation is a cause of concern. Department staff has stated wastewater management plan projected 20 year flows will be used to determine the level of immediate permitted plant expansion. That is, the levels indicated by the projection may be realized at any time by the treatment plant. Therefore, plant expansion can take place at an uncontrolled rate. This position conflicts with the Water Quality Planning Act which requires the Department to "coordinate and integrate water quality management plans with . . . relevant planning activities, programs and policies". Phasing schedules for needed plant capacity should be required in wastewater management plans. This would allow municipalities and designated planning agencies to coordinate future development and planning in a comprehensive manner consistent with local and regional plans.

RESPONSE: The Department has changed N.J.A.C. 7:15-5.18(a) to stipulate that in addition to the required 20-year period, wastewater management plans may include descriptions of wastewater service areas and DTW for shorter or longer periods. The Department has also made corresponding changes to N.J.A.C. 7:15-5.18(c), (d), and (e), and to N.J.A.C. 7:15-5.20(b)2. Descriptions for shorter or longer periods could serve, for example, to establish phasing schedules for treatment works expansion that are coordinated and integrated with development schedules specified in zoning ordinances or master plans used in preparing the wastewater management plan. Because many zoning ordinances and master plans do not include such development schedules, the need for such coordination and integration does not warrant a requirement that all wastewater management plans address time periods shorter than 20 years. See the Department response to comment number 179 for further discussion of Department policy concerning treatment works expansion.

224. COMMENT: N.J.A.C. 7:15-5.18 puts municipalities at an unnecessary disadvantage and is unacceptable. The proposed rules require that a municipality's wastewater management plan reflect its master plan and zoning, even anticipating future development. The commenter has strong reservations about the Department's ability to invade the traditional role of municipalities under the Municipal Land Use Law to control their growth in accordance with the master plan. Zoning represents a long term consideration of growth and development. Sewer service relies on appropriate technology, which varies as technology advances. Sewer service must be an element of land use planning, not the other way around.

Requiring that municipalities cite DTW and sewer service areas for 20 years into the future will force a municipality to provide sewer service to areas which, although zoned for future development, may not be ripe for such development, either because the infrastructure has yet to catch up to the pace of growth or because existing sewage technologies are simply not appropriate for the area. The proposed rules ignore the essential distinctions which must be made between long term land use planning and wastewater treatment. The rules should require wastewater management plans to reflect "existing" and "planned" sewage treatment areas. The amendment process, ably set forth in the proposed rules, allows interested parties, developers or even the township to amend the wastewater management plan if and when the need arises. Alternatively, the rules should allow a municipality to submit a plan which reflects alternative zoning, that is, zoning which is made contingent upon the availability of sewer service.

RESPONSE: N.J.A.C. 7:15-5.18 does not invade the traditional role of municipalities under the Municipal Land Use Law to control their growth and development. On the contrary, N.J.A.C. 7:15-1.3(a)8 specifies that part of the purpose of this chapter is to "coordinate and integrate WQM plans with Federal, State, regional and local comprehensive land use, functional and other planning activities, programs and policies . . ." Such coordination and integration is expressly required by the Water Quality Planning Act (see N.J.S.A. 58:11A-2a and N.J.S.A. 58:11A-7). In requiring the identification of future wastewater service areas based on existing zoning or master plans, N.J.A.C. 7:15-5.18 merely requires that wastewater management plans address, to the maximum extent prac-

ticable, the wastewater needs of future development that has already been authorized or planned by municipal or county government.

Section 208(b)(2)(A) of the Clean Water Act (33 U.S.C. §1288(b)(2)(A)) and the Water Quality Planning Act (see N.J.S.A. 58:11A-5(a)) expressly require wastewater planning to address wastewater needs over a 20-year planning period. Therefore, the 20-year period should not be deleted from N.J.A.C. 7:15-5.18. However, as discussed in the Department response to comment number 223, the Department has changed N.J.A.C. 7:15-5.18(a) to stipulate that in addition to the required 20-year period, wastewater management plans may include descriptions of wastewater service areas and DTW for shorter or longer periods. Such descriptions could be used to coordinate and integrate the wastewater management plan with development schedules specified in zoning ordinances or master plans used in preparing the wastewater management plan.

The commenter has confused the requirement for wastewater planning with the technical requirements of the treatment works approval process. N.J.A.C. 7:15-5.16 and 5.18 do require wastewater management plans to reflect existing and planned wastewater service areas. Under N.J.A.C. 7:15-5.16(a), wastewater management plans must depict existing sewer service areas. Under N.J.A.C. 7:15-5.18(b) and (c), areas that would require sewers in order to provide adequate wastewater treatment for future authorized or planned development are, with few exceptions, to be identified in the wastewater management plans as future sewer service areas. N.J.A.C. 7:15-5.18 does not require municipalities to provide sewer service (that is, construct sewers or authorize connections to a municipal sewer system) at any particular time. That is a decision that will be made at the local level and which must also be authorized by the Department through the treatment works approval process (see N.J.A.C. 7:14A-12).

Under the Municipal Land Use law, it is the zoning ordinance rather than the master plan that defines the legally allowable type, density, and intensity of land use. Moreover, the land use information in zoning ordinances is sometimes more detailed and specific than the land use information in master plans. For these reasons, the Department has changed N.J.A.C. 7:15-5.18(b) to allow either zoning ordinances or master plans to be used in preparing wastewater management plans, and has added a reference to zoning ordinances in N.J.A.C. 7:15-5.23(i) (proposed at N.J.A.C. 7:15-5.24(i)). (As proposed, N.J.A.C. 7:15-5.18(b) required the use of master plans, but allowed some use of zoning ordinances as specified in proposed N.J.A.C. 7:15-5.18(b)2. As adopted, N.J.A.C. 7:15-5.18(b) gives zoning ordinances the same status as master plans.) Therefore, zoning ordinances that provide for "alternative zoning" may be used in preparing wastewater management plans. However, such wastewater management plans must still map future wastewater service areas in accordance with N.J.A.C. 7:15-5.18(c).

225. COMMENT: One commenter appreciates the Department's efforts to promote implementation of county and municipal master plans by channeling development towards designated sewer service areas. A second commenter said that requiring the municipal wastewater management plans to be consistent with municipal master plans is an excellent provision in that it shows some consistency between wastewater management planning and the actual zone in a township.

RESPONSE: The Department appreciates the support of the commenters, but notes that the Department has changed N.J.A.C. 7:15-5.18(b) as discussed in the Department response to comment number 226.

226. COMMENT: One commenter said that N.J.A.C. 7:15-5.18(b)2 promotes piecemeal growth and spot zoning and should be deleted. Instead of encouraging development that is not in compliance with municipal master plans, N.J.A.C. 7:15-5.18(b)3 should discourage such divergence by upholding the master plan. In N.J.A.C. 7:15-5.18(b)5, the Department should require that the plan list inconsistencies with the master plan, but should allow these inconsistencies only in emergencies.

A second commenter objects to the qualifications and exceptions listed in N.J.A.C. 7:15-5.18(b)2, 3 and 5, whose intent appears to nullify municipal master planning in favor of spot zoning and variances in order to permit 201 agencies to design for maximum development, thus permitting pipe sizes and locations to be growth determinants. Municipal master plans, not sewer pipes, should be the guiding documents, and the Department should require 201 agencies to use these documents. The common practice of some 201 agencies of promoting land development to create new customers should be eliminated through strict adherence to regional water quality management plans and to municipal master plans.

RESPONSE: The Water Quality Planning Act expressly requires that the Department and the designated planning agencies shall "coordinate and integrate" WQM planning with "related . . . regional and local comprehensive land use, functional and other relevant planning activities,

## ADOPTIONS

programs and policies" (see N.J.S.A. 58:11A-2(a) and N.J.S.A. 58:11A-7). Because of the importance of zoning ordinances and zoning variances in land use management, and because of the principle that planning embraces zoning and that zoning is a means of implementing land use plans, the Department believes that zoning is within the scope of this coordination and integration requirement. Municipal master plans are an important component of land use planning, but they are not the only important component. Given the significance of zoning under the Municipal Land Use Law, and given the provision in that statute which expressly authorizes municipal governing bodies to adopt zoning ordinances that are inconsistent with municipal master plans (N.J.S.A. 40:55D-62(a)), the Department is not obligated to exclude zoning ordinances and zoning variances from the factors that may be used under N.J.A.C. 7:15-5.18(b) in the preparation of wastewater management plans.

Indeed, it is the zoning ordinances and the zoning variance, rather than the master plan, that defines, under the Municipal Land Use Law, the allowable type, density, and intensity of land use. Moreover, the land use information in zoning ordinances is sometimes more detailed and specific than the land use information in master plans. For these reasons, the Department has changed N.J.A.C. 7:15-5.18(b) to allow either zoning ordinances or master plans to be used in preparing wastewater management plans. (As proposed, N.J.A.C. 7:15-5.18(b) required the use of master plans, but allowed some use of zoning ordinances as specified in proposed N.J.A.C. 7:15-5.18(b)2. As adopted, N.J.A.C. 7:15-5.18(b) gives zoning ordinances the same status as master plans.)

As part of the changes to N.J.A.C. 7:15-5.18(b), what was proposed as N.J.A.C. 7:15-5.18(b)2, (b)3, and (b)5 has been adopted, with some changes, as N.J.A.C. 7:15-5.18(b)5, (b)6, and (b)8, respectively. Because N.J.A.C. 7:15-5.18(b)1 and (b)2 (as adopted) allow either zoning ordinances or master plans to be used in preparing wastewater management plans, N.J.A.C. 7:15-5.18(b)5 (as adopted) groups zoning ordinances with master plans rather than with zoning variances, and the references to master plans in N.J.A.C. 7:15-5.18(b)6 and (b)8 are accompanied by parallel references to zoning ordinances.

The use of zoning ordinances and zoning variances under N.J.A.C. 7:15-5.18(b)1 and (b)5, the use of subdivision or site plan approvals under N.J.A.C. 7:15-5.18(b)6, and the use of "other compelling reasons" under N.J.A.C. 7:15-5.18(b)8 do not promote or favor "spot zoning". The phrase "spot zoning" refers to the illegal use of the zoning power to benefit particular private interests rather than the collective interests of the community. The Department has no intent or authority to promote or favor illegal zoning. However, the decision as to whether a particular municipality has engaged in illegal "spot zoning" lies with the courts and not with the Department. The Municipal Land Use Law expressly authorizes municipal governing bodies to adopt zoning ordinances that are inconsistent with municipal master plans (see N.J.S.A. 40:55D-62(a)). Such ordinances do not necessarily constitute "spot zoning". The granting of zoning variances that comply with N.J.S.A. 40:55D-70 does not constitute "spot zoning". The granting of subdivision or site plan approvals does not constitute zoning of any kind, much less "spot zoning". Because zoning ordinances and zoning variances are addressed in N.J.A.C. 7:15-5.18(b)1 and (b)5, the "other compelling reasons" in N.J.A.C. 7:15-5.18(b)8 cannot include "spot zoning" or any other kind of zoning.

Zoning variances and "spot zoning" are not in the same class. "Spot zoning" is always illegal. In contrast, the Municipal Land Use Law expressly authorizes the granting of variances (see N.J.S.A. 40:55D-70). Indeed, the Municipal Land Use Law expressly requires that upon the adoption of a zoning ordinance, the governing body shall create a zoning board of adjustment unless the municipality has provided that the municipal planning board shall exercise all the powers of a board of adjustment (N.J.S.A. 40:55D-69). Lawfully granted variances serve legitimate functions, including the promotion of the general welfare and the provision of relief from zoning ordinances that would be unconstitutional as applied to particular properties. Given the significance of variances under the Municipal Land Use Law, the recognition of variances in N.J.A.C. 7:15-5.18(b)5 is not improper. The Department recognizes that the power to grant variances is subject to abuse. However, the decision as to whether any particular variance is illegal lies with the courts and not with the Department.

Because of the importance of subdivision and site plan control in land use management, and because such control is a means of implementing land use plans, the Department believes that, like zoning, subdivision and site plan control is within the scope of coordination and integration requirement of the Water Quality Planning Act (see N.J.S.A. 58:11A-2 and N.J.S.A. 58:11A-7). Municipal master plans are an important compo-

## ENVIRONMENTAL PROTECTION

nent of land use planning, but they are not the only important component. It is entirely possible under the Municipal Land Use Law for subdivisions and site plans to be lawfully approved even through such subdivisions and site plans are inconsistent with the current municipal master plan. (For example, such approval may have occurred before the current master plan was adopted, or such approval may have conformed, under N.J.S.A. 40:55D-38(d), to a zoning ordinance that was lawfully inconsistent with the current master plan under N.J.S.A. 40:55D-62(a).) Given the significance of subdivision and site plan approvals under Municipal Land Use Law, including the substantial rights that such approvals confer upon applicants or developers under such provisions as N.J.S.A. 40:55D-46.1(c), N.J.S.A. 40:55D-47, N.J.S.A. 40:55D-49, and N.J.S.A. 49:55D-52, the requirement in N.J.A.C. 7:15-5.18(b)6 that such approvals be used in the preparation of wastewater management plans is not improper.

The Department does not agree that N.J.A.C. 7:15-5.18(b)8 should allow wastewater management plans to be inconsistent with master plans only in emergencies. There are other compelling reasons, besides emergencies, that may justify such inconsistency. One example would be where master plans include sewerage provisions that do not provide for cost-effective, environmentally sound wastewater management, as required by N.J.A.C. 7:15-5.18(a)1.

As discussed in N.J.A.C. 7:15-5.3(e) and in the Department response to comment number 187, a wastewater management plan is not a 201 Facilities Plan, and a wastewater management planning agency may or may not be a 201 facilities planning agency. Zoning and subdivision and site plan approvals are recognized in N.J.A.C. 7:15-5.18(b)1, (b)5, and (b)6 because they are important components of land use planning under the Municipal Land Use Law, not in order to allow 201 planning agencies to design for maximum development. Municipal master plans are recognized in N.J.A.C. 7:15-5.18(b)2, but the Department is not obligated to elevate them to a supreme status that they do not have under the Municipal Land Use Law. The mere desire of a 201 planning agency to obtain new customers and design for maximum development would not qualify as a "compelling reason" under N.J.A.C. 7:15-5.18(b)8. (It is possible, however, that it could be shown that obtaining additional customers for a particular DTW is clearly necessary for cost-effective, environmentally sound wastewater management, and that such necessity qualifies as a "compelling reason".)

7:15-5.19 Individual septic systems and other small domestic treatment works in sewer service areas

227. COMMENT: The commenter applauds the connection guarantees and the option which allows wastewater management plans to require installation of collection system sewers for use when sewer service becomes available.

RESPONSE: The Department appreciates the commenter's support.

228. COMMENT: In N.J.A.C. 7:15-5.19(b), define the term "adequate guarantees". What criteria are used?

RESPONSE: The Department has reconsidered N.J.A.C. 7:15-5.19(b) and determined that term "adequate" should be replaced by the term "legally enforceable". An example of this term would be special conditions in a permit for a facility.

7:15-5.20 Specifications for text and graphs

229. COMMENT: The Department's wastewater management plan requirements dated June 19, 1986 state that "Environmentally constrained areas need not be specifically indicated on this map as to type (i.e. wetlands, parks and preserves)", and that "It shall be noted in the WMP, and on this map, that development requiring sewer or septic service will not be permitted in environmentally constrained areas . . . and that this exclusion applies to all infrastructure associated with the proposed development including sewers, roads, stormwater, recreational, and other structural facilities". Why was this language deleted from the proposed rules? N.J.A.C. 7:15-5.20(b)3 should be replaced with the much clearer language quoted above.

RESPONSE: The Department requirements quoted above were superseded in October 1986 and do not represent present Department policy. Specifically, the language quoted by the commenter is from the Department's Technical Resource Document entitled "Requirements for Preparing Wastewater Management Plans", dated June 19, 1986. This section of the Technical Resource Document was substantially revised on October 29, 1986 to recognize that the construction of some infrastructure in freshwater wetlands is unavoidable, and to eliminate conflicting or duplicate regulation of activities in other environmentally constrained areas, such as flood hazard areas. Specifically, this section of the Technical Resource Document was revised to include the following statements:

"Development requiring sewer or septic service shall not be permitted in freshwater wetlands. This exclusion also applies to all infrastructure associated with the proposed development . . . with the exception of those facilities determined by the Department to be unavoidable. Development in other environmentally constrained areas is permitted in accordance with the appropriate laws or regulations." On January 29, 1987, this section was changed by replacing the phrase "sewer or septic service" with "wastewater facilities."

The freshwater wetlands language in the January 29, 1987 Technical Resources Document was not used in N.J.A.C. 7:15-5.20(b)3 because of the enactment of the Freshwater Wetlands Protection Act in July 1987. Because that Act preempts local regulation of activities in freshwater wetlands, and because that Act requires the Department to consolidate the processing of freshwater wetlands related aspects of Department regulatory programs, it was no longer appropriate to require freshwater wetlands restrictions in new wastewater management plans. In general, wastewater management plans should not establish regulatory requirements for environmentally constrained areas that could duplicate or conflict with regulatory requirements established under statutes or rules governing specific environmental features. Also, the Department believes that either rules or WQM plan amendments proposed on an areawide scale, and not wastewater management plans, are the appropriate vehicles for establishing new programs to protect additional environmental features. However, as the Department believes that wastewater management plans should provide information about certain environmental features, N.J.A.C. 7:15-5.17 and 5.20(b)3 require the provision of such information.

#### 7:15-5.22 Consultation and endorsements for wastewater management plans

230. COMMENT: It took one commenter, a municipal sewerage authority, approximately two years and five submissions to obtain an endorsement of their wastewater management plan from a regional sewerage authority. If each endorsement took two years to obtain, there would be no development in the commenter's municipality. The commenter does not want to become the political pawn of the regional authority. In order to have a comprehensive set of plans and rules which all concerned can live by in the future, the political manipulation of authorities has to be addressed, and either a clearing house or something else must be set up if endorsements cannot be obtained.

RESPONSE: N.J.A.C. 7:15-5.22(b) provides that endorsements for wastewater management plans shall be requested under N.J.A.C. 7:15-3.4. Under N.J.A.C. 7:15-3.4(g)4 (or under parallel provisions in the WQM plan amendment procedure of a designated planning agency that, as required by N.J.A.C. 7:15-3.4(d), is consistent with N.J.A.C. 7:15-3.4(g)4), affected or interested parties are allotted 60 days to respond to a request for an endorsement of a proposed WQM plan amendment. N.J.A.C. 7:15-3.4(g)4iv provides that the reasons, if known, for inaction on or denial of endorsement requests shall be taken into consideration in decisions about the proposed WQM plan amendment. However, as discussed in the Department response to comments number 107, 108, and 110, a WQM plan amendment may be adopted by the Governor or his designee even though requested endorsements are not obtained. Therefore, the concerns of the commenter regarding delays in obtaining endorsements for WQM plan amendments are addressed in N.J.A.C. 7:15-5.22(b) and N.J.A.C. 7:15-3.4.

231. COMMENT: How would the United States Fish and Wildlife Service (USFWS) be able to input into a municipal wastewater management plan? Would the USFWS be allowed or is there any authority given to the USFWS to be a part of the plan formulation as it may affect USFWS lands, such as the Great Swamp National Wildlife Refuge? That refuge sits in three or four municipalities and two counties; how does the USFWS ensure that it is contacted and involved in the process?

RESPONSE: The USFWS may directly contact those agencies with wastewater management plan responsibility for areas containing lands under USFWS jurisdiction in order to provide their input during the preparation of the wastewater management plans. The agencies with wastewater management plan responsibility and the schedules for submitting wastewater management plans are identified under N.J.A.C. 7:15-5.4, through 5.13 and under N.J.A.C. 7:15-5.23, respectively. Also, the public comment periods for proposed N.J.A.C. WQM plan amendments are open to the USFWS. Public participation requirements in the wastewater management planning process are discussed in more detail in the Department response to comment number 235.

232. COMMENT: Under N.J.A.C. 7:15-5.22(a), all parties responsible for a wastewater management plan or amendment must notify and

seek comments from, and offer to confer with, various entities. The BPU should be included whenever a public utility is involved in a plan.

RESPONSE: The BPU may directly contact those agencies with wastewater management plan responsibility for areas that contain BPU-regulated utilities, in order to provide BPU input during the preparation of the wastewater management plans. The wastewater management planning agencies and the schedules for submitting wastewater management plans are identified under N.J.A.C. 7:15-5.4 through 5.13 and under N.J.A.C. 7:15-5.23, respectively. Also, the public comment periods under N.J.A.C. 7:15-5.4 for proposed WQM plan amendments, including wastewater management plans, are open to the BPU. The public participation requirements in the wastewater management planning process are discussed in more detail in the Department response to comment number 235.

233. COMMENT: N.J.A.C. 7:15-5.22(b) should require the solicitation of endorsements from public sewer utilities as well as governmental units.

RESPONSE: The Department has reconsidered N.J.A.C. 7:15-5.22(b) and has decided to decrease rather than increase the number of parties from whom endorsements shall generally be requested. Specifically, the Department has changed N.J.A.C. 7:15-5.22(b) by replacing "governmental units" with "governmental entities and sewerage agencies". The terms "governmental entity" and "sewerage agency" are defined in N.J.A.C. 7:15-1.5 and do not include all "governmental units" as that term is used in N.J.A.C. 7:15-5.22(a). For example, municipal planning boards are "governmental units" which must be notified under N.J.A.C. 7:15-5.22(a), but are not "governmental entities" from whom endorsements may be requested under N.J.A.C. 7:15-5.22(b). This change is consistent with N.J.A.C. 7:15-3.4(d)3 and (g)4i which, as adopted, identify "governmental entities" and "sewerage agencies" (rather than "governmental units") as potential endorsing parties for WQM plan amendments. This change is also consistent with Department practice, which has been to require endorsements to be requested from municipal governing bodies but not from municipal planning boards.

As discussed in the Department response to comment number 91, the Department has changed N.J.A.C. 7:15-3.4(d)3 and (g)4i to identify BPU-regulated sewer utilities as potential endorsing parties for WQM plan amendments, including wastewater management plans. However, BPU-regulated sewer utilities do not have the same powers and responsibilities as governmental entities or sewerage agencies, and the Department believes that the decision to request endorsements from such utilities should be made on a case-by-case basis (depending on the scope of the utility's operations and the contents of the proposed wastewater management plan), and should not be generally required under N.J.A.C. 7:15-5.22(b).

234. COMMENT: Do the rules give direction on how the public can be involved in the formulation of municipal wastewater management plans? Or do people have to arrange for such involvement through the municipalities? Do the rules require public involvement? Does public involvement occur, basically, through existing public involvement procedures?

RESPONSE: The public participation component of the wastewater management planning process is provided through the proposal of these rules, through public participation via local procedures during the preparation of the wastewater management plan, and through the WQM plan amendment process to adopt a proposed wastewater management plan (see N.J.A.C. 7:15-3.4). Public participation in the wastewater management planning process is addressed in more detail in the Department response to comment number 235.

235. COMMENT: The following paragraphs summarize the objections expressed by four commenters to the absence of public participation in wastewater management planning. (Related objections expressed by other commenters are summarized above in the "General Comment" concerning public participation). One commenter said that under N.J.A.C. 7:15-5.22, during preparation of wastewater management plans or amendments, the general public must be notified, their comments sought, and offers made to confer with them. An effective public outreach program must be required. The exclusion of the public in these proposed rules grossly violates the Federal Clean Water Act and provisions for public participation. In addition, the proposed rules should require certified public hearings to be held by 201 agencies with Department review to assure compliance with public participation requirements. A second commenter said that in all of the sections related to the responsibilities of institutions and agencies handling wastewater, no directive is provided regarding the public participation component.

A third commenter said wastewater management planning is critically important to land use in New Jersey. A municipal wastewater management plan is as important as a master plan in directing growth. The State

Development and Redevelopment Plan bases most of its tier designations on whether the area will have sewer service in the future. So public participation must be a very important part of wastewater planning. These rules require municipalities to prepare wastewater management plans, but do not require municipalities to have public hearings or public participation. The public can get involved only at the end of the process by commenting on NJPDES permits, if the public is lucky enough to find the public notices for those permits.

The idea of creating a framework for this critical infrastructure and for the Statewide, areawide, and local plans is critical, but the proposed rules are unsatisfactory. The commenter is not quite sure how the problems can be corrected, but public participation will do much to ensure that municipal planning will be integrated into areawide planning and areawide planning obviously will have to be integrated into State planning. The public must be able to participate in this process.

A fourth commenter said that, under N.J.A.C. 7:15-5.22, those who prepare wastewater management plans should be required to include public participation early in the planning process. Since this plan is even more critical than a master plan, the Department should also require public notice of intent to prepare a municipal wastewater management plan and public hearings by the preparer with adequate time to make changes that reflect public concern. These proposed rules do not acknowledge the critical role wastewater management planning plays in determining regional and community land use. Because this critical infrastructure is basic to growth, full public involvement in the planning process is essential to protect the public interest and investment and to bring regional concerns to bear on each plan.

The absence of public participation requirements in the wastewater management planning program is of vital concern. Because no public notice or hearings are required at the local or state level, such planning is occurring without public review or participation. This serious policy deficiency is especially disturbing in the Great Swamp basin. Any wastewater management decisions in that basin may exacerbate flooding and substantially impair the basin's water resources, the swamp's already overburdened absorptive capacity, and the public interest and investment in a national resource, the Great Swamp National Wildlife Refuge (the first national wilderness area established east of the Mississippi). For several years, the commenter has been active in water quality planning required under the Clean Water Act. The commenter has participated on advisory committees for the Upper Passaic River Basin Wastewater Management Plan and the Great Swamp Water Quality Study. Substantial public moneys are invested in this planning. It is therefore very disturbing that in recent years the Department has offered no opportunity for public participation when these plans are amended.

Considering the absence of such opportunity in the proposed municipal wastewater management planning requirements, how are the Clean Water Act requirements for public participation being satisfied. How is the public investment and interest in water quality planning being protected if public concerns are excluded from municipal wastewater management planning? Will public meetings or hearings be required before decisions are made and conceptual approvals given for projects in the Great Swamp basin? If not, why not?

**RESPONSE:** The rules do not exclude the public from the wastewater management planning process, and do not violate requirements for public participation under the Federal Clean Water Act. Public participation is an important part of wastewater management planning under these rules. N.J.A.C. 7:15-5.3(f), which was proposed as N.J.A.C. 7:15-5.23(d), states that wastewater management plans and amendments thereof are valid only upon their adoption under N.J.A.C. 7:15-3.4 as amendments to the areawide WQM plans. N.J.A.C. 7:15-3.4 contains adequate provisions for public participation in the WQM plan amendment process, including public notice of proposed WQM plan amendments in the New Jersey Register and in newspapers; requests for endorsements of proposed WQM plan amendments from affected governmental entities and sewerage agencies; public comment periods on such amendments; and opportunities for public hearings on such amendments.

Because wastewater management plans are amendments to areawide WQM plans, public notice of proposed wastewater management plans is required under N.J.A.C. 7:15-3.4(d)4 and (g)3. Changes to proposed wastewater management plans may be requested during the public comment period, in accordance with N.J.A.C. 7:15-3.4(d)5 and (g)6. Public hearings on proposed wastewater management plans may be requested in accordance with N.J.A.C. 7:15-3.4(d)5 and (g)7, and public hearings will be held where there is significant interest. Changes to adopted wastewater management plans may be requested by submitting petitions to

amend areawide WQM plans, in accordance with N.J.A.C. 7:15-3.4(d)1 and (g)1.

In addition to the public participation requirements specified in N.J.A.C. 7:15-3.4, further opportunities for public participation in the wastewater management planning process may be provided by governmental entities and sewerage agencies that receive requests to endorse wastewater management plans, and by wastewater management planning agencies during the preparation of such plans. It is true that the rules do not require wastewater management planning agencies to provide such further opportunities (except as required in N.J.A.C. 7:15-5.22). As emphasized above, however, a wastewater management plan is an amendment to an areawide WQM plan, and is not valid until that amendment is adopted by the Governor or his designee. When governmental units submit wastewater management plans or other petitions to amend areawide WQM plans, the Clean Water Act does not require such amendments to be subjected to separate public participation procedures before and after the petition is submitted. The procedure in N.J.A.C. 7:15-3.4 is adequate to satisfy the Clean Water Act.

As discussed in N.J.A.C. 7:15-5.3(e) and in the Department response to comment number 187, a wastewater management plan is not a 201 Facilities Plan, and a wastewater management planning agency may or may not be a 201 facilities planning agency. Also, as N.J.A.C. 7:15-5.4 through 5.7 and N.J.A.C. 7:15-5.8(a) and (e) make clear, not all wastewater management plans are prepared by municipalities, and not all municipalities are required to prepare wastewater management plans.

Wastewater management plans do not determine regional and community land use. Rather, wastewater management plans generally reflect land uses authorized in municipal zoning ordinances or development application decisions, or recommended in county or municipal master plans. Land use decisions reflected in wastewater management plans are made at the municipal or county level (except as provided in N.J.A.C. 7:15-3.6 and 3.7) and are subject to public scrutiny and public participation in accordance with N.J.S.A. 40:27-4, N.J.S.A. 40:49-2 and N.J.S.A. 40:49-2.1, and N.J.S.A. 40:55D-9 through N.J.S.A. 40:55D-17.

The Department has always provided adequate opportunity for public participation in the WQM plan amendment process, in accordance with the Clean Water Act. No amendment to a WQM plan has ever been adopted without public notice and opportunity for public comment. N.J.A.C. 7:15-3.4 provides such opportunities in the Great Swamp basin and everywhere else in the State.

7:15-5.23 Submission and adoption of wastewater management plans

236. COMMENT: Five commenters said that proposed N.J.A.C. 7:15-5.23(a) is vague as to the proper party to whom the wastewater management plan should be submitted for plan amendment. Where a designated planning agency exists, the wastewater management plan should be submitted to that agency.

**RESPONSE:** The Department has reconsidered what was proposed at N.J.A.C. 7:15-5.23, and has determined that most of what was proposed in that section should be deleted. Such deletion serves to eliminate provisions that are redundant to provisions in N.J.A.C. 7:15-3.4, and to simplify the wastewater management planning process by treating wastewater management plans in the same manner as other amendments to areawide WQM plans.

Specifically, the Department has made the following changes. What was proposed at N.J.A.C. 7:15-5.23(d) has been adopted at N.J.A.C. 7:15-5.3(f), which specifies that wastewater management plans are valid only upon their adoption as amendments to areawide WQM plans in accordance with N.J.A.C. 7:15-3.4. Because procedures for amendment of areawide WQM plans are identified under N.J.A.C. 7:15-3.4, what was proposed at N.J.A.C. 7:15-5.23(a) and (b) is redundant and has been deleted. (In accordance with N.J.A.C. 7:15-5.3(c), however, wastewater management plans shall be submitted only by wastewater management planning agencies.) What was proposed at N.J.A.C. 7:15-5.23(c) has also been deleted. Governmental units and other persons that are not wastewater management planning agencies may still prepare amendments to wastewater management plans and seek their adoption as amendments to areawide WQM plans under N.J.A.C. 7:15-3.4. The requirements in N.J.A.C. 7:15-3.4 concerning endorsements are applicable to such amendments. Finally, what was proposed at N.J.A.C. 7:15-5.24 has been adopted, with certain changes discussed elsewhere, at N.J.A.C. 7:15-5.23.

Where a designated planning agency exists and is processing amendments under N.J.A.C. 7:15-3.4(c), petitions to adopt wastewater management plans as amendments to areawide WQM plans shall be submitted to that agency in accordance with N.J.A.C. 7:15-3.4(c). In all other

instances, such petitions shall be submitted to the Department in accordance with N.J.A.C. 7:15-3.4(c) and (g).

237. COMMENT: Five commenters question the use of the word "shall" in proposed N.J.A.C. 7:15-5.23(b). The Department and designated planning agency may deny the amendment request. The quote "shall" can be read to require Department approval.

RESPONSE: For reasons discussed in the Department response to comment number 236, the Department has deleted what was proposed at N.J.A.C. 7:15-5.23(b). (The Department also notes that as proposed, N.J.A.C. 7:15-5.23(b) clearly applied only where the designated planning agency or the Department itself has wastewater management plan responsibility, and that the word "shall" in N.J.A.C. 7:15-5.23(b) clearly applied only to the proposal of WQM plan amendments, and not to the adoption or denial of amendment requests.) Regardless of whether the wastewater management planning agency is the designated planning agency, the Department, or some other governmental unit, the procedures under N.J.A.C. 7:15-3.4 for proposing and adopting wastewater management plans and other amendments to areawide WQM plans still apply.

238. COMMENT: N.J.A.C. 7:15-5.23 appears to set forth a schedule (Table I) for submission of wastewater management plans by governmental units or other persons with wastewater management planning responsibility, where such plans do not now exist. Table I does not appear to be referenced anywhere in N.J.A.C. 7:15-5.23.

RESPONSE: Table I was not part of proposed N.J.A.C. 7:15-5.23. Rather, Table I was part of proposed N.J.A.C. 7:15-5.24(c), which expressly referred to "the following table". However, because the Department has relocated or deleted all of what was proposed at N.J.A.C. 7:15-5.23 (as discussed in the Department response to comment number 236), what was proposed at N.J.A.C. 7:15-5.24 has been adopted, with certain changes, at N.J.A.C. 7:15-5.23. Therefore, Table I is now part of N.J.A.C. 7:15-5.23(c).

7:15-5.24 Schedule for submission of wastewater management plans

239. COMMENT: Requiring municipal wastewater management plans to be updated every six years is a good idea that keeps such plans current with zoning.

RESPONSE: The Department appreciates the commenter's support of N.J.A.C. 7:15-5.23(a), which was proposed at N.J.A.C. 7:15-5.24(a). The Department notes, however, that under N.J.A.C. 7:15-5.18(b), wastewater management plans may be based on factors other than zoning.

240. COMMENT: The schedule for updating a wastewater management plan should be based on the re-issuance of NJPDES permits rather than the county in which that plan is relocated. A recently completed plan would be a useful basis for renewal of the permit. Similarly, the updating period should perhaps be five years rather than six years, since NJPDES permits are issued on a five year reauthorization period.

RESPONSE: The schedule for updating a wastewater management plan is not always based on the county in which that plan is located. Table I in N.J.A.C. 7:15-5.23(c), which establishes a schedule, varying by county, for the initial submission of wastewater management plans, does not apply to wastewater management plans submitted by the governmental units listed in N.J.A.C. 7:15-5.23(b). The purpose of Table I is to stagger the submission of numerous wastewater management plans (approximately 275 are expected) so that the workload of preparing and reviewing such plans is roughly equal each year, thereby providing a more manageable workload for the Department and for consultants to wastewater management planning agencies. Also, because Table I uses county location to establish the submission schedule, and because interested persons can readily identify the county in which a wastewater management plan area is located, Table I reduces uncertainty about the submission schedule.

The six year updating period in N.J.A.C. 7:15-5.23(a) is based on the six year reexamination period required for development regulations and master plans under the Municipal Land Use Law (see N.J.S.A. 40:55D-89). Under N.J.A.C. 7:15-5.18(b), wastewater management plans may be based on land uses authorized or recommended in such regulations or master plans, and the six year updating period in N.J.A.C. 7:15-5.23(a) is intended to facilitate coordination of wastewater management plans with such regulations or master plans.

There are difficulties in basing updating periods on the re-issuance of NJPDES permits. Some wastewater management plan areas may contain no existing DTW that has a NJPDES discharge permit. Other wastewater management plan areas may contain two or more DTW with different NJPDES permit expiration dates. Such factors would introduce into the submission schedule uncertainties that could be resolved only by individual WQM plan amendments or revisions. In some instances, the re-

issuance of a NJPDES permit does not require a change in the wastewater management plan or related permit conditions. However, the Department acknowledges that it may sometimes be desirable to update a wastewater management plan in coordination with the issuance or renewal of a NJPDES permit. In such an instance, an alternative schedule for submission of a wastewater management plan or update may be requested, as provided in N.J.A.C. 7:15-5.23(f)4.

241. COMMENT: The rules force the Passaic Valley Sewerage Commissioners, county utilities authorities, and regional sewerage authorities to submit wastewater management plans for very large areas within twelve months. Since these agencies' plans are the largest and thus the most difficult to complete, these agencies should have a more extended submission schedule. Plans for smaller designated areas, such as municipalities under one square mile, certainly can be submitted in twelve months.

RESPONSE: N.J.A.C. 7:15-5.23(b), proposed at N.J.A.C. 7:15-5.24(b), requires various governmental units, including but not limited to those cited in the comment, to submit wastewater management plans within twelve months. In general, these governmental units have ample wastewater planning experience. The requirements for wastewater management plans are much less detailed than the requirements for 201 Facilities Plans prepared in the past by most of these governmental units. The Department does not believe that, in general, it will be unduly difficult for most of these governmental units to submit wastewater management plans within 12 months. If individual instances arise where such submission is not feasible, alternative schedules for submission may be requested, in accordance with N.J.A.C. 7:15-5.23(f).

Scheduling municipalities to submit wastewater management plans after such plans are submitted by these governmental units is consistent with the way wastewater management plan responsibility is assigned under N.J.A.C. 7:15-5. Under N.J.A.C. 7:15-5.8(e), no municipality has wastewater management plan responsibility in any area for which another governmental unit has wastewater management plan responsibility under N.J.A.C. 7:15-5.4 through 5.8. It will take at least a few months to determine exactly which municipalities have wastewater management planning responsibility under N.J.A.C. 7:15-5.8. Moreover, because many of the governmental units listed under N.J.A.C. 7:15-5.23(b)2 through (b)5 provide wastewater service outside their districts or member municipalities, the wastewater management plan areas of many of these governmental units will expand under N.J.A.C. 7:15-5.11(b). Even if a municipality has initial wastewater management plan responsibility under N.J.A.C. 7:15-5.8, that responsibility may subsequently be assigned to another governmental unit as N.J.A.C. 7:15-5.11(b) is implemented.

By delaying the submission of wastewater management plans by municipalities, Table I in N.J.A.C. 7:15-5.23(c) provides adequate time to determine which municipalities have wastewater management plan responsibility under N.J.A.C. 7:15-5.8, and serves to reduce duplication of wastewater management planning effort (that is, the preparation of a wastewater management plan by a municipality, followed by the addition of that municipality to the wastewater management plan area of another governmental unit).

242. COMMENT: One commenter objects to N.J.A.C. 7:15-5.24(c) which allows certain governmental units to take up to 60 months to submit wastewater management plans. This unfairly denies landowners in areas that will not have such a plan for several years their right to develop land on an equal basis with other landowners. Instead, the Department should require these units to submit these plans immediately, to place all landowners on an equal basis from which to apply for Department permits.

A second commenter said Table I should be deleted since it is unfair and a denial of the right to equal protection of law to discriminate between persons living in different counties, on a matter which will fundamentally affect their ability and right to use their property. Under this Table, for example, a person living in some counties cannot compel a municipality to adopt a wastewater management plan nor anticipate such voluntary adoption for five years, whereas an individual living in certain other counties can compel or anticipate such action after two years. Even a one year delay is unfair, assuming such a plan is a lawful prerequisite to permit application by individual citizens (which it is not). If the plan is a prerequisite, then the planning requirement should have been adopted long ago. It cannot now be superimposed on an existing statutory process to exclude some or all citizens of their right to apply for a NJPDES (or other wastewater) permit.

Under N.J.A.C. 7:15-5.23(c), governmental units or other persons that do not have wastewater management planning responsibility have the right to prepare amendments to wastewater management plans and seek

their adoption as amendments to areawide WQM plans, and the governmental unit responsible for the plan shall be "requested to endorse" such application. While this may be somewhat workable in areas that already have approved wastewater management plans, it does not address the problem of areas without such plans. If adopted at all, the requirement that governmental units have approved wastewater management plans should be effective for all municipalities simultaneously and immediately, and the proposal that a project be specifically included in such a plan as a prerequisite to a permit application should be dropped.

RESPONSE: After evaluating this comment, it is the Department's position that the wastewater management plan submission schedule in N.J.A.C. 7:15-5.23(b) and (c) (proposed at N.J.A.C. 7:15-5.24(b) and (c)) serves a rational purpose, is not unfair, and does not deny equal protection of the laws. The basis for the wastewater management plan requirement in N.J.A.C. 7:15-5.1 was discussed in the Department response to comment number 189.

The purpose of N.J.A.C. 7:15-5.23(b) and (c) is to stagger the submission of numerous wastewater management plans (approximately 275 are expected) so that the workload of preparing and reviewing such plans is roughly equal each year, thereby providing a more manageable workload for the Department and for consultants to wastewater management planning agencies. Requiring all wastewater management plans to be submitted immediately would create an unmanageable workload for the Department, which would have to perform an initial review of these submissions and then process them (in conjunction with designated planning agencies) as proposed amendments to areawide WQM plans. (The contrast with the present workload is evident when it is considered that only 36 amendments to areawide WQM plans were adopted in 1988.) This initial period of concentrated activity would be followed by six years of relative inactivity until the Department received a flood of updated wastewater management plans in accordance with N.J.A.C. 7:15-5.23(a) (proposed at N.J.A.C. 7:15-5.24(a)).

As discussed in the Department response to comment number 241, Table I in N.J.A.C. 7:15-5.23(c) also provides adequate time to determine which municipalities have wastewater management plan responsibility under N.J.A.C. 7:15-5.8, and serves to reduce duplication of wastewater management planning effort. Particular counties were assigned to particular Table I submission periods in order to have a roughly equivalent workload each year, taking into account population projections (rapidly growing counties tend to have more complex wastewater planning issues), the location of the county (Department staff who review wastewater management plans are organized by geographic region), and the presence or absence of county utilities authorities (whose wastewater management plan schedule is governed by N.J.A.C. 7:15-5.23(b) rather than by Table I).

The wastewater management plan submission schedule in N.J.A.C. 7:15-5.23(b) and (c) is not ironclad, however. As discussed in the Department response to comment number 193, wastewater management plans may be submitted ahead of that schedule, in accordance with N.J.A.C. 7:15-5.23(f), (g), and (j).

243. COMMENT: In N.J.A.C. 7:15-5.24(d), what do the words "already addressed" mean?

RESPONSE: In N.J.A.C. 7:15-5.23(d), which was proposed at N.J.A.C. 7:15-5.24(d), the words "already addressed by" are equivalent to "within the geographic scope of". Every wastewater management plan referred to in N.J.A.C. 7:15-5.2 contains maps that specify the geographic scope of that plan.

244. COMMENT: Delete N.J.A.C. 7:15-5.24(f)5 as it is unfair to penalize property owners and permit applicants by delaying the submission of wastewater management plans because the Department is understaffed or unable to cope with the workload; one solution is to hire more staff or subcontract for services.

RESPONSE: N.J.A.C. 7:15-5.23(f)5, which was proposed at N.J.A.C. 7:15-5.24(f)5, is warranted by practical considerations of program administration. N.J.A.C. 7:15-5.23(b) and (c) identify which wastewater management plans should be submitted during specified 12 month periods, but does not regulate the time when such plans are submitted within those periods. Therefore, the workload associated with reviewing submitted wastewater management plans contains an element of unpredictability that may create difficulties in the hiring of staff or in contracting for services.

Many programs administered by the Department require payment of fees to the Department to support such programs. In contrast, N.J.A.C. 7:15 does not require payment of fees to support the Department's efforts in reviewing wastewater management plans and other requests to amend WQM plan amendments. N.J.A.C. 7:15-5.23(f)5 provides for more effi-

cient use of Department staff and is less expensive to the taxpayer than are the actions suggested by the commenter. In practice, the Department will be as fair in implementing this provision as is practicable. However, it is not expected that this provision will have to be exercised often, if not at all.

245. COMMENT: In N.J.A.C. 7:15-5.24(i), does the word "updates" refer to updated material or a completely revised plan?

RESPONSE: In N.J.A.C. 7:15-5.23(i), which was proposed at N.J.A.C. 7:15-5.24(i), the word "updates" refers to the updated wastewater management plan whose submission is required by N.J.A.C. 7:15-5.23(a). The updating in such plans must be comprehensive, as required by N.J.A.C. 7:15-5.23(i) through (i)3. The word "updates" does not refer to less comprehensive amendments to wastewater management plans, that is, amendments that do not satisfy all of the requirements in N.J.A.C. 7:15-5.23(i)1 through (i)3. Such amendments may be proposed and adopted under N.J.A.C. 7:15-3.4, but do not satisfy the requirements in N.J.A.C. 7:15-5.23(a) for an updated wastewater management plan.

#### Department Initiated Changes

1. In order to treat municipal authorities created by two or more municipalities in the same manner as sewerage authorities created by two or more municipalities, the term "regional sewerage authority" has been changed to "regional authority" in N.J.A.C. 7:15-1.5, 7:15-5.6(e)2, and 7:15-5.23(b)4 (proposed at N.J.A.C. 7:15-5.24(b)4). The adopted definition of "Regional authority" in N.J.A.C. 7:15-1.5 cites N.J.S.A. 40:14B-5 as well as N.J.S.A. 40:14A-4(c).

2. In the definition of "Revisions" in N.J.A.C. 7:15-1.5, the citation to the referenced subsection has been corrected to read "N.J.A.C. 7:15-3.5(b)".

3. The term "Statewide Plan" has been corrected to read "Statewide WQM Plan" in the second sentence of N.J.A.C. 7:15-2.2(a), and the term "Statewide Water Quality Program Plan" has been corrected to read "Statewide Water Quality Management Program Plan" in the note within that subsection.

4. In N.J.A.C. 7:15-3.2(c)6, the phrase "more than one" has been changed to "two or more" as a grammatical correction. In N.J.A.C. 7:15-3.2(c)6i, the phrase "ceased to be consistent or not inconsistent" has been changed to "become inconsistent" in order to shorten this subparagraph and to eliminate the term "not inconsistent" (see the Department response to comment number 68).

5. In order to ensure that public notices of proposed WQM plan amendments are accurate and follow a common format, N.J.A.C. 7:15-3.4(g)3 has been changed to require the Department to provide the text of the public notice that shall be published by the applicant.

6. In N.J.A.C. 7:15-3.4(g)9, the requirement that the Governor or his designee render a final decision within specified time periods has been eliminated. Because the Department is a State agency under the supervision of the Governor, it is not appropriate for N.J.A.C. 7:15-3.4(g)9 to establish a mandatory deadline for decisions by the Governor or his designee.

7. In N.J.A.C. 7:15-3.4(h)2ii and iii, the phrase "to the BWQP" has been inserted after "Submit written requests" in order to identify the Department unit to which interested parties shall submit requests for extended comment periods and public hearings. In N.J.A.C. 7:15-3.4(h)2ii, the phrase "that the public comment period be extended" has been changed to "that the Department extend the public comment period" in order to make it more clear that it is the Department that decides whether the comment period is extended.

8. In the last sentence of N.J.A.C. 7:15-3.4(i), the reference to N.J.A.C. 7:15-3.4(c) has been deleted. Because N.J.A.C. 7:15-3.4(c) provides that WQM plan amendments whose specific purpose is to establish effluent limitations or schedules of compliance shall be processed only by the Department, and because the Department procedure for amendment of areawide WQM plans is set forth in N.J.A.C. 7:15-3.4(g), a separate reference to N.J.A.C. 7:15-3.4(c) is unnecessary in this sentence.

9. In N.J.A.C. 7:15-3.4(j), the citation to the USEPA regulation has been corrected to read "40 CFR 130.7(d)".

10. In N.J.A.C. 7:15-3.6(c), the conjunction "and" has been deleted from the phrase "and the Department's Coastal Management Program" for clarity.

11. Because the Department has not adopted N.J.A.C. 7:14C, the Department has changed N.J.A.C. 7:15-4.1(c)2 by replacing the phrase "as may be required in N.J.A.C. 7:14C" with the phrase "as required in Department rules on sludge management adopted pursuant to N.J.S.A. 13:1E-1 et seq."

N.J.A.C. 7:15-4.1(d) has been added to provide that a school district shall not be the sole permittee or co-permittee under N.J.A.C. 7:14A for any DTW that serves any property other than property of that school district. It is inappropriate for school districts to either provide sewer service or to be co-permittee for any private development as it may create a situation whereby a school board, whose principal function is to provide educational services, may have to act in the capacity of a sewerage utility. It is doubtful that this function was ever contemplated in the establishment of these boards.

As adopted, N.J.A.C. 7:15-4.1 provides that the Department shall not "issue a permit under N.J.A.C. 7:14A" for specified new or expanded DTW "unless a governmental entity or sewerage agency is either the sole permittee or co-permittee under N.J.A.C. 7:14A for that DTW". N.J.A.C. 7:14A prescribes procedures and policies for implementation and operation of the New Jersey Pollutant Discharge Elimination System (NJPDES) permit program. N.J.A.C. 7:14A-2.1 sets forth procedures required to apply for a NJPDES permit. Because the subject matter of N.J.A.C. 7:15-4.1 is closely related to applications for NJPDES permits under N.J.A.C. 7:14A-2.1, the rule which the Department is adopting at N.J.A.C. 7:15-4.1 is also being codified at N.J.A.C. 7:14A-2.1(l) through (o).

Terms that are defined in adopted N.J.A.C. 7:15-1.5 and used in N.J.A.C. 7:15-4.1 and N.J.A.C. 7:14A-2.1(l) through (o) include "commercial unit", "governmental entity", and "sewerage agency". The definitions of "governmental entity" and "sewerage agency", in turn, use some additional terms that are also defined in adopted N.J.A.C. 7:15-1.5: "joint meeting", "municipal authority", "municipal government", "Passaic Valley Sewerage Commissioners", and "sewerage authority". Because of the close relationship between these eight terms and the rule being codified at N.J.A.C. 7:14A-2.1(l) through (o), the Department is codifying the definitions of these eight terms in N.J.A.C. 7:14A-1.9 as well as adopting these definitions in N.J.A.C. 7:15-1.5. Both N.J.A.C. 7:14A and N.J.A.C. 7:15 are adopted under the authority of N.J.S.A. 13:1D-1 et seq., N.J.S.A. 58:10A-1 et seq., and N.J.S.A. 58:11A-1 et seq.

As indicated by N.J.A.C. 7:15-4.1(a) and N.J.A.C. 7:14A-2.1(l), the term "permit under N.J.A.C. 7:14A" in the opening clause of N.J.A.C. 7:15-4.1(a) and N.J.A.C. 7:14A-2.1(l) is broad in scope, and includes "treatment works approvals" (as defined in N.J.A.C. 7:14A-1.9) as well as NJPDES discharge permits.

12. In N.J.A.C. 7:15-4.3(a)1, the phrase "require a NJPDES discharge permit" has been deleted in recognition of the fact that certain treatment works, other than sewers and pumping stations, treat 2,000 gallons per day or more of wastewater, but do not require a NJPDES discharge permit. This change is intended to provide a consistent basis for review of wastewater treatment facilities based upon treatment capacity rather than the permit required.

13. In N.J.A.C. 7:15-5.1(b), the citation to the referenced subsection has been corrected to "(a) above".

14. Because N.J.A.C. 7:15-5.2 may be in effect for many years, the word "submitted" has been substituted for the phrase "recently prepared" in the title of that section.

15. In order to prevent confusion between "wastewater management plan areas" identified under N.J.A.C. 7:15-5 and "planning areas" identified under the recently adopted Department rules concerning environmental assessment requirements for State assisted wastewater treatment facilities, N.J.A.C. 7:15-5.3(e) has been expanded to provide that the identification of wastewater management plan areas does not establish or change the designation of "planning areas" as defined in N.J.A.C. 7:22-10.1.

16. In N.J.A.C. 7:15-5.8(b)4, the citation to the referenced statute has been corrected to read "N.J.S.A. 40:63-52".

17. Because N.J.A.C. 7:15-5.8(b)1, 2, 8, 13, 14, and 15 do not include all of the activities that are listed in N.J.A.C. 7:15-5.8(b) but that could meet one or more criteria in N.J.A.C. 7:15-5.8(c), the enumeration in N.J.A.C. 7:15-5.8(c) of specific paragraphs in N.J.A.C. 7:15-5.8(b) has been deleted.

18. Because the term "sewerage" is sometimes applied to activities that pertain solely to stormwater (see, for example, the references to "sewerage" and "storm sewers" in N.J.S.A. 40:63-1), because wastewater management plans are required under N.J.A.C. 7:15-5.18 to address domestic wastewater rather than stormwater, and because provisions concerning stormwater management plans are contained in statutes not mentioned in N.J.A.C. 7:15-5.8(b) (for example, N.J.S.A. 40:55D-93 et seq. and N.J.S.A. 58:16A-55.4), N.J.A.C. 7:15-5.8(c)3 has been added to provide that activities that pertain solely to stormwater shall not be considered "sewerage-related functions" under N.J.A.C. 7:15-5.8.

19. In N.J.A.C. 7:15-5.9(c), the term "of" has been corrected to "or".

20. Because N.J.A.C. 7:15-5.13 provides that WQM plan revisions may not only transfer wastewater management plan responsibility from one agency to another, but also establish such responsibility where no agency previously had such responsibility, the term "revisions" has been substituted for the term "transfers" in N.J.A.C. 7:15-5.9(d)1 and (d)2.

21. Because industrial wastewater can sometimes be treated at DTW, and because some industrial treatment works serve property other than the property on which such treatment works are located, knowledge of existing industrial treatment works can sometimes be useful in the planning of future DTW. Therefore, N.J.A.C. 7:15-5.15, 5.16 and 5.20 have been changed to require wastewater management plans to include maps and descriptions concerning certain existing industrial treatment works. This change is consistent with current Department practice regarding wastewater management plans.

22. In N.J.A.C. 7:15-5.16(a)3, the phrase "requires a NJPDES discharge permit" has been deleted in order to require wastewater management plans to identify certain existing treatment works, other than sewers and pumping stations, that have a design capacity of 2,000 gallons per day or larger, but that do not require a NJPDES discharge permit. This change is consistent with current Department practice regarding wastewater management plans.

23. The requirement in N.J.A.C. 7:15-5.16(b)4 and 5.18(d)4 that wastewater management plans identify the latitude and longitude of wastewater discharges has been deleted. Users of wastewater management plans can determine such latitudes and longitudes from the mapping required under N.J.A.C. 7:15-5.16(a)4 and 5.18(c)2.

24. The phrase "if any" has been inserted after "NJPDES discharge permit number" in N.J.A.C. 7:15-5.16(b)4, to recognize the possibility that some existing discharges may not have NJPDES discharge permit numbers.

25. The requirement in N.J.A.C. 7:15-5.16(b)9 that wastewater management plans identify the treatment process of existing DTW has been deleted. In general, wastewater management plans do not identify recommended changes to treatment processes, so information about existing treatment processes has limited value. This deletion is consistent with current Department practice regarding wastewater management plans.

26. N.J.A.C. 7:15-5.16(b)7, (b)8, (c)2, and (c)3, and N.J.A.C. 7:15-5.18(d)7, (e)2, and (e)3, have been changed to require estimates of population and wastewater flow to be disaggregated by municipality. Such disaggregation will help to document the basis for estimates of future wastewater flow. Such disaggregation will also assist reviewers of proposed wastewater management plans in determining whether wastewater management plans are properly related to zoning ordinances or master plans in accordance with N.J.A.C. 7:15-5.18(b), and assist municipalities and their residents in assessing proposed wastewater management plans. This change is consistent with current Department practice regarding wastewater management plans.

Because disaggregation of existing flow by municipality or land use is sometimes not possible using readily available data, N.J.A.C. 7:15-5.16(d) has been changed to provide that the Department may waive such disaggregation for particular treatment works. (The subject of disaggregation is further discussed in statements below concerning changes to N.J.A.C. 7:15-5.18(g) and (h).) What was proposed at N.J.A.C. 7:15-5.16(d) and (e) has been codified at N.J.A.C. 7:15-5.16(e) and (f), respectively.

27. In order to assist reviewers of proposed wastewater management plans, N.J.A.C. 7:15-5.18(b)3 has been changed to provide that when wastewater management plans are based on zoning ordinances or master plans, the documentation for such wastewater management plans shall include maps and other pertinent information from such ordinances or master plans. This change is consistent with current Department practice regarding wastewater management plans.

28. In N.J.A.C. 7:15-5.18(c)1, the term "waste water" has been corrected to read "wastewater".

29. In N.J.A.C. 7:15-5.18(c)6ii, the word "direct" has been inserted before "discharge", and the phrase "or onto the land surface" has been inserted after "water". These changes were made in order to make the terminology in N.J.A.C. 7:15-5.18(c)6ii consistent with the terminology in N.J.A.C. 7:15-4.3(a)1i, 4.4(a)2, 5.16(a)3i, and 5.18(c)1i.

30. As evident in N.J.A.C. 7:14A-12.4(a)3 and in N.J.A.C. 7:15-4.3(a)1ii, 4.4(a)2, and 5.16(a)3ii, the Department uses a 2,000 gpd criterion to distinguish categories of treatment works that are subject to different regulatory requirements. In order to better recognize this criterion in wastewater management plans, N.J.A.C. 7:15-5.18(c)7 has been added to require such plans to depict areas, if any, that would be served only by DTW that would have a design capacity of less than 2,000

gallons per day. Such small DTW often require different management techniques and serve less intensive land uses than do larger DTW. This change is consistent with current Department practice regarding wastewater management plans.

31. The requirement in N.J.A.C. 7:15-5.18(d)8 and (e)3 that wastewater management plans estimate future infiltration/inflow has been deleted. Such estimation often requires costly and detailed engineering analysis which the Department does not generally seek to require of wastewater management planning agencies at this time. This deletion is consistent with current Department practice regarding wastewater management plans.

32. The requirement in N.J.A.C. 7:15-5.18(d)9 that wastewater management plans identify the future design capacity of DTW has been deleted. Proper identification of future design capacity often requires consideration of peak wastewater flows or other engineering factors that can be addressed more suitably in the administration of permit or financial assistance programs under N.J.A.C. 7:14A or N.J.A.C. 7:22. Notwithstanding the policy which was contained in proposed N.J.A.C. 7:15-5.18(g), the identification of future design capacity in wastewater management plans could still confuse applicants or other members of the public when design capacity subsequently needs to be identified under N.J.A.C. 7:14A or N.J.A.C. 7:22. This deletion is consistent with current Department practice regarding wastewater management plans.

33. To assist reviewers of proposed wastewater management plans and other interested persons, N.J.A.C. 7:15-5.18(f) has been changed to require that wastewater management plans document the basis for estimated future wastewater flows attributed to residential, commercial, and industrial sources.

34. The policy which was contained in proposed N.J.A.C. 7:15-5.18(g) has been deleted because N.J.A.C. 7:15-5.18(d)9, which required identification of design capacity, has been deleted. (Proposed N.J.A.C. 7:15-5.18(g) referred erroneously to N.J.A.C. 7:15-5.18(d)10 rather than to N.J.A.C. 7:15-5.18(d)9.)

35. N.J.A.C. 7:15-5.18(g) as adopted provides that unless expressly stated otherwise in the wastewater management plan, disaggregations in that plan of future wastewater flows by municipality or land use shall not constitute legally enforceable flow allocations. This policy will prevent confusion about the legal significance of such disaggregations, and also addresses existing concerns with the present wastewater management program.

36. N.J.A.C. 7:15-5.18(h) has been changed to provide that if the Department has waived under N.J.A.C. 7:15-5.16(d) the requirement for disaggregation of existing flow to a DTW, then the disaggregation of future flow to that DTW shall be limited to disaggregation of future changes in flow to that DTW. Because total future flow can be considered to be the sum of existing flow and future changes to that flow, it is generally impossible to disaggregate total future flow if existing flow is not disaggregated. Disaggregation of future changes in flow is still possible, however. What was proposed at N.J.A.C. 7:15-5.18(h) has been codified at N.J.A.C. 7:15-5.18(i).

37. The phrase "some or all" in N.J.A.C. 7:15-5.19(a) has been deleted as unnecessary. Even without this phrase, a wastewater management plan may apply this subsection's requirement for collection system sewers to all of the DTW identified in this subsection, or to only some of those DTW.

The phrase "some or all" in N.J.A.C. 7:15-5.19(b) has been deleted in order to make N.J.A.C. 7:15-5.19(b) consistent with N.J.A.C. 7:15-4.4(b), which requires individual subsurface sewage disposal systems to have legally enforceable guarantees to connect with sewer service when it becomes available.

38. In order to promote rational delineation of the boundaries of future wastewater service areas, N.J.A.C. 7:15-5.20(b)2 has been changed to provide that, wherever feasible, such boundaries shall coincide with recognizable geographic or political features.

39. Because alternative schedules for submission of wastewater management plans may be established under N.J.A.C. 7:15-5.23(g), a reference to that subsection has been added to N.J.A.C. 7:15-5.23(a). (N.J.A.C. 7:15-5.23(a) and (g) were proposed at N.J.A.C. 7:15-5.24(a) and (g), respectively.)

40. In order to emphasize that updated wastewater management plans are required to meet the same specifications as other wastewater management plans, N.J.A.C. 7:15-5.23(i), which was proposed at N.J.A.C. 7:15-5.24(i), has been changed to expressly require updated wastewater management plans to comply with N.J.A.C. 7:15-5.20. Because N.J.A.C. 7:15-5.20 did not exclude updated wastewater management plans from its scope, this requirement already existed under N.J.A.C. 7:15-5.20.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks **\*thus\***; deletions from proposal indicated in brackets with asterisks **\*[thus]\***).

#### 7:14A-1.9 Definitions

As used in this chapter, the following words and terms shall have the following meanings.

...  
**\*\*\*"Commercial unit" means one or more buildings, or one or more rooms within a building, which will be occupied by a single individual, corporation, company, association, society, firm, partnership or joint stock company, and used for nonresidential purposes.\***

...  
**\*\*\*"Governmental entity" means a Federal, state, county or municipal government or school district whose jurisdiction is partially or entirely within New Jersey.\***

...  
**\*\*\*"Joint meeting" means a joint meeting as defined in N.J.S.A. 40:63-69.\***

...  
**\*\*\*"Municipal authority" means a municipal authority as defined in the Municipal and County Utilities Authorities Law at N.J.S.A. 40:14B-3(5), and shall include a municipal utilities authority created by one or more municipalities and a county utilities authority created by a county.**

**"Municipal government" means a city, town, borough, village, township or other municipal government created by State law, which has an elected governing body, a chief executive, and municipal public officials including a municipal clerk, tax assessor, and tax collector.\***

...  
**\*\*\*"Passaic Valley Sewerage Commissioners" means the body described by that name under N.J.S.A. 58:14-2.\***

...  
**\*\*\*"Sewerage agency" means the Passaic Valley Sewerage Commissioners, a sewerage authority, a municipal authority or a joint meeting.**

**"Sewerage authority" means a sewerage authority created pursuant to the Sewerage Authorities Law, N.J.S.A. 40:14A-1 et seq.\***

#### 7:14A-2.1 Application for a NJPDES permit

(a)-(k) (No change.)

**\*(1) After December 5, 1985, the Department shall not, except as provided in (n) below, issue a permit under N.J.A.C. 7:14A for the following new or expanded DTW unless a governmental entity or sewerage agency is either the sole permittee or co-permittee under N.J.A.C. 7:14A for that DTW:**

**1. DTW that, using subsurface sewage disposal systems or any other means, serve more than one property, dwelling unit, commercial unit, or other premises, whether or not such DTW require NJPDES discharge permits; and**

**2. Any other DTW that require NJPDES discharge permits.**

**(m) For purposes of this section, a "new or expanded DTW" means:**

**1. A DTW that was not in existence or under construction on or before December 5, 1985; or**

**2. A DTW whose actual or proposed capacity exceeds the capacity identified for that DTW in the areawide WQM Plan that was in effect on December 5, 1985.**

**(n) This section does not apply to the following new or expanded DTW:**

**1. Sewers or pumping stations;**

**2. New or expanded DTW whose only new or expanded components handle sludge only, except as required in Department rules on sludge management adopted pursuant to N.J.S.A. 13:1E-1 et seq.; or**

**3. New or expanded DTW owned by a BPU-regulated sewer utility, if that DTW replaces or expands a DTW that discharges at the same location, if:**

**i. A DTW that discharged at the same location was owned by that BPU-regulated sewer utility prior to the effective date of N.J.A.C. 7:15-4; and**

**ii. That sewer utility was a BPU-regulated sewer utility prior to the effective date of N.J.A.C. 7:15-4.**

(o) A school district shall not be the sole permittee or co-permittee under N.J.A.C. 7:14A for any DTW that serves any property other than property of that school district.\*

CHAPTER 15  
STATEWIDE WATER QUALITY  
MANAGEMENT PLANNING

SUBCHAPTER 1. GENERAL PROVISIONS

7:15-1.1 Scope

(a) This chapter prescribes water quality management policies and procedures established 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., and N.J.S.A. 13:1D-1 et seq. Specifically, this chapter prescribes 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;
6. The adoption of other Department rules, wastewater facilities priority systems and project priority lists, sludge management plans, effluent limitations, wastewater management plans, 201 Facilities Plans, and other documents in WQM Plans;
7. Coordination of WQM planning with Coastal Zone, Hackensack Meadowlands, and Pinelands programs;
8. Mechanisms to resolve conflicts among State agencies, designated planning agencies, applicants, and other parties affected by this chapter;
9. Selected aspects of wastewater management, including NJPDES permittees required for certain new or expanded domestic treatment works; treatment works deemed to be \*[not inconsistent]\* **\*consistent\*** with WQM plans and this chapter; WQM plan amendment requirements for treatment works not identified in WQM plans; construction of individual septic systems and other small domestic treatment works in future sewer service areas; and eligibility for financial assistance.
10. The identification of WQM plan amendments that require the adoption or amendment of wastewater management plans in areawide WQM plans;
11. The assignment of the duty to prepare and update wastewater management plans to certain sewerage agencies and municipalities, and the establishment of alternative assignments of such wastewater management plan responsibility; and
12. The required contents of wastewater management plans, and schedules and procedures for their submission, adoption, and updating.

7:15-1.2 Construction

This chapter shall be liberally construed to permit the Department to discharge its statutory functions, and to effectuate the provisions of 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., N.J.S.A. 13:1D-9, the Statewide WQM Plan, and the areawide WQM plans.

7:15-1.3 Purpose

(a) The purpose of this chapter is to:

1. Implement 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., and N.J.S.A. 13:1D-9;
2. Establish policies, procedures and standards which, wherever attainable, help to restore and maintain the chemical, physical and biological integrity of the waters of the State, including groundwaters, and the public trust therein, 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;

3. Prevent, control, and abate water pollution;
4. Conserve the natural resources of the State, promote environmental protection, and prevent the pollution of the environment of the State;
5. Encourage, direct, supervise and aid areawide WQM planning;
6. Integrate and unify the Statewide and areawide WQM planning processes, and provide for continuing WQM planning;
7. Ensure that projects and activities affecting water quality are developed and conducted in a manner consistent with this chapter and adopted WQM Plans;
8. Coordinate and integrate WQM plans with related Federal, State, regional and local comprehensive land use, functional and other relevant planning activities, programs and policies;
9. Develop and implement water quality programs in concert with other social and economic objectives;
10. Provide opportunities for public participation in the WQM planning process;
11. Prepare, administer, and supervise Statewide, regional and local plans and programs concerning conservation and environmental protection, including plans and programs concerning sewerage facilities;
12. Encourage, direct and aid in coordinating State, regional and local plans and programs concerning conservation and environmental protection, including plans and programs concerning sewerage facilities, in accordance with a unified Statewide Plan formulated, approved and supervised by the Department;
13. Supervise sanitary engineering facilities within the State; and
14. Encourage the development of comprehensive regional sewerage facilities that serve the needs of the regional community and that conform to the adopted areawide WQM plan applicable to that region.

7:15-1.4 Severability

If any section, subsection, provision, clause, or portion of this chapter is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this chapter shall not be affected thereby and shall remain in full force and effect.

7:15-1.5 Definitions

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

"Actual flow" means the volume of sewage and other wastes that a DTW receives; actual flow shall be determined by the arithmetic average of the metered daily volumes of waste received at a DTW for the preceding period of three consecutive calendar months. Where peak flows have been determined by the Department to be seasonal in nature, the seasonal peak flow period shall be used in determining actual flow.

"Adoption" means the adoption by the Department of Statewide WQM Plans or amendments or revisions thereof and the adoption by the Governor or his designee of areawide plans or amendments or revisions thereof pursuant to this chapter.

"Amendments" means changes to the Statewide and areawide WQM plans that may be proposed and adopted under N.J.A.C. 7:15-3.4.

"Areawide plan" or "areawide WQM plan" means the areawide WQM plan authorized in Section 5 of the Water Quality Planning Act (N.J.S.A. 58:11A-1 et seq.), and Sections 208 and 303 of the Clean Water Act, 33 U.S.C. §1251 et seq.

"Authority" means a sewerage authority as defined in N.J.S.A. 40:14A-3(5), or a municipal authority as defined in N.J.S.A. 40:14B-3(5).

"Best Management Practices (BMPs)" means the methods, measures, or practices to prevent or reduce the amount of pollution from point or non-point sources, including structural and nonstructural controls, and operation and maintenance procedures.

**\*\*BPU-regulated sewer or water utilities" means sewer utilities or water utilities regulated by the Board of Public Utilities under N.J.S.A. 48:1-1 et seq. and N.J.A.C. 14:9.\***

"BWQP" means the Bureau of Water Quality Planning in the Division of Water Resources.

**"Commercial unit"** means one or more buildings, or one or more rooms within a building, which will be occupied by a single individual, corporation, company, association, society, firm, partnership or joint stock company, and used for nonresidential purposes.\*

"Commissioner" means the Commissioner of the New Jersey Department of Environmental Protection or his or her designee.

"Consistency determination" means the written statement by the Department under N.J.A.C. 7:15-3.2, as to whether a project or activity listed in N.J.A.C. 7:15-3.1(b) is consistent\*[ , not inconsistent, or]\* **\*with,\*** inconsistent with\*, or not addressed by,\* adopted WQM Plans and this chapter.

"Continuing planning process" or "CPP" means the Statewide planning process conducted by the Department of Environmental Protection as authorized in Section 7 of the Water Quality Planning Act (N.J.S.A. 58:11A-7).

"County utilities authority" means any public body created by a county governing body pursuant to N.J.S.A. 40:14B-4a, or any sewerage authority or county sewer authority reorganized as a county utilities authority pursuant to N.J.S.A. 40:14B-6b.

"County water quality management plan" or "County WQM plan" means a county plan prepared by a county planning board pursuant to Section 5 of the Water Quality Planning Act (N.J.S.A. 58:11A-5).

"CPI application" means the formal application for a permit from the Department.

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

"Designated area" means an area designated by the Governor as an areawide WQM planning area pursuant to Section 4 of the Water Quality Planning Act (N.J.S.A. 58:11A-4).

"Designated management agency" means an agency designated in an adopted WQM plan to implement one or more of the policies, objectives, and recommendations of that plan.

"Designated planning agency" means an agency designated by the Governor to conduct areawide WQM planning pursuant to Section 4 of the Water Quality Planning Act (N.J.S.A. 58:11A-4).

"Development" means the division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation or enlargement of any building or other structure, or of any mining, landfill, excavation, roads, sewers and other infrastructure and any use or change in the use of any building or other structure, or land or extension of use of land. Phased development shall be considered as a single project.

"Director" means the Director of the Division of Water Resources.

"District" means either or both of the following, depending on the context: the district of a sewerage authority as defined in N.J.S.A. 40:14A-3(6), or the district of a municipal authority as defined in N.J.S.A. 40:14B-3(6). For purposes of N.J.A.C. 7:15-5.14(a)1, 5.6(a)2i and 5.18(i), "district" shall also mean the Passaic Valley Sewerage District.

"Division" means the Division of Water Resources in the New Jersey Department of Environmental Protection.

"Domestic treatment works" or "DTW" means a publicly or privately owned treatment works and shall include a treatment works processing domestic wastes together with any ground water, surface water, storm water or industrial process wastewater that may be present.

"Drawings and/or plans" means those drawings, site plans and/or blueprints prepared by a professional engineer or professional planner, as appropriate, which portray the development specifications of the site project or activity.

"DTW" means domestic treatment works.

"Emergency activities" means activities that are necessary to be performed in response to sudden or unexpected occurrences or conditions, in order to prevent loss of life, personal injury, severe property damage, or severe environmental damage.

"Environmentally sensitive areas" means those areas identified in a Statewide or areawide WQM plan as land areas possessing characteristics or features which are important to the maintenance or improvement of water quality, or to the conservation of the natural resources of the State.

"Freshwater wetlands" means freshwater wetland as defined at N.J.S.A. 13:9B-3 and N.J.A.C. 7:7A-1.

"Governmental entity" means a Federal, state, county or municipal government or school district whose jurisdiction is partially or entirely within New Jersey.

"Industrial/commercial" means any project or activity engaged in manufacturing, production or sales of services or products.

"Industrial treatment works" means an industrial treatment works as defined at N.J.A.C. 7:14A-1.9.

"Interim connection," "interim construction" or "interim expansion" means interim connection, construction or expansion of wastewater facilities as described in N.J.A.C. 7:15-4.2(a)4.

"Joint meeting" means a joint meeting as defined in N.J.S.A. 40:63-69.

"Load allocation" means the portion of a total maximum daily load that is not allocated to a point source of pollution.

\*["Major modification" means a significant alteration, expansion or other change that may reasonably be expected to affect the quantity of flow treated or the quality of the effluent discharged to the waters of the State or to a publicly owned treatment works.]\*

"Multi-county joint meeting" means any joint meeting whose membership includes municipalities in two or more counties.

"Municipal authority" means a municipal authority as defined in the Municipal and County Utilities Authorities Law at N.J.S.A. 40:14B-3(5), and shall include a municipal utilities authority created by one or more municipalities and a county utilities authority created by a county.

"Municipal government" means a city, town, borough, village, township or other municipal government created by State law, which has an elected governing body, a chief executive, and municipal public officials including a municipal clerk, tax assessor, and tax collector.

"NJPDES" means the New Jersey Pollutant Discharge Elimination System established in N.J.A.C. 7:14A.

"NJPDES discharge permit" means a permit issued by the Department under N.J.A.C. 7:14A for a discharge to surface water or a discharge to ground water.

"Non-designated area" means an area not designated by the Governor as an areawide WQM planning area pursuant to Section 4 of the Water Quality Planning Act (N.J.S.A. 58:11A-4).

"Non-point source" means a contributing factor to water pollution that cannot be traced to a specific discernible confined and discrete conveyance.

"Passaic Valley Sewerage Commissioners" means the body described by that name under N.J.S.A. 58:14-2.

"Passaic Valley Sewerage District" means the sewerage district now or hereafter described by that name under N.J.S.A. 58:14-1 et seq.

"Point source" means any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

"Process waste water" means process waste water as defined at N.J.A.C. 7:14A-1.9.

"Regional \*[sewerage]\* authority" means any sewerage authority created by the governing bodies of two or more municipalities pursuant to N.J.S.A. 40:14A-4(c)\*, or any municipal authority created by the governing bodies of two or more municipalities pursuant to N.J.S.A. 40:14B-5\*.

"Regional wastewater management plan area" means a wastewater management plan area that includes land in two or more municipalities.

"Revisions" means changes to WQM plans under N.J.A.C. 7:15-3.5 that are necessary for one or more of the purposes set forth at N.J.A.C. 7:15-3.5\*[(a)]\*\*\*(b)\*.

"Sewerage agency" means the Passaic Valley Sewerage Commissioners, a sewerage authority, a municipal authority or a joint meeting.

"Sewerage authority" means a sewerage authority created pursuant to the Sewerage Authorities Law, N.J.S.A. 40:14A-1 et seq.

**"Significant modification" means a significant alteration, expansion or other change that may reasonably be expected to affect the quantity of flow treated or the quality of the effluent discharged to the waters of the State or to a publicly owned treatment works.\***

"Site-specific pollution control plan" means a plan that details necessary structures or measures designed to control one or more specified pollutants or sources of pollution from a site.

"State" means the State of New Jersey.

"State Water Quality Inventory Report" means the biennial report prepared by the Department, pursuant to Section 305 of the Clean Water Act, 33 U.S.C. §§1251 et seq., which inventories and assesses the quality of surface and ground waters of the State.

"Statewide Water Quality Management Plan" or "Statewide WQM Plan" (formerly known as the Statewide Water Quality Management Program Plan) means the plan that, together with this chapter, directs and coordinates water quality planning and implementation activities for the entire State, and contains the written provisions of the CPP pursuant to Section 7 of the Water Quality Planning Act (N.J.S.A. 58:11A-7).

"Total maximum daily load" means a total maximum daily load formally established pursuant to Section 7 of the Water Quality Planning Act (N.J.S.A. 58:11A-7) and Section 303(d) of the Clean Water Act, 33 U.S.C. §§1251 et seq.

"Treatment works" means treatment works as defined at N.J.A.C. 7:14A-1.9.

"Treatment works approval" means an approval issued pursuant to N.J.S.A. 58:10A-6b and N.J.A.C. 7:14A-12.

"201 Facilities Plans" means the plans for wastewater facilities prepared pursuant to Section 201 of the Clean Water Act, 33 U.S.C. §§1251 et seq.

"201 Facilities Planning agencies" means those agencies which are responsible for conducting 201 facilities planning, pursuant to Section 201 of the Clean Water Act, 33 U.S.C. §§1251 et seq.

"209 Basin Plans" means water resources plans adopted pursuant to Section 209 of the Clean Water Act, 33 U.S.C. §§1251 et seq.

"Upgrade" means a modification of a domestic or industrial treatment works to improve the quality of effluent discharged to surface water or ground water.

"USEPA" means the United States Environmental Protection Agency.

"USGS quadrangle map" means any of the set of topographic maps published by the United States Geological Survey at 1:24,000 scale and known as "quadrangles" or "quads".

"Wasteload allocation" means the portion of a total maximum daily load that is allocated to a point source.

"Wastewater management agency" means a governmental entity or sewerage agency designated in an areawide WQM plan to plan, construct, or operate domestic treatment works.

**"Wastewater management planning agency" means a governmental unit or other person that has "wastewater management plan responsibility" as defined in N.J.A.C. 7:15-5.3(b).\***

"Wastewater management plan" or "WMP" means a written and graphic description of existing and future wastewater-related jurisdictions, wastewater service areas, and selected environmental features and domestic treatment works.

"Wastewater management plan area" or "WMP area" means the geographic area for which a governmental unit or other person has "wastewater management plan responsibility" as defined in N.J.A.C. 7:15-5.3(b).

"Water quality based effluent limitations" means water quality based effluent limitations established pursuant to the Department's Surface Water Quality Standards (N.J.A.C. 7:9-4), including, but not limited to, wasteload allocations.

"Water quality limited segment" means any segment of a waterway where it is known that water quality does not meet applicable water quality standards, and/or is not expected to meet applicable water quality standards, even after the application of the technology-based effluent limitations required by Sections 301(b) and 306 of the Clean Water Act, 33 U.S.C. §§1251 et seq.

"Water quality management plans" or "WQM plans" means the plans prepared pursuant to Sections 208 and 303 of the Clean Water Act, 33 U.S.C. §§1251 et seq., and the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., including the Statewide, areawide, and county WQM Plans.

"WMP" means wastewater management plan.

"Work programs and plans" means those documents that detail the specific work activities proposed as part of a water quality management program.

"WQM plan" means water quality management plan.

## SUBCHAPTER 2. PLANNING REQUIREMENTS

### 7:15-2.1 Continuing planning process (CPP)

(a) The Department shall conduct a continuing planning process (CPP) whose written provisions shall be contained, directly or by reference, in the Statewide WQM Plan and this chapter. In conducting the CPP the Department shall:

1. Integrate and unify the Statewide and areawide water quality management planning processes;
2. Encourage, direct, supervise and aid areawide water quality management planning;
3. Coordinate and integrate WQM plans with related Federal, State, regional and local comprehensive land use, functional and other relevant planning activities, programs and policies;
4. Identify aspects of the CPP that have been delegated to other State, Federal, interstate, or local agencies;
5. Provide opportunities for meaningful public participation in the water quality management planning process;
6. Conduct a Statewide assessment of water quality. (The State Water Quality Inventory Report shall be the principal water quality assessment component of the Statewide WQM Plan.);
7. Establish water quality goals and water quality standards for the waters of the State; and
8. Develop a Statewide implementation strategy to achieve the water quality standards and objectives and meet the requirements of Section 303(e) of the Clean Water Act (33 U.S.C. §§1251 et seq.), which shall include, but not be limited to:
  - i. The determination of effluent limitations and schedules of compliance at least as stringent as those required by the Clean Water Act (33 U.S.C. §§1251 et seq.);
  - ii. The identification of water quality limited segments;
  - iii. The determination of total maximum daily loads, wasteload allocations, and load allocations for pollutants;
  - iv. The incorporation of areawide and county WQM plans, applicable 209 Basin Plans, 201 Facilities Plans, and wastewater management plans;
  - v. The amendment and revision of WQM plans, including schedules for such amendment and revision;
  - vi. An inventory and ranking of needs, in order of priority, for the construction of wastewater facilities;
  - vii. The determination of priorities for the issuance of discharge permits;
  - viii. Methods for controlling all residual wastes from any water treatment processing; and
  - ix. Adequate authority for intergovernmental cooperation in water quality management activities.

(b) In order to accomplish one or more of the requirements of (a) above, the CPP may also include or otherwise address, but not be limited to, one or more of the following:

1. Identification of existing or potential surface or ground water pollution problems, caused by point or nonpoint sources;
2. Evaluation of programs for water pollution control based upon factors that may include, but not be limited to, technical feasibility; cost-effectiveness; public acceptability; economic, social or environmental impact; or legal, institutional, managerial or financial capability;
3. Technical measures, regulatory programs, or non-regulatory programs for point or nonpoint source water pollution control, protecting water resources, protecting environmentally sensitive areas, or other water quality related issues;

4. Designation of management agencies to implement one or more provisions of WQM plans; and

5. Other measures necessary to implement WQM plans.

#### 7:15-2.2 Relationship between the Statewide, areawide and county Water Quality Management Plans

(a) The Statewide WQM Plan and this chapter contain the written provisions of the CPP. The Statewide **\*WQM\*** Plan and this chapter direct and coordinate water quality management planning and implementation activities for the entire State and serve as a guide for areawide planning. The Statewide Water Quality Management Program Plan adopted by the Commissioner on December 5, 1985 and all subsequent amendments and revisions thereto are hereby incorporated by reference into this chapter. This chapter is included within the Statewide WQM Plan.

NOTE: The Statewide Water Quality **\*Management\*** Program Plan may be inspected at the Bureau of Water Quality Planning, Division of Water Resources, Department of Environmental Protection, 401 East State Street, Trenton, New Jersey, or the Office of Administrative Law, Quakerbridge Plaza, Building 9, Trenton, New Jersey.

(b) The areawide WQM plan is the basis by which the Department and the designated planning agencies conduct selected water quality management planning activities for a particular "area" or section of the State which has either designated or non-designated area status.

(c) If any elements of any areawide WQM plan conflict with any component of the Statewide WQM Plan identified under N.J.A.C. 7:15-3.1(f) or with this chapter, such elements shall be of no legal effect and shall be superseded by this chapter and the Statewide WQM Plan to the extent that such conflict exists.

(d) All WQM plans shall be consistent with State statutes and rules and to the extent they are not consistent shall have no legal force and effect.

(e) Every county planning board may conduct a county-wide water quality management planning process and prepare a county WQM plan.

1. County WQM plans shall not be in conflict with the Statewide WQM Plan, appropriate areawide WQM plans, or this chapter. If any elements of any county WQM plan conflict with the Statewide WQM Plan, appropriate areawide WQM plans, or this chapter, such elements shall be superseded by the Statewide WQM Plan, areawide WQM plans, or this chapter to the extent that such conflict exists.

2. Each county planning board that prepares or changes a county WQM plan shall transmit a copy of that plan or change to the BWQP, and to any designated planning agency whose designated area includes part or all of the subject geographic area;

3. Consistency of projects and activities with county WQM plans shall be required under N.J.A.C. 7:15-3.1 or 3.2, only to the extent that county WQM plans or components thereof are adopted into areawide WQM plans pursuant to N.J.A.C. 7:15-3.4 or 3.5.

#### 7:15-2.3 Role of the Department

(a) The Department shall:

1. Conduct a CPP and prepare a Statewide WQM Plan;

2. Prepare areawide WQM plans for non-designated areas;

3. Revise and amend the Statewide WQM Plan as necessary;

4. Coordinate and direct the activities of designated planning agencies;

5. Review and approve areawide work programs;

6. To the maximum extent feasible, act as a resource for designated planning agencies and county planning boards, providing them with technical assistance, and information on best management practices and pollution control technologies;

7. Require the preparation and updating of wastewater management plans, and provide for their review and adoption into areawide WQM Plans;

8. Establish and administer policies, procedures, standards, criteria, and rules for water quality and wastewater management issues;

9. Identify water quality limited segments;

10. Establish total maximum daily loads, wasteload allocations, load allocations, and water quality based effluent limitations;

11. Prepare a biennial State Water Quality Inventory Report, and other reports required from the State under the Clean Water Act, 33 U.S.C. §§1251 et seq.;

12. Perform consistency determination reviews, and otherwise ensure that projects and activities affecting water quality do not conflict with WQM plans or this chapter.

13. Delegate aspects and responsibilities of the CPP to other State, Federal, interstate, county or local agencies, and also withdraw or transfer such delegations as necessary; and

14. Make recommendations to the Governor regarding designation of planning agencies and planning areas under N.J.S.A. 58:11A-4.

#### 7:15-2.4 Role of designated planning agencies

(a) The designated planning agencies shall:

1. Prepare, revise, and amend the areawide WQM plans for their designated areas;

2. Fulfill all responsibilities assigned to them under this chapter, the Statewide WQM Plan, the areawide WQM plan, their charter, any grant agreement, approved work program, and any agreement with the State;

3. Carry out other responsibilities as agreed with or assigned by the Department under N.J.A.C. 7:15-2.3; and

4. Ensure that the areawide WQM plan shall not be in conflict with any component of this chapter or the Statewide WQM Plan and shall not otherwise conflict with State statutes or duly promulgated rules.

(b) The Department and the designated planning agencies shall coordinate their work in shared river basins or sub-basins, and shall refer any conflicts concerning such coordination to the Commissioner for his mediation.

(c) If a previously designated area becomes a non-designated area as a result of action by the Governor, the Department shall conduct areawide water quality management planning for that area.

### SUBCHAPTER 3. PLAN ASSESSMENT, AMENDMENT AND ADOPTION

#### 7:15-3.1 Water quality management plan consistency requirements

(a) All projects and activities affecting water quality shall be developed and conducted in a manner that does not conflict with this chapter or **\*adopted\*** WQM plans. The Commissioner shall not undertake, nor shall he or she authorize through the issuance of a permit, any project or activity that conflicts with applicable sections of **\*[a]\* \*an adopted\*** WQM plan or with this chapter. For purposes of N.J.A.C. 7:15-3.1 through 3.3, "permit" includes permits, approvals, certifications, and similar actions.

(b) The Department shall not grant permits for the following projects and activities before a formal consistency determination review under N.J.A.C. 7:15-3.2 has been completed:

1. New surface water or ground water discharges, or existing surface or ground water discharges proposing **\*[major]\* \*significant\*** modifications, that require individual NJPDES discharge permits under N.J.A.C. 7:14A and the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.;

2. Treatment works that require treatment works approvals under N.J.A.C. 7:14A-12 and the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.;

3. Actions regulated by the Coastal Area Facility Review Act, N.J.S.A. 13:19-1 et seq.;

4. Actions that require Type "B" wetland permits under N.J.A.C. 7:7-2.2;

5. Construction of the following new solid waste facilities, other than hazardous waste facilities and minor expansions of solid waste facilities, regulated by N.J.A.C. 7:26:

i. New sanitary landfills other than vertical expansion;

\*[ii. New solid waste transfer stations];\*

\*[iii.]\***\*\*ii.\*** New solid waste composting or co-composting facilities over one acre, but excluding leaf composting facilities;

\*[iv.]\***\*\*iii.\*** New resource recovery facilities and new solid waste materials recovery facilities; and

\*[v.]\***\*\*iv.\*** New solid waste incinerators and thermal destruction facilities;

6. Sanitary landfill closures where leachate collection and control is required under N.J.A.C. 7:26;

7. Construction of new hazardous waste facilities regulated by N.J.A.C. 7:26;

8. Waterfront development activities regulated under N.J.S.A. 12:5-3, for residential developments of 25 units or greater, and for industrial, commercial, and mixed use (including residential) developments having wastewater flows of 20,000 gallons per day or more; extensions or modifications to existing projects when the cumulative total for the project is greater than 24 units, or greater than or equal to 20,000 gallons per day;

9. Construction of 50 or more realty improvements regulated under the Realty Improvement Sewerage and Facilities Act, N.J.S.A. 58:11-23 et seq.; and

10. Adoption or amendment of environmental health ordinances to control water pollution under the County Environmental Health Act, N.J.S.A. 26:3A2-21 et seq.;

(c) The following projects and activities do not require a formal consistency determination review under N.J.A.C. 7:15-3.2, but shall still not conflict with WQM plans:

1. Approved and non-approved water supply connections regulated by the Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq.;

2. Construction or repair of dams regulated by N.J.S.A. 58:4-2 et seq.;

3. Well drilling regulated by N.J.S.A. 58:4A-14 et seq.;

4. Actions regulated by the Air Pollution Control Act (1954), N.J.S.A. 26:2C-9.2;

5. Renewals or modifications of existing permitted activities that do not propose \*[major]\* **\*significant\*** modifications, as determined by the Department;

6. Actions that require Type "A" wetland permits under N.J.A.C. 7:7-2.2;

7. Stream encroachments regulated under the Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq.;

8. Waterfront development activities regulated under N.J.S.A. 12:5-3, other than those identified in (b)8 above;

9. Water lowering regulated under N.J.S.A. 23:5-29 or N.J.S.A. 58:4-9;

10. Construction or operation of water systems regulated by the Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq.;

11. Diversion of surface or ground waters regulated by the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq.;

12. Activities that require freshwater wetlands permits, open water fill permits, or transition area waivers under the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq.;

13. Discharges that require water quality certifications under N.J.S.A. 58:10A-5.b and Section 401 of the Clean Water Act, 33 U.S.C. §§1251 et seq.;

14. Actions regulated by N.J.A.C. 7:26 other than actions identified in (b)5 and 6 above and actions pertaining to hazardous waste, including\*[\*]\*\*:

i. Collection and haulage of solid waste;

ii. Operation of solid waste facilities;

iii. Permit renewals for solid waste facilities not proposing major expansions;

iv. Vertical expansions of sanitary landfills;

**\*v. Construction of new solid waste transfer stations;\***

\*[v.]\*\*vi.\* Construction of new solid waste composting and co-composting facilities under one acre;

\*[vi.]\*\*vii.\* Construction of new leaf composting facilities;

\*[vii.]\*\*viii.\* Sanitary landfill closure where leachate collection and control is not required; and

\*[viii.]\*\*ix.\* Disruption of sanitary landfills, where such disruption does not require construction of new sanitary landfills or treatment and disposal of leachate;

15. Hazardous waste activities regulated by N.J.A.C. 7:26 but not identified in (b)7 above, including collection and haulage of hazardous waste, operation of hazardous waste facilities, and permit renewals for hazardous waste facilities not proposing major modifications; **\*and\***

\*[16. Removal or remedial actions performed by the Department or by Federal agencies, or by their agents, under the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., or the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§9601 et seq., or other statutes authorizing Department or Federal removal or remedial actions for hazardous substances; and]\*

\*[17.]\*\*16.\* Any other activity regulated by the Department but not identified in (b) above or deemed to be \*[not inconsistent]\* **\*consistent\*** under N.J.A.C. 7:15-4.2.

(d) The Department shall conduct the consistency determination review or other consistency review for a Department permit concurrently with the Department's review of the permit application. The Department shall not issue the permit if the Department finds the project or activity to be inconsistent with a WQM plan or this chapter.

(e) At the request of any person who intends to apply for a Department permit, the Department shall informally discuss with such person the consistency of such person's proposed project or activity with WQM plans and this chapter. Information provided by the Department in such discussions is for guidance only, and is not binding on the Department.

(f) Except as expressly provided in this chapter or in an areawide WQM plan, the only components of the Statewide WQM Plan that shall be used in performing consistency determination reviews and other consistency reviews are the following:

1. This chapter\*, **exclusive of those portions of the Statewide WQM Plan incorporated by reference, but not codified in this chapter\***; and

2. Statewide Sludge Management Plans, District Sludge Management Plans, and sludge management rules that are promulgated or approved by the Department pursuant to N.J.S.A. 13:1E-1 et seq.

(g) Interested parties may comment on the consistency of Department permits with WQM plans and this chapter through the appropriate draft or final permit public review and comment process. Such comments shall be taken into consideration prior to the issuance of a final permit.

**\*[h) At the request of any applicant whose proposed project or activity has been found by the Department to be inconsistent with a WQM plan or this chapter, the Department may informally discuss with that applicant the possible actions which that applicant might take to attempt to resolve the conflict. Such actions may include revising the project or activity to conform with the WQM plan and this chapter, seeking an amendment to the WQM plan under N.J.A.C. 7:15-3.4, or appealing the Department's finding under N.J.A.C. 7:15-3.9(g). The applicant may take such actions without regard to the existence or absence of a discussion or a request for a discussion under this subsection. Information provided by the Department in such discussions is for guidance only, and is not binding on the Department or the designated planning agencies. If the project or activity is in a designated area, the Department shall invite the designated planning agency to participate in the discussion.\***

7:15-3.2 Procedures for consistency determination reviews  
(a) Requests for consistency determination review shall, where applicable, include but not be limited to the following information:

1. A narrative description of the project, including county and municipality, lot and block, type of development or activity, number of dwelling units, anticipated population, anticipated wastewater flow, availability and identification of existing treatment works, proposals for new treatment works (include proposed owner and operator of treatment works, and, for DTW, permittees under N.J.A.C. 7:15-4.1), and location of discharge;

2. A United States Geological Survey quadrangle map showing the approximate boundaries of the project site and discharge location; and

3. Drawings and/or plans which illustrate the description under (a)1 above.

(b) Based upon potential negative water quality impacts of the project, the Department may require the narrative description under (a)1 above to also include potential water quality impacts and a site-specific pollution control plan. **\*[Amendments to areawide WQM**

plans may also expressly require such inclusion for specific categories of projects in specific geographic areas.]\* **In most cases, the Department intends that requirements for such inclusion shall be established through amendments to areawide WQM plans. Any areawide WQM plan that establishes such requirements shall specify the categories of projects that are subject to the requirements, the pollutants or sources of pollutants that shall be addressed, and the geographic region in which the requirements apply, if that region is less than the entire designated area or non-designated area.\***

(c) The Department shall perform consistency determination reviews in accordance with the following procedure:

1. Upon receipt of a complete request for consistency determination review\*[,]\* and\*[, where a Department permit is sought,]\* a complete permit application, the Department shall review the appropriate WQM plan and this chapter to determine whether the project or activity is consistent with the written provisions of the plan and this chapter. This review shall include, but not be limited to, the following plan components where applicable:

- i. Population forecasts;
- ii. Wastewater flow projections;
- iii. Availability of DTW;
- iv. Identification of appropriate DTW;
- v. Identification of appropriate wastewater service area;
- vi. Identification of appropriate project management agency;
- vii. Use of Best Management Practices for pollution control;
- viii. Identification of areas suitable or unsuitable for development with consideration of environmentally sensitive areas; and
- ix. Other water quality based policies, goals, objectives, or recommendations.

2. The Department shall complete this review within 90 days of receipt of a complete request for consistency determination review and\*[, where a Department permit is sought,]\* a complete permit application. **\*This time period may be extended for a one time only 30 day period by the mutual consent of the applicant and the Department.\***

3. Upon completion of the review, the Department shall, except as provided in (c)4 below, issue a consistency determination. This determination shall state that the project or activity is either consistent\*[, not inconsistent, or]\* **\*with,\* inconsistent with\*, or not addressed by,\*** the WQM plan and this chapter.

i. A project or activity shall be determined to be consistent if it is in accordance with the written provisions of the WQM plan and this chapter.

ii. If the WQM plans and this chapter do not contain provisions precluding a project or activity, then this shall be interpreted to mean that the project or activity is not **\*[inconsistent]\* \*addressed\*.** A finding of **\*\*\*not [inconsistent]\* \*addressed\*\*\*** is equivalent in effect to a finding of consistent.

iii. A finding of inconsistent means that the project or activity is in conflict with the written provisions of a WQM plan or this chapter.

4. If the Department finds **\*that\* a project or activity \*[to be]\* \*is\* consistent or not **\*[inconsistent]\* \*addressed\*.** then the Department may issue a statement of this finding to the applicant or may issue the permit without issuing a written consistency determination.**

5. Except as provided in (c)6 below, all Department findings made for Department permits under (c)4 above shall be valid only for the permit application for which the consistency determination review was sought.

6. If a project or activity requires **\*two or\* more \*[than one]\* Department permit\*s\***, and if the Department makes a finding under (c)4 above for one of those permits, that finding shall be **\*[vaild]\* \*valid\* for the remaining Department permits unless:**

i. The project or activity has **\*[ceased to be consistent or not]\* \*become\* inconsistent,** because of an amendment made to the WQM plan or this chapter after the initial finding; or

ii. The Department denies a permit in response to comments received under N.J.A.C. 7:15-3.1(g).

7. If the Department finds a project or activity to be inconsistent, then the Department shall notify the applicant in writing of the reasons for this finding. The applicant may request **\*[a resolution]\***

**\*an informal discussion\* of the conflict\*]. The conflict resolution procedure is presented in N.J.A.C. 7:15-3.3]\* **\*under N.J.A.C. 7:15-3.1(h)\*.****

7:15-3.3 **\*[Procedures for resolution of conflicts in plan consistency]\* **\*(Reserved)\*****

**\*(a) The following procedures shall be followed where the Department has found a proposed project or activity to be inconsistent with a WQM plan or this chapter, and the applicant chooses to resolve the conflict.**

1. The applicant may formally request a resolution of conflict by writing to the BWQP within 30 days of receipt of notification. This request shall include, but not be limited to:

- i. Description of project;
- ii. Description of conflict; and
- iii. Proposed resolution of conflict.

2. The applicant shall meet with the BWQP within a reasonable period of time to examine and resolve mutual differences in a resolution conference.

3. As a result of the resolution conference, the applicant may either revise his or her project or activity to conform with the WQM plan and this chapter, seek an amendment to the WQM plan under N.J.A.C. 7:15-3.4 or appeal the decision under N.J.A.C. 7:15-3.9.

4. The Department may waive the requirement for a conflict resolution conference in cases where the Department determines that such a conference would be unlikely to be useful.]\*

7:15-3.4 Water quality management plan amendment procedures

(a) The Department and the designated planning agencies shall propose amendments to the Statewide and areawide WQM Plans whenever such amendments are necessary or desirable. Amendments may be proposed for various reasons, such as to implement or comply with applicable State or Federal law; respond to new circumstances; improve the economic, social, or environmental impact of WQM plans; or resolve issues disclosed through the consistency review **\*[or conflict resolution]\* procedure.**

(b) Procedures for amendment of the Statewide WQM Plan are as follows:

1. Water quality related provisions in present and future rules adopted by the Department shall be considered to be part of the Statewide WQM Plan. Such provisions may not be adopted, amended, or repealed through the WQM plan amendment process under (b)4 below.

2. Priority systems, intended use plans and project priority lists for wastewater facilities that are developed by the Department and accepted by the United States Environmental Protection Agency (USEPA) pursuant to USEPA regulations, or that otherwise are developed by the Department under N.J.A.C. 7:22, shall be considered to be part of the Statewide WQM Plan. Such priority systems and project priority lists shall be adopted or revised in accordance with USEPA regulations and N.J.A.C. 7:22, as appropriate, and shall not be adopted or revised through the WQM plan amendment process under (b)4 below.

3. Statewide Sludge Management Plans, District Sludge Management Plans and sludge management rules that are promulgated or approved by the Department pursuant to N.J.S.A. 13:E-1 et seq., and shall not be promulgated, revised, updated, or approved through the WQM plan amendment process under (b)4.

4. Components of the Statewide WQM Plan other than (b)1 through 3 above may be amended by using the procedure specified in (g) below, except that the Commissioner shall render the final decision identified in (g)9 below.

(c) Areawide WQM plans for designated areas may be amended by designated planning agencies pursuant to their approved procedures for plan amendment. The Department may amend the areawide WQM plan for any non-designated area, pursuant to the procedures under (g) below. Amendments or provisions thereof for any areawide WQM plan whose specific purpose or effect is to address projects or activities covered by (i) and (j) below, or that are either proposed, constructed, operated or conducted by the State or Federal government, or that are regulated by the Solid Waste Management Act (N.J.S.A. 13:1E-1 et seq.), shall be processed only by the Department, regardless of whether the areawide WQM plan is

for a designated area or a non-designated area. **\*By the mutual consent of the Department and the designated planning agency, the Department may also process all other amendments to an areawide WQM plan for a designated area.\***

(d) Procedures for plan amendment developed by the designated planning agencies shall be consistent with this section and approved by the Department. Such procedures shall include, but need not be limited to, provisions that:

1. Allow any interested person to submit to the designated planning agency written, documented petitions to amend the areawide WQM Plan;

2. Provide for review by the Department of all proposed amendments prior to public notice;

3. Allow the Department to identify **\*[parties]\* \*governmental entities, sewerage agencies, and BPU-regulated sewer or water utilities\*** that shall be requested to endorse proposed amendments, such parties being in addition to any **\*[parties]\* \*governmental entities, sewerage agencies, and BPU-regulated sewer or water utilities\*** identified by the designated planning agency;

4. Provide for publication of public notice of proposed amendments in **\*the New Jersey Register and in\*** a newspaper of general circulation in the designated area; and

5. Provide for adequate public comment periods and opportunities for public hearings before the designated planning agency decides whether to approve an amendment.

(e) Every designated planning agency shall, within 90 days of the effective date of this subchapter, submit for Department approval plan amendment procedures that have been revised for consistency with this section. Such procedures shall identify the newspaper in which public notices of plan amendments shall be published. All plan amendment procedures that the Department approved before that effective date, but that are not revised and approved by the Department as being consistent with this section, shall become void 180 days after that effective date. **\*If a plan amendment procedure becomes void in this manner, the Department shall immediately provide to the designated planning agency a plan amendment procedure that is consistent with this section, and that shall be used by the designated planning agency until a plan amendment procedure is submitted by the designated planning agency and approved by the Department under this subsection.\***

(f) Within 15 days of approving an amendment, a designated planning agency shall submit to the BWQP a copy of the amendment, together with background information for that amendment. WQM plan amendments approved by designated planning agencies are valid only upon the subsequent adoption of such amendments by the Governor or his designee.

(g) Except as provided in (h) below, the Department procedure for amendment of areawide WQM plans is as follows:

1. For amendments which are the Department's responsibility under (c) above, any interested person may petition the Department to amend the areawide WQM plan, or the Department may propose to amend the areawide WQM plan on the Department's own initiative. Requests for amendments shall be submitted in writing to the Bureau of Water Quality Planning (BWQP), Division of Water Resources, CN 029, Trenton, New Jersey 08625.

2. Requests for amendments shall include, but need not be limited to, a detailed description of the proposed amendment, including documentation substantiating the need for the amendment and other documentation as determined by the Department. Within **\*[a reasonable period of time, not to exceed 180]\* \*90\*** days of receiving such requests, the Department shall review such requests and shall either:

i. Disapprove the amendment request, and return it to the applicant; or

ii. Return the amendment request to the applicant for additional information or other necessary changes\*. **If the applicant then submits a revised amendment request, the Department shall, within 90 days of receiving the revised amendment request, review such request and render a decision under (g)2i above, this subparagraph, or (g)2iii below\*:** or

iii. Decide to proceed further with the amendment request.

3. The Department shall notify the applicant **\*and the applicable designated planning agency, if any,\*** in writing of its decision under (g)2 above. If the Department's decision is to proceed further with

the amendment request under (g)2iii above, then **\*this notification shall include the public notice that shall be given for the proposed amendment.\*** **\*[the]\* \*The\*** applicant shall request endorsements under (g)4 below, and shall give public notice by publication in a newspaper of general circulation at the applicant's expense. The Department shall maintain a list identifying the newspaper that shall be used for this purpose in each planning area. **\*The public notice shall also be published in the New Jersey Register.\*** In cases where such Department decisions include a requirement for a non-adversarial public hearing, the public notice shall provide at least **\*[15]\* \*30\*** days notice of the hearing.

4. Requirements concerning endorsement of plan amendments are as follows:

i. As part of each notification of a decision under (g)2iii above, the Department may identify a list of **\*[parties]\* \*governmental entities, sewerage agencies, and BPU-regulated sewer and water utilities\*** that may be affected by, or otherwise have a substantial interest in, approval of the proposed amendment, and that shall be asked to endorse the proposed amendment. Within 15 days of receiving such notification, the applicant shall submit by certified mail (return receipt requested) a copy of the proposed amendment to these parties, with a request that they endorse the proposed amendment within 60 days of their receipt of the request.

ii. An endorsement shall include a statement that the party concurs with, or does not object to, the proposed amendment. Tentative, preliminary, or conditional statements shall not be considered to be endorsements. An endorsement by a governmental unit shall be in the form of a resolution by that unit's governing body.

iii. The applicant shall promptly forward to the BWQP a copy of all endorsements and comments received, and a copy of all requests for endorsement (with return receipts) sent to parties that did not provide endorsements or comments within 60 days of their receipt of such requests.

iv. Where a party identified under (g)4i above refuses to endorse or does not act on an endorsement, the reasons, if known, for that refusal or inaction shall be considered in making decisions under (g)8 and 9 below.

5. When the Department proposes to amend the areawide plan on its own initiative, the Department shall give public notice by publication in a newspaper of general circulation in the planning area, **\*shall send copies of the public notice to the applicable designated planning agency, if any,\*** and may hold a public hearing or request endorsements as if the Department were an applicant under (g)3 and 4 above. **\*The public notice shall also be published in the New Jersey Register.\***

6. Interested **\*[parties]\* \*persons\***, including, but not limited to, those from which endorsements are requested under (g)4i or 5 above, may submit written comments to the BWQP within 30 days of the date of the public notice. Interested **\*[parties]\* \*persons\*** may request that the public comment period be extended up to 30 additional days, and such extensions may be granted to the extent they appear necessary. Requests for such extensions shall be submitted in writing to the BWQP within 30 days of the date of the public notice.

7. **\*[Parties]\* \*Interested persons\*** may also request that the Department hold a non-adversarial public hearing; such requests shall be submitted in writing to the BWQP within 30 days of the date of the public notice. If there is significant interest, as determined by the Department, in holding a public hearing, then a public hearing will be held **\*[within 45 days of the date on which the public comment period was to have ended]\***. A public notice providing at least **\*[15]\* \*30\*** days notice of the hearing will be published **\*in the New Jersey Register and\*** in two newspapers of general circulation\*,\* and **\*will be\*** mailed to **\*the applicable designated planning agency, if any, and to\*** each **\*[person who responded to the initial public notice or]\* \*party who\*** was requested to endorse the amendment\*,\* and **\*the]\* \*The\*** public comment period will be extended until 15 days after the hearing. Except when the Department proposes to amend areawide WQM plans on its own initiative, the applicant shall, at the applicant's expense, **\*[provide for publication and mailing of]\* \*mail\*** the public notice, **\*provide for publication of the public notice in two newspapers,\*** secure a court stenographer, and provide three copies of a verbatim transcript of the hearing to the BWQP.

8. If any data, information or arguments submitted during the public comment period or in response to a request for an endorsement appear to raise substantial new questions concerning a proposed plan amendment, the Department may:

i. Reopen or extend the public comment period **\*for no more than 30 additional days\*** to give interested persons an opportunity to comment on the information or arguments submitted;

ii. Disapprove the proposed amendment and, where applicable, return it to the applicant;

iii. Return the amendment request to the applicant for necessary **\*substantial\*** changes **\*[and reproposal under this section]\*\***. **If the applicant then submits a revised amendment request, the Department shall review such request in the same manner as a revised amendment request submitted under (g)2ii above\***; or

iv. Prepare a new proposed plan amendment, appropriately modified, for proposal under this section.

9. Except where the Department has already disapproved or returned the proposed amendment under (g)8 above, the Governor or his designee shall render a final decision on the amendment **\*[within 60 days of the end of the public comment period or, if a public hearing is held, within 60 days of the public hearing]\***. The Governor or his designee shall either:

i. Adopt the amendment as proposed;

ii. Adopt the proposed amendment with minor changes that do not effectively destroy the value of the public notice; or

iii. Disapprove the proposed amendment and, where applicable, return it to the applicant.

10. The Department shall provide written notification of the decision of the Governor or his designee to the applicant where applicable<sup>\*</sup>, and to each person who submitted comments or requested notice of the final decision<sup>\*</sup>. **\*Notice of the final decision shall also be published in the New Jersey Register.\***

11. The Department shall retain the administrative record for WQM Plan amendments for the following periods of time:

i. For each amendment adopted under (g)9 above, a period of not less than three years from the effective date of the amendment.

ii. For each proposed amendment disapproved or returned under (g)2, 8, or 9 above, a period of not less than one year from the date of disapproval or return.

(h) For amendments identified in (h)3 below, the Department **\*[may]\* \*shall\*** modify the plan amendment procedure specified in (g) above in the manner set forth in (h)1 and 2 below. Except as provided in (h)1 and 2 below, the entire procedure specified in (g) above remains applicable to such amendments.

1. In lieu of the endorsement requirements in (g)3 and 4 above, the Department shall identify a list of potentially affected or interested parties that shall receive notice of the proposed amendment, but that need not be asked to endorse the proposed amendment. **\*Such parties shall include the applicable designated planning agency, if any.\*** Within five days of receiving such a list, the applicant shall submit by certified mail (return receipt requested) to these parties a copy of the proposed amendment and a copy of the public notice that will be published **\*[in a newspaper]\*** pursuant to (g)3 above. The applicant shall promptly forward to the BWQP a copy of all letters (with return receipts) sent to these parties under this paragraph. For sewers and pumping stations identified in (h)3ii below, endorsements are still required from owners or operators of affected DTW.

2. Instead of the 30 day period specified for these actions in (g)6 and 7 above, interested **\*[parties]\* \*persons\*** may take the following actions within 10 working days of the date of the public notice:

i. Submit written comments on the proposed amendment to the BWQP;

ii. Submit written requests **\*to the BWQP\*** that the **\*Department extend the\*** public comment period **\*[be extended]\*** up to 30 additional days; or

iii. Submit written requests **\*to the BWQP\*** that the Department hold a non-adversarial public hearing.

3. The modifications set forth in (h)1 and 2 above shall be **\*[available]\* \*used\*** only for amendments whose sole purpose is to address the following projects:

i. Schools, health care facilities, or correctional facilities, if such schools or facilities are publicly owned or operated; or

ii. New sewers or pumping stations to serve a project or activity that is partially within a future sewer service area depicted in an areawide WQM plan, if such sewers or pumping stations would convey wastewater from such project or activity to the existing DTW whose sewer service area is depicted in that WQM plan, and if a resolution of endorsement is received from the owner or operator of that DTW. If a project or activity is partially or entirely within two or more depicted sewer service areas, the new sewers or pumping stations may convey wastewater to one or more such existing DTW, provided that resolutions of endorsement are received from the owners or operators of the affected DTW in each of the sewer service areas. **\*This subparagraph shall apply only to wastewater service area modifications of less than 10 acres.\***

iii. Notwithstanding (h)3ii above, the modifications set forth in (h)1 and 2 above shall not be **\*[available]\* \*used\*** for sewers or pumping stations whose construction would violate N.J.A.C. 7:14A-12.21, or that would convey wastewater to DTW whose capacity must by statute, rule or other legal requirement be reserved for other projects or activities. The Department may require the applicant to provide proof from the owner or operator of DTW that would receive the conveyed flow that capacity is available for the applicant's project or activity. This paragraph applies whether treatment works approvals are sought for both construction and operation, or for construction only, of sewers or pumping stations.

(i) Effluent limitations, including, but not limited to, water quality based effluent limitations, and schedules of compliance established in accordance with N.J.A.C. 7:15-3.1 as NJPDES permit conditions under N.J.A.C. 7:14A-8.6 shall be considered to be part of the areawide WQM plans. NJPDES permit conditions shall be modified only through the procedures specified in the Department's New Jersey Pollutant Discharge Elimination System rules (N.J.A.C. 7:14A), in accordance with applicable Department rules, and shall not be modified through the WQM plan amendment process under (c) or (g) above. This subsection, however, shall not preclude the adoption of effluent limitations or schedules of compliance in areawide WQM plans under **\*[(c) or]\*** (g) above, prior to the establishment of such effluent limitations or compliance schedules as new or revised NJPDES permit conditions.

(j) Total maximum daily loads, wasteload allocations, load allocations, and listings of water quality limited segments established by the United States Environmental Protection Agency (USEPA) pursuant to 40 CFR 130.7<sup>\*</sup>**\*[(D)]\*\*\*(d)\*** shall be considered to be part of areawide WQM plans, but the Governor or his designee may adopt more stringent requirements in such plans pursuant to the procedures in (g) above. The Governor or his designee may also adopt these WQM plan elements under (g) above in the absence of USEPA action to establish such elements.

(k) Water quality management planning related documentation in present and future 201 Facilities Plans that are approved by the Department and USEPA after May 31, 1975 shall constitute amendments to areawide WQM plans. This documentation may include, but is not limited to: selected facilities alternative, future design capacity and flows, treatment levels, sewer service areas, septage management areas, sludge and septage management and disposal plans, environmental constraints mapping, identification of management agencies, and grant conditions. Itemized abstracts of the appropriate documentation shall be available at the Division of Water Resources. Water quality management planning related documentation in 201 Facilities Plans completed on or prior to May 31, 1975 may be adopted into areawide WQM plans on a case-by-case basis under (c) or (g) above.

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) 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;

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

3. Revise schedules for submission of wastewater management plans under N.J.A.C. 7:15-5.24(g).

(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 3, (i), and (j) shall not be revised under this section.

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

1. The Governor or his 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 \*[parties]\* **\*persons\*** may submit petitions to amend WQM plans to repeal or modify such revisions.

(e) 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 designee.

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

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

(a) In accordance with N.J.A.C. 7:7E-1.2(g), the Department's Rules on Coastal Resources and Development, N.J.A.C. 7:7E, including, but not limited to, provisions concerning the Hackensack Meadowlands Development Commission at N.J.A.C. 7:7E-1.5(a) and 7:7E-3.43, 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., **\*[and]\*** 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)4 or (c), the Hackensack Meadowlands Development Commission shall be requested to endorse 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)3, (i), (j), or (k) that automatically incorporate Department or USEPA actions taken through rulemaking proceedings or water pollution control programs, the consultation requirement in N.J.S.A. 13:17-9(c) shall be addressed, as necessary, through those rulemaking proceedings or programs, and shall not be independently addressed under this section.

#### 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) For WQM plan amendments processed under N.J.A.C. 7:15-3.4(b)4 or (c), the Department shall seek comments from the Pinelands Commission before making the decision required by N.J.A.C. 7:15-3.4(g)2 or 7:15-3.4(d)2, as appropriate.

(c) For other amendments to WQM plans under N.J.A.C. 7:15-3.4(b)1 through (b)3, (i), (j), or (k), that automatically incorporate Department or USEPA actions taken through rulemaking proceedings or water pollution control programs, any need to seek comments from the Pinelands Commission shall be addressed, as necessary, through those rulemaking proceedings or programs, and shall not be independently addressed under this section.

#### 7:15-3.8 Validity of water quality management plan amendments

(a) No WQM plan amendment hereafter adopted by the Governor or his designee is valid unless adopted in substantial compliance with this chapter. A proceeding to contest any WQM plan amendment on the ground of noncompliance with the procedural requirements of this chapter shall be commenced within one year from the adoption date of the amendment.

(b) A proceeding to contest any WQM plan amendment adopted by the Governor or his designee prior to the effective date of this subchapter, on the ground of noncompliance with the procedural requirements of this chapter as it existed prior to that effective date, shall be commenced within one year from the effective date of this subchapter.

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

(a) Within 20 calendar days **\*[from the conflict resolution conference held pursuant to N.J.A.C. 7:15-3.3 or]\*** from the 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-**\*[3.3(a)4,]\*** 3.4(g)2i or ii or 8ii through iv, the applicant may request an adjudicatory hearing to contest the **\*[finding of inconsistency or other]\*** Department decision by submitting a written request to the Department which shall include the following information:

1. The name, address, and telephone number of the applicant and its authorized representative if any;

2. The applicant's factual position on each question alleged to be at issue, its relevance to the Department's decision, specific reference to contested factors as well as suggested revised or alternative provisions;

3. Information supporting the applicant's factual position and copies of other written documents relied upon to support the request for a hearing;

4. An estimate of the time required for the hearing (in days and/or hours); and

5. A request, if necessary, for a barrier-free hearing location for disabled persons.

(b) A hearing request not received within 20 days **\*[after the conflict resolution conference or]\*** after receipt by the applicant of a written notification from the Department of the decision of the Department, shall be denied.

(c) During the pendency of the review and hearing on a Department decision made pursuant to this chapter, the challenged Department decision shall remain in full force and effect, unless a stay is granted by the Director upon formal request by the applicant.

(d) If the appellant fails to include all the information required by (a) above, the Department may deny the hearing request.

(e) If it grants the request for a hearing, the Department shall file the request for a hearing with the Office of Administrative Law. The hearing shall be held before an administrative law judge and 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. **\*If the subject of the hearing is a proposed amendment to the areawide WQM plan for a designated area, the Department shall provide notice of the hearing to the designated planning agency for that area.\***

(f) Appeals of decisions made by designated planning agencies under this subchapter shall be made to a court of competent jurisdiction.

**\*(g) An appeal of a decision made by the Department pursuant to N.J.A.C. 7:15-3.1 or 3.2 shall be made in accordance with the statutes and rules that govern the permit that is the subject of the decision. Such an appeal shall not be governed by (a) through (e) above.**

**(h) If the subject of a Department decision identified under (a) above is a proposed amendment to the areawide WQM plan for a designated area, the designated planning agency for that area may request an adjudicatory hearing to contest the Department decision, regardless of whether or not the applicant requests such a hearing. Such requests shall be governed by (a) through (e) above, and the designated planning agency shall be treated in the same manner as an "applicant" for purposes of those subsections.\***

#### SUBCHAPTER 4. WATER QUALITY AND WASTEWATER MANAGEMENT POLICIES AND PROCEDURES

7:15-4.1 Permittees for new or expanded domestic treatment works

(a) After December 5, 1985, the Department shall not, except as provided in (c) below, issue a permit under N.J.A.C. 7:14A for the following new or expanded DTW unless a governmental entity or sewerage agency is either the sole permittee or co-permittee under N.J.A.C. 7:14A for that DTW\*, and is identified as a Wastewater Management Agency in an areawide WQM Plan\*:

1. DTW that, using subsurface sewage disposal systems or any other means, serve more than one property, dwelling unit, commercial unit, or other premises, whether or not such DTW require NJPDES discharge permits; and

2. Any other DTW that require NJPDES discharge permits.

(b) For purposes of this section, a "new or expanded DTW" means:

1. A DTW that was not in existence or under construction on or before December 5, 1985; or

2. A DTW whose actual or proposed capacity exceeds the capacity identified for that DTW in the areawide WQM Plan that was in effect on December 5, 1985.

(c) This section does not apply to the following new or expanded DTW:

1. Sewers or pumping stations; \*[or]\*

2. New or expanded DTW whose only new or expanded components handle sludge only, except as \*[may be]\* required in \*[N.J.A.C. 7:14C.]\* **\*Department rules on sludge management adopted pursuant to N.J.S.A. 13:1E-1 et seq.; or**

3. **New or expanded DTW owned by a BPU-regulated sewer utility, if that DTW replaces or expands a DTW that discharges at the same location, if:**

i. A DTW that discharged at the same location was owned by that BPU-regulated sewer utility prior to the effective date of this subchapter; and

ii. That sewer utility was a BPU-regulated sewer utility prior to the effective date of this subchapter.

(d) **A school district shall not be the sole permittee or co-permittee under N.J.A.C. 7:14A for any DTW that serves any property other than property of that school district.\***

7:5-4.2 Projects and activities deemed to be \*[not inconsistent]\*

**\*consistent\* with WQM plans and this chapter**

(a) The following treatment works are deemed to be \*[not inconsistent]\* **\*consistent\* with WQM plans and this chapter:**

1. Upgrades of domestic or industrial treatment works, including upgrades accomplished through construction of new treatment works at the same location\*, **that do not exceed existing flows and do not exceed flows identified in areawide WQM plans\***. However, where levels of treatment are specified in areawide WQM Plans, upgrades that are not designed to achieve such treatment levels shall be deemed to be \*[not inconsistent]\* **\*consistent\* only if such upgrades are in accordance with approved compliance schedules that provide for the future achievement of such treatment levels, and that are included**

in NJPDES discharge permits, court orders, or Department enforcement documents such as administrative orders or administrative consent orders.

2. Treatment works whose sole purpose is to abate an existing pollution problem, if such treatment works are required by the Department or **\*USEPA\***.

3. **\*[Expansions of domestic or industrial treatment works up to flows identified in areawide WQM plans, or to flows allowed in permits under N.J.A.C. 7:14A that were in effect on December 5, 1985, whichever are higher.]\* **\*Removal or remedial actions performed or required by the Department or by Federal agencies or by their agents, under the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq., or the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§9601 et seq., or other statutes authorizing Department or Federal removal or remedial actions for hazardous substances.\*****

4. Interim construction on interim expansion of, or interim connection with, domestic or industrial treatment works that are required by law to be abandoned or incorporated at a definite time into other treatment works:

i. That are under construction;

ii. For which contracts **\*[or Federal or State financial assistance]\*** have been awarded for construction; or

iii. Whose construction is required by court order or Department order, or by a consent agreement to which the Department is a party.

(b) The initial performance of emergency activities, including, but not limited to, emergency activities allowed by emergency permits issued pursuant to N.J.A.C. 7:14A-2.2, is deemed to be **\*[not inconsistent]\* **\*consistent\*** with the WQM plans and this chapter.** The Department may require the results of an emergency activity to be removed or modified after such initial performance, in order to obtain conformance with a WQM plan or this chapter.

7:15-4.3 Treatment works not identified in Water Quality Management Plans

(a) Except as provided in N.J.A.C. 7:15-4.2 or 4.4, the following treatment works are considered to be inconsistent with the areawide WQM plan, and shall require an amendment to that plan to be eligible for treatment works approvals, NJPDES discharge permits, or financial assistance under the Clean Water Act, U.S.C. §§1251 et seq., or under N.J.A.C. 7:22.

1. New domestic or industrial treatment works, or expansions of existing domestic or industrial treatment works, if such new treatment works or expansions are not identified in the existing areawide WQM plan, are not sewers or pumping stations, **\*[require a NJPDES discharge permit,]\*** and would:

i. Directly discharge to surface waters, or onto the land surface (for example, spray irrigation or overland flow facilities); or

ii. Have a design capacity of 2000 gallons per day or larger.

2. New DTW that would conflict with or be outside of future sewer service areas depicted in the areawide WQM plan.

(b) The provisions of (a) above apply whether treatment works approvals are sought for both construction and operation, or for construction only, of treatment works.

(c) This section does not apply to the following treatment works:

1. Activities identified under N.J.A.C. 7:14A-12.4 as not requiring treatment works approval;

2. Treatment works components that handle sludge only; **\*[or]\***

3. Industrial treatment works that do not handle process waste water or **\*[domestic wastes]\* **\*sanitary sewage; or****

4. **DTW that meet the criteria in N.J.A.C. 7:15-5.18(c)6ii, if such DTW would provide service only in:**

i. **Areas depicted under N.J.A.C. 7:15-5.18(c)6 in adopted wastewater management plans; or**

ii. **Areas identified as "on-site ground water disposal areas", or identified by substantially equivalent names, in wastewater management plans that are adopted or in effect under N.J.A.C. 7:15-5.2\*.**

(d) In preparing amendments to areawide WQM plans, the following policies shall be adhered to:

1. Existing regional DTW shall be used where **\*[appropriate]\* **\*such use is cost-effective, environmentally sound, and feasible from an****

**engineering standpoint\***. Expansion or upgrading of existing regional DTW is generally preferable to construction of additional DTW that would produce additional direct discharges to surface water at new locations.

2. Where a sewer connection ban is in effect under N.J.A.C. 7:14A-12.21 on a DTW, the sewer service area for that DTW shall not be altered unless such alteration would, even in the absence of the sewer connection ban, be cost-effective, environmentally sound, and feasible from the engineering standpoint.

7:15-4.4 Individual \*[septic]\* **\*subsurface sewage disposal\*** systems and other small domestic treatment works in sewer service areas

(a) Subject to the provisions of (b) **\*and** (c) below and of N.J.A.C. 7:15-5.19, depiction of future sewer service areas in wastewater management plans or elsewhere in areawide WQM plans shall not be construed to prohibit the lawful construction in such areas of the following DTW:

1. Individual \*[septic]\* **\*subsurface sewage disposal\*** systems for individual residences pursuant to N.J.A.C. 7:9A; or

2. Other DTW that would have a design capacity of less than 2,000 gallons per day, and use either subsurface sewage disposal systems or other sewage disposal systems that would not directly discharge to surface water or onto the land surface.

(b) DTW identified in (a) above shall be constructed in depicted sewer service areas only if **\*adequate\*** **\*legally enforceable\*** guarantees are provided before such construction that the depicted sewer service will be used when it becomes available, and that any discharge to ground water will then be discontinued.

**\*(c) DTW that are identified in a(2) above and that require treatment works approval shall not be constructed in the depicted sewer service area of a DTW on which a sewer connection ban is in effect under N.J.A.C. 7:14A-12.21, unless such construction would, even in the absence of the sewer connection ban, be cost-effective, environmentally sound, and feasible from the engineering standpoint.\***

7:15-4.5 Eligibility for financial assistance

Financial assistance under the Clean Water Act, 33 U.S.C. §§1251 et seq., or under N.J.A.C. 7:22, for planning, design, or construction of DTW shall be awarded only to Wastewater Management Agencies identified in a Statewide or areawide WQM Plan.

## SUBCHAPTER 5. WASTEWATER MANAGEMENT PLANNING REQUIREMENTS

7:15-5.1 Wastewater management plan requirement for water quality management plan amendments

(a) If a proposed WQM plan amendment under N.J.A.C. 7:15-3.4(c) or (g) includes a DTW not identified in the existing WQM plan, or includes an expansion of an existing DTW above the capacity identified in the existing WQM plan, or modifies a wastewater service area delineation in the existing WQM plan, the Governor or his designee shall adopt the amendment only if the amendment otherwise complies with this chapter and consists of, or includes, a wastewater management plan (WMP), or an amendment to a wastewater management plan, that identifies such DTW, expansion, or modified delineation.

(b) The requirement in **\*(A)\*\*(a)\*** above applies only to:

1. Wastewater service area modifications that directly affect 10 or more acres, or the disposition of 20,000 gallons or more per day of wastewater; or

2. DTW that requires a NJPDES discharge permit, and that:

i. Directly discharge to surface waters, or onto the land surface (e.g., spray irrigation or overland flow facilities); or

ii. Have a design capacity of 20,000 gallons per day or larger.

**\*(c) The requirement in (a) above does not apply to WQM plan amendments whose specific purpose or effect is to address projects or activities that are either proposed, constructed, operated or conducted by the State or Federal government, or that are regulated by the Solid Waste Management Act (N.J.S.A. 13:1E-1 et seq.), or that are identified in N.J.A.C. 7:15-3.4(h)3.\***

7:15-5.2 Validity of previously adopted or **\*[recently prepared wastewater]\* **\*submitted wastewater\***** management plans

(a) Wastewater management plans adopted between June 1, 1985 and the effective date of this subchapter shall remain in effect as wastewater management plans in the appropriate areawide WQM plans without the need for further adoption procedures.

(b) The Governor or his designee may, under N.J.A.C. 7:15-3.4, adopt any wastewater management plan that meets the requirements of the former "Policy on Wastewater Management Plans" that was part of the Statewide WQM Plan that the Department adopted on December 5, 1985, but that does not meet the procedural or substantive requirements of this subchapter, if a draft of that wastewater management plan was submitted to the Department prior to the effective date of this chapter.

7:15-5.3 **\*Wastewater management planning agencies,\*** **\*[Wastewater]\* **\*wastewater\***** management plan areas and wastewater management **\*[planning]\* **\*plan\***** responsibility: general statement

(a) **\*A "wastewater management planning agency" ("WMP agency") is a governmental unit or other person that has "wastewater management plan responsibility" as defined in (b) below.\*** A "wastewater management plan area" ("WMP area") is the geographic area for which a **\*[governmental unit or other person]\* **\*wastewater management planning agency\***** has "wastewater management planning responsibility" **\*[as defined in (b) below]\***.

(b) N.J.A.C. 7:15-5.4 through 5.8 identify governmental units that have "wastewater management plan responsibility" ("WMP responsibility") for the wastewater management plan areas specified in those sections, unless alternative assignments of wastewater management plan responsibility are established under N.J.A.C. 7:15-5.9. "Wastewater management plan responsibility" means the duty to:

1. Prepare, submit, and periodically update a wastewater management plan for the wastewater management plan area; and

2. Provide comments on proposed amendments to wastewater management plans under N.J.A.C. 7:15-**\*[5.23(c)]\*\*3.4\***.

(c) Wastewater management plans shall be prepared, submitted, and periodically updated only by the **\*[governmental units or other persons that have wastewater management plan responsibility]\* **\*wastewater management planning agencies\***** for the corresponding wastewater management plan areas. Such **\*[governmental units or other persons]\* **\*wastewater management planning agencies\***** shall submit wastewater management plans **\*as requests to amend areawide WQM plans\*** in accordance with the procedures specified in N.J.A.C. 7:15-**\*[5.23(a) or (b), as appropriate]\* **\*3.4\*****, and in accordance with the schedule specified in N.J.A.C. 7:15-**\*[5.24]\*\*5.23\***. A **\*[governmental unit or other person]\* **\*wastewater management planning agency\***** may meet its responsibility to prepare and submit wastewater management plans by submitting wastewater management plans prepared by another party on behalf of that **\*[governmental unit or person]\* **\*wastewater management planning agency\*****.

(d) N.J.A.C. 7:15-5.4 through 5.13 apply notwithstanding any statements about wastewater planning responsibility contained in management agency designations or WQM Plans, or amendments thereto, issued or adopted before the effective date of this subchapter.

(e) The identification under this subchapter of wastewater management plan areas and assignments of wastewater management plan responsibility does not, by itself, establish or change the designations of 201 facilities planning areas or 201 facilities planning agencies. Such designations may be established or modified only by specific provisions for that purpose in amendments to areawide WQM plans under N.J.A.C. 7:15-3.4, including but not limited to provisions in wastewater management plans under N.J.A.C. 7:15-5.18**\*(h)\*\*(i)\***. **\*The identification of wastewater management plan areas under this subchapter does not establish or change the designation of "planning areas" as defined in N.J.A.C. 7:22-10.1.**

(f) Except for wastewater management plans identified in N.J.A.C. 7:15-5.2(a), wastewater management plans and amendments thereof are valid only upon their adoption by the Governor or his designee as amendments to areawide WQM plans under N.J.A.C. 7:15-3.4.\*

**7:15-5.4 Responsibility of designated planning agencies**

A designated planning agency shall have wastewater management plan responsibility for a wastewater management plan area consisting of all or part of its designated area, if the governing body of that agency adopts and submits to the BWQP a resolution requesting such responsibility within 60 calendar days of the effective date of this subchapter. In wastewater management plan areas identified in such resolutions, no other governmental units shall have wastewater management plan responsibility under N.J.A.C. 7:15-5.5 through 5.8.

**7:15-5.5 Responsibility of Passaic Valley Sewerage Commissioners**

The Passaic Valley Sewerage Commissioners have wastewater management plan responsibility for a wastewater management plan area consisting of the entire Passaic Valley Sewerage District. No other governmental unit shall have such responsibility for any part of that District under N.J.A.C. 7:15-5.6 through 5.8.

**7:15-5.6 Responsibility of sewerage authorities and municipal authorities**

(a) Except as provided in (b) or (e) below or in N.J.A.C. 7:15-5.4 or 5.5, every sewerage authority and every municipal authority has wastewater management plan responsibility for a wastewater management plan area consisting of that authority's entire district.

(b) A municipal authority does not have wastewater management plan responsibility if that municipal authority does not perform sewerage-related functions in at least part of its district, and does not request wastewater management plan responsibility. Except as provided in (c) below, a municipal authority performs "sewerage-related functions" if it:

1. Owns, leases, constructs, operates, or maintains sewerage facilities, or is a party to a contract providing for or relating to sewerage facilities;

2. Regulates the construction or use of sewerage facilities;

3. Is a permittee or co-permittee under N.J.A.C. 7:14A for a DTW, or has applied to be such a permittee or co-permittee;

4. Seeks WQM plan amendments for sewerage facilities;

5. Receives or seeks to receive Federal or State financial assistance for sewerage facilities; or

6. Is required by statute, rule, contract, court order, Department order, consent agreement, or other legal obligation to perform any of the activities listed in (b)1 through 5 above.

(c) The activities listed in (b)1 through 6 above shall not be considered "sewerage-related functions" if such activities are:

1. Performed solely to carry out the municipal authority's water supply, solid waste, chemical or hazardous waste, or hydroelectric power functions; or

2. Pertain solely to sewage that arises on property owned or leased by the municipal authority, and that is conveyed to sewerage facilities not owned, leased, operated, or maintained by the municipal authority.

(d) The Department may, at any time, send a letter to any municipal authority, requesting that authority to declare in writing to the BWQP whether or not that authority performs any of the sewerage-related functions listed under (b) and (c) above, and whether or not that authority requests wastewater management plan responsibility. If that authority does not make such a declaration within 90 calendar days of receipt of the letter, the Department shall, in the absence of information to the contrary, presume that the authority performs sewerage-related functions or requests wastewater management plan responsibility.

(e) Where there is overlap between the districts of two or more authorities that would otherwise have wastewater management plan responsibility for their entire districts under this section, wastewater management plan responsibility in the overlap is assigned by the following criteria:

1. If only one of the authorities is a county utilities authority, only that county utilities authority has wastewater management plan responsibility in the overlap.

2. If none of the authorities is a county utilities authority, and if only one of the authorities is a regional \*[sewerage]\* authority, only that regional \*[sewerage]\* authority has wastewater management plan responsibility in the overlap.

3. If both of the conditions in (e)1 or 2 above are not met, and if only one of the authorities owns, leases, operates, or maintains a DTW that requires a NJDPES permit, and that is located within or serves all or part of the overlap, then only that authority has wastewater management plan responsibility in the overlap.

4. If none of the conditions in (e)1, 2, or 3 above is met, arrangements shall be made under N.J.A.C. 7:15-5.9 to assign wastewater management plan responsibility in the overlap to a single governmental unit.

(f) For purposes of (e) above, "overlap" exists when the district of one authority is partially or completely within, or identical to, the district of one or more other authorities.

(g) When wastewater management plan responsibility is assigned under (e) above to an authority or other governmental unit that also has wastewater management plan responsibility outside the overlap, the entire geographic area for which the authority or other governmental unit has wastewater management plan responsibility shall constitute a single wastewater management plan area.

**7:15-5.7 Responsibility of joint meetings**

(a) Except as provided in (b) below, every joint meeting has wastewater management plan responsibility for a wastewater management plan area consisting of the entirety of all municipalities that are members of that joint meeting.

(b) No joint meeting has wastewater management plan responsibility for any location that:

1. Is within a wastewater management plan area for which another governmental unit has wastewater management plan responsibility under N.J.A.C. 7:15-5.4 through 5.6; or

2. Does not generate sewage that is received by any sewerage facilities owned, leased, operated, or maintained by the joint meeting, and is not projected to generate such sewage in the 20 year projection period of the wastewater management plan.

**7:15-5.8 Responsibility of municipalities**

(a) Except as provided in (e) below, every municipality that performs sewerage-related functions in at least part of the municipality has wastewater management plan responsibility for a wastewater management plan area consisting of the entire municipality.

(b) Except as provided in (c) below, a municipality performs "sewerage-related functions" if the municipality either:

1. Owns, leases, constructs, operates, or maintains any sewerage facilities, under N.J.S.A. 40:63-1 et seq. or other statutes;

2. Is a party to a contract providing for or relating to sewerage facilities under N.J.S.A. 40:63-1 et seq., 40:14A-23, 40:14B-49, 58:27-1 et seq., or other statutes;

3. Has an ordinance under N.J.S.A. 40:63-6 that provides for, establishes, or alters a general system of sewerage;

4. Has an ordinance under N.J.S.A. 40:63-\*[53]\*\*52\* requiring buildings to be connected with sewers;

5. Has an ordinance under N.J.S.A. 40:55D-37 requiring approval of either subdivisions or site plans or both;

6. Has a zoning ordinance under N.J.S.A. 40:55D-62 that includes standards for the provision of sewerage facilities;

7. Has a master plan under N.J.S.A. 40:55D-28 that includes a utility service plan element for sewerage and waste treatment;

8. Has a capital improvements program under N.J.S.A. 40:55D-30 that includes sewerage projects;

9. Has an ordinance under N.J.S.A. 40:56-1 for undertaking sewerage improvements as local improvements;

10. Has a sewerage district under N.J.S.A. 40:63-32 through 40 or N.J.S.A. 40A:18-1 et seq.;

11. Has granted an unexpired franchise to a public utility to provide sewerage service regulated under N.J.S.A. 48:1-1 et seq.;

12. Has an ordinance regulating sewerage facilities under N.J.S.A. 40:48-2;

13. Is a permittee or co-permittee under N.J.A.C. 7:14A for DTW, or has applied to be such a permittee or co-permittee;

14. Seeks WQM plan amendments for DTW;

15. Receives or seeks to receive Federal or State financial assistance for DTW; or

16. Is required by statute, rule, contract, court order, Department order, consent agreement, or other legal obligation to perform any of the activities, or adopt any of the ordinances, plans, or other programs, listed in (b)1 through 15 above.

(c) The activities listed in (b)\*[1, 2, 8, 13, 14, and 15]\* above shall not be considered "sewerage-related functions" if they:

1. Pertain solely to sewage that arises on property owned or leased by the municipality, and that is conveyed to sewerage facilities not owned, leased, operated, or maintained by that municipality: \*[or]\*

2. Are performed by the municipality solely through the agency of an authority or joint meeting\*[.]\*\*; or\*

**\*3. Pertain solely to stormwater.\***

(d) The Department may, at any time, send a letter to any municipality, requesting that municipality to declare in writing to the BWQP whether or not that municipality performs any sewerage-related functions as discussed under (b) and (c) above. If that municipality does not make such a declaration within 90 calendar days of receipt of the letter, the Department shall, in the absence of information to the contrary, presume that the municipality performs sewerage-related functions.

(e) No municipality has wastewater management plan responsibility in any wastewater management plan area for which another governmental unit has wastewater management plan responsibility under N.J.A.C. 7:15-5.4 through 5.7.

#### 7:15-5.9 Alternative assignment of wastewater management plan responsibility: general statement

(a) Alternative assignments of wastewater management plan responsibility, different from those set forth in N.J.A.C. 7:15-5.4 through 5.8, shall be made and subsequently changed if and only if such alternative assignments or changes thereto are adopted as amendments to areawide WQM plans under N.J.A.C. 7:15-3.4(c) or (g), or as revisions to WQM Plans under N.J.A.C. 7:15-5.13 and N.J.A.C. 7:15-3.5. Amendments or revisions that change alternative assignments may establish different alternative assignments, or may restore wastewater management plan responsibilities set forth in N.J.A.C. 7:15-5.4 through 5.8.

(b) N.J.A.C. 7:15-5.10 through 5.13 identify some but not necessarily all of the alternative assignments of wastewater management plan responsibility that may be adopted as WQM Plan amendments or revisions under (a) above.

(c) Except if specifically provided otherwise in the amendment or revision under (a) above, any wastewater management plan responsibility assigned to a governmental unit under (a) above is in addition to, and does not diminish, any wastewater management plan responsibility which that governmental unit already has under N.J.A.C. 7:15-5.4 through 5.8 \*[of]\* **\*or\*** this section.

(d) In deciding whether or not to establish or change alternative assignments of wastewater management plan responsibility under (a) above, consideration shall be given, but not be limited to, the following general principles:

1. The Department shall generally support amendments or \*[transfers]\* **\*revisions\*** that:

i. Establish regional wastewater management plan areas;

ii. Encourage the development and management of cost-effective, environmentally sound wastewater facilities and wastewater management, including comprehensive regional sewerage facilities and management where appropriate;

iii. Assign, to a governmental unit that will have long-term responsibility to own or operate a DTW that will require a NJPDES discharge permit, the wastewater management plan responsibility for the entire area that is projected to generate sewage that will be conveyed to that governmental unit's DTW;

iv. Assign wastewater management plan responsibility to governmental units rather than to private persons; or

v. Prevent or eliminate geographic overlap of wastewater management plan areas.

2. The Department shall generally oppose amendments or \*[transfers]\* **\*revisions\*** that:

i. The Department considers to be contrary to one or more of the principles expressed in (d)1 above;

ii. Remove wastewater management plan responsibility from a governmental unit or private person, unless another governmental unit or private person already has or receives wastewater management plan responsibility for the subject geographic area;

iii. Include part of a municipality in a wastewater management plan area, but leave the remainder of the municipality outside any wastewater management plan area;

iv. Assign wastewater management plan responsibility, for all or part of a designated planning area, to a designated planning agency that does not \*[request]\* **\*want\*** such responsibility **\*at the time the amendment is proposed\***, except where such assignment is necessary to resolve wastewater management problems that cannot satisfactorily be resolved at other levels;

v. Assign wastewater management plan responsibility, for all or part of a county, to a county planning board that does not request such responsibility; or

vi. Assign wastewater management plan responsibility to the Department, except as a last resort.

(e) The Department may determine that a governmental unit identified under N.J.A.C. 7:15-5.4 through 5.8 is unable to exercise wastewater management plan responsibility effectively. Upon the adoption of such a determination in an amendment to an areawide WQM plan under (a) above, N.J.A.C. 7:15-5.4 through 5.8 shall be administered without regard to the existence of such governmental unit, or other assignments of wastewater management plan responsibility may be made in the amendment. Such a determination may be rescinded in a subsequent amendment to an areawide WQM plan.

#### 7:15-5.10 Wastewater management plan responsibility as condition for financial assistance

A WQM plan amendment under N.J.A.C. 7:15-5.9 may assign wastewater management plan responsibility to a governmental unit, for the wastewater management plan area identified in that amendment, as a condition of that governmental unit's being eligible to apply for or receive a grant, loan, or other financial assistance for wastewater facilities, if such financial assistance is subject to Department certification or approval.

#### 7:15-5.11 Wastewater management plan responsibility for complete wastewater service area

(a) A WQM plan amendment under N.J.A.C. 7:15-5.9 may assign wastewater management plan responsibility to a governmental unit that is, or has applied to be, a permittee or co-permittee under N.J.A.C. 7:14A for a DTW that requires a NJPDES discharge permit, or that owns, leases, or seeks a WQM plan amendment for such a DTW, for the entire area that generates sewage conveyed to that DTW, or that is projected to generate such sewage in the 20 year projection period of the wastewater management plan.

(b) Every \*[governmental unit or other person that has wastewater management plan responsibility for a wastewater management plan area]\* **\*wastewater management planning agency\*** automatically assumes wastewater management plan responsibility for any additional \*[20-year]\* sewer service area identified in \*[the wastewater management plan for]\* that **\*wastewater management planning agency's\*** wastewater management plan \*[area]\* under N.J.A.C. 7:15-5.18(c)4, upon adoption of that wastewater management plan by the Governor or his designee.

#### 7:15-5.12 Joint wastewater management plan responsibility

A WQM plan amendment under N.J.A.C. 7:15-5.9 may assign joint wastewater management plan responsibility for a unified wastewater management plan area to two or more governmental units that would otherwise have wastewater management plan responsibility for separate but contiguous wastewater management plan areas.

#### 7:15-5.13 Voluntary establishment of wastewater management plan responsibility

(a) With the consent of the Department and of the parties making and receiving the transfer, wastewater management plan responsibility for all or part of a wastewater management plan area may be transferred from one governmental unit or private person to another.

(b) With the consent of the Department and of the party receiving the assignment, wastewater management plan responsibility may be assigned to a governmental unit or private person for a wastewater

management plan area for which no other party has wastewater management plan responsibility under this subchapter.

(c) Transfers or assignments of wastewater management plan responsibility under (a) or (b) above do not require WQM Plan amendments under N.J.A.C. 7:15-3.4, but shall be adopted as WQM Plan revisions under N.J.A.C. 7:15-3.5.

(d) This section shall not be construed to prevent wastewater management plan responsibility from being transferred or assigned by WQM plan amendment under N.J.A.C. 7:15-5.9 and N.J.A.C. 7:15-3.4. Such transfers or assignments may be made without the consent of the affected parties.

7:15-5.14 District boundaries and related information; joint meeting membership

(a) To assist the identification of wastewater management plan responsibility under N.J.A.C. 7:15-5.5 through 5.8, the following information shall be submitted in writing to the BWQP within 120 calendar days after the effective date of this subchapter:

1. The Passaic Valley Sewerage Commissioners, every sewerage authority, and every municipal authority shall:

- i. List each municipality that is entirely within their district;
- ii. List each municipality, if any, that is partially within their district; and
- iii. Submit a map depicting the boundaries of the district within any municipality listed under (a)ii above, using 1:24,000, United States Geological Survey quadrangle maps as a base.

2. Every sewerage authority and every municipal authority shall also:

- i. Identify the date when each municipality listed under (a)i or ii above became part of the district of that authority; and
- ii. Identify the statute under which the authority was created and the date, if any, when the authority was reorganized under N.J.S.A. 40:14B-6.

3. Every joint meeting shall list the municipalities that are members of that joint meeting.

(b) Whenever a new authority or joint meeting is created, or an existing authority is reorganized under N.J.S.A. 40:14B-6, or the district of an existing authority is modified, or an additional municipality becomes a member of an existing joint meeting, such authority or joint meeting shall, by letter to the BWQP, provide or update the information required under (a)2 or 3 above within 120 calendar days of such event.

(c) The Department may at any time request the Passaic Valley Sewerage Commissioners or any authority or joint meeting to update information provided under (a) or (b) above, and such governmental units shall submit such information in writing to the BWQP within 120 calendar days of receiving such request.

(d) To assist the identification of wastewater management plan responsibility, the Department may consult other sources of information, including but not limited to resolutions or ordinances filed in the office of the Secretary of State under N.J.S.A. 40:14A-4 or 40:14B-7.

(e) If an authority or joint meeting cannot identify with reasonable certainty the boundaries of its district or other information required under (a) through (c) above, the authority or joint meeting shall make a written declaration to that effect to the BWQP, and shall provide its best estimate. Such estimates, together with any other information obtained under (d) above, shall suffice to define the geographic scope of wastewater management plan responsibility under N.J.A.C. 7:15-5.6 or 5.7.

(f) The Department may exempt a municipal authority from the requirements of this section if that authority makes the declaration identified in N.J.A.C. 7:15-5.6(d).

7:15-5.15 Contents of wastewater management plans; general statement

(a) Each wastewater management plan shall consist of written descriptions and maps of existing and future wastewater-related jurisdictions and wastewater service areas, and of selected environmental features. A wastewater management plan shall also include written descriptions and maps of specified categories of existing and future **\*[DTW]\* \*treatment works\***, if such **\*[DTW]\* \*treatment**

**works\*** presently exist or are necessary to meet anticipated wastewater management needs. More specific requirements for these written descriptions and maps are set forth in N.J.A.C. 7:15-5.16 through 5.20.

(b) In accordance with N.J.A.C. 7:15-5.16 through 5.20, each wastewater management plan shall address all types of DTW and all methods of **\*domestic\*** wastewater disposal, including but not limited to surface water discharges and ground water discharges, to the extent that such DTW and methods of **\*domestic\*** wastewater disposal presently exist or are necessary to meet anticipated wastewater management needs. **\*In accordance with N.J.A.C. 7:15-5.16 and 5.20, each wastewater management plan shall provide information about specified categories of existing industrial treatment works.\***

7:15-5.16 Existing jurisdictions, wastewater service areas, and **\*[domestic]\* treatment works**

(a) Each wastewater management plan shall include maps of existing wastewater jurisdictions, existing wastewater service areas, and any existing **\*[DTW]\* \*treatment works\*** in the categories specified in (a)3 or 5 below. These maps shall depict the following information:

1. The existing boundaries of the wastewater management plan area:

2. The boundaries, within the wastewater management plan area, or within any 20-year sewer service area identified under N.J.A.C. 7:15-5.18(c)4, of the following:

- i. Any existing districts, and the existing franchise areas for sewerage service of any public utilities; and
- ii. Any areas within the Hackensack Meadowlands District defined at N.J.S.A. 13:17-4, the Pinelands Area defined at N.J.S.A. 13:18A-11, the Pinelands National Reserve defined at 16 U.S.C. §471i(c), or the "coastal area" described in N.J.S.A. 13:19-4.

3. The location, within or outside the wastewater management plan area, of each existing **\*[DTW]\* \*treatment works\***, if any, that is not a sewer or a pumping station, but that receives **\*[sewage]\* \*wastewater\*** that arises within or is conveyed into or through the wastewater management plan area, if such **\*[DTW]** requires a NJPDES discharge permit and **\*[treatment works]** is:

- i. **\*A DTW that\* \* [Directly]\* \*directly\*** discharges to surface waters, or onto the land surface (for example, spray irrigation or overland flow facilities): **\*[or]\***
- ii. **\*A DTW that\* \* [Has]\* \*has\*** a design capacity of 2,000 gallons per day or larger, and stores or disposes of sewage by any means: **\*or\***

**\*iii. An industrial treatment works that requires a NJPDES discharge permit and that handles process waste water or sanitary sewage.\***

4. The location of each existing discharge to surface or ground water from each **\*[DTW]\* \*treatment works\*** mapped within the wastewater management plan area under (a)3 above, and the location of any overflow discharges of sewage within the wastewater management plan area;

5. The location of each existing pumping station and major interceptor and trunk sewer, if any, within the wastewater management plan area;

6. Except as provided under (a)9 below, the present sewer service area, within or outside the wastewater management plan area, for each **\*[DTW mapped within the wastewater management plan area under (a)3 above, distinguishing the separate area served by each DTW:]\*\*:**

**\*i. Each DTW mapped within the wastewater management plan area under (a)3 above, distinguishing the separate area served by each DTW; and**

**ii. Each industrial treatment works that is mapped within the wastewater management plan area under (a)3 above, and that serves property other than the property on which the industrial treatment works is located, distinguishing the separate area served by each industrial treatment works.\***

7. Except as provided under (a)9 below, the present sewer service area, within the wastewater management plan area, for **\*[each DTW mapped outside the wastewater management plan area under (a)3 above, distinguishing the separate area served by each DTW:]\*\*:**

\*i. Each DTW mapped outside the wastewater management plan area under (a)3 above, distinguishing the separate area served by each DTW; and

ii. Each industrial treatment works that is mapped outside the wastewater management plan area under (a)3 above, and that serves property other than the property on which the industrial treatment works is located, distinguishing the separate area served by each industrial treatment works.\*

8. Any areas within the wastewater management plan area that \*, as regards DTW, are\* presently \*[are]\* served only by either or both of the following:

i. Individual \*[septic]\* **\*subsurface sewage disposal\*** systems for individual residences; or

ii. Other DTW that have a design capacity of less than 20,000 gallons per day, use either subsurface sewage disposal systems or other sewage disposal systems that have no direct discharge to surface water or onto the land surface and do not have aggregate service areas mapped under (a)9 below;

9. The requirements in (a)6 and 7 above do not apply to DTW that are mapped under (a)3ii above, but that have a design capacity of less than 20,000 gallons per day. However, if two or more such DTW, on a single lot or on two or more adjacent lots, in combination have a design capacity of 20,000 gallons per day or larger, the aggregate service area of such DTW shall be depicted and distinguished from other areas mapped under (a)6 through 8 above.

(b) Each wastewater management plan shall provide the following information, in narrative, outline, or tabular form, for **\*each existing treatment works or\*** each existing DTW\*, as appropriate,\* mapped within the wastewater management plan area under (a)3 above:

1. Name and owner of the \*[DTW]\* **\*treatment works\***;

2. Name of any other governmental unit or corporation, if any, responsible for operating the DTW;

3. Location of the \*[DTW]\* **\*treatment works\*** within municipality, county, and WQM planning area, and within any district;

4. NJPDES discharge permit number, \*[and latitude and longitude]\* **\*if any\***, for any discharges from the \*[DTW]\* **\*treatment works\***;

5. Name of NJPDES permittee and any co-permittee under N.J.A.C. 7:14A for any discharges from the DTW;

6. Name and classification, under N.J.A.C. 7:9-4 and N.J.A.C. 7:9-6, of any surface and ground waters receiving any discharges from the \*[DTW]\* **\*treatment works\***;

7. Estimate of existing residential population served by the \*[DTW]\* **\*treatment works\*** within and outside the wastewater management plan area, **\*disaggregated by municipality and\*** including any major seasonal fluctuations;

8. Actual flow of wastewater received by the \*[DTW]\* **\*treatment works\***, in millions of gallons per day (MGD), expressed as total flow, as estimated flow arising within and outside the wastewater management plan area, and as estimated flow\*, **disaggregated by municipality and\*** attributed to each of the following sources: residential, commercial, industrial, and infiltration/inflow; and

9. Existing design capacity \*[and treatment process]\* of the DTW.

(c) Each wastewater management plan shall include the following information, in narrative, outline, or tabular form, for each existing \*[DTW]\* **\*treatment works\*** mapped outside the wastewater management plan area under (a)3 above:

1. Name and owner of the \*[DTW]\* **\*treatment works\***;

2. Estimate of existing residential population served by the \*[DTW]\* **\*treatment works\*** within the wastewater management plan area, **\*disaggregated by municipality and\*** including any major seasonal fluctuations; and

3. Estimated average flow of wastewater conveyed to the \*[DTW]\* **\*treatment works\*** from the wastewater management plan area, in millions of gallons per day\*, **disaggregated by municipality and\*** expressed as total flow and as estimated flow attributed to each of the following sources: residential, commercial, industrial, and infiltration/inflow.

**\*(d) For a particular treatment works, the Department may waive the disaggregation of flow by municipality or land use under (b)8 and (c)3 above, if it is demonstrated to the satisfaction of the Department**

**that such disaggregation would require data not readily available for that treatment works.\***

**\*(d)\*\*(e)\*** Each wastewater management plan shall state whether or not there are combined sewers in the wastewater management plan area.

**\*(e)\*\*(f)\*** For purposes of (a), (b) and (c) above, "existing" or "present" means existing or present at the time the particular wastewater management plan is being prepared or updated, as the case may be.

#### 7:15-5.17 Mapping of environmental features

(a) Each wastewater management plan shall include mapping of each of the following environmental features in the wastewater management plan area, and in any additional sewer service area identified in that wastewater management plan under N.J.A.C. 7:15-5.18(c)4:

1. Coastal wetlands that have been mapped by the Department under the Wetlands Act of 1970, N.J.S.A. 13:9A-1 et seq.;

**\*[2. Other freshwater and estuarine wetlands, based on the following information sources, in order of preference:**

i. Maps prepared by the Department under the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-25c;

ii. On-site delineations verified by the United States Army Corps of Engineers, the United States Fish and Wildlife Service, the Pinelands Commission, or the Department, if such verified delineations are made readily available to the governmental unit or other person with wastewater management plan responsibility;

iii. National Wetlands Inventory maps prepared by the United States Fish and Wildlife Service;]\*

**\*2. Other freshwater and estuarine wetlands, based on maps prepared by the Department under the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-25c, or if such Department maps are not available, the National Wetlands Inventory maps prepared by the United States Fish and Wildlife Service;\***

3. Flood prone areas, based on the following information sources in order of preference:

i. Delineations of flood hazard areas made by the Department under the Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq., where such delineations exist;

ii. Delineations of flood hazard areas by the Federal Emergency Management Agency under the National Flood Insurance Program, 42 U.S.C. §§4001-4128;

iii. Within the New Jersey Coastal Zone identified in the Department's Rules on Coastal Resources and Development, N.J.A.C. 7:7E, the 10-foot contour line as specified in N.J.A.C. 7:7E-8.19, where flood hazard areas have been delineated by neither the Department nor the Federal Emergency Management Agency;

4. Public open space and recreation areas that include at least 10 acres of undeveloped land, including:

i. National recreation areas, wildlife refuges, and historical parks administered by the United States Department of the Interior;

ii. State and interstate parks, forests, wildlife management areas, natural areas, and recreation areas administered by the Department or the Palisades Interstate Park Commission; and

iii. County and municipal parks, reservations, preserves, and other conservation or recreation areas;

5. River areas designated under the New Jersey Wild and Scenic Rivers Act, N.J.S.A. 13:8-45 et seq., or the Federal Wild and Scenic Rivers Act, 16 U.S.C. §§1278 et seq.;

6. Category One Waters\*, **trout production waters, and trout maintenance waters\*** designated in the Department's Surface Water Quality Standards, N.J.A.C. 7:9-4, based on the Department's maps of such waters; and

7. Surface waters, as mapped on USGS quadrangle maps.

#### 7:15-5.18 Future wastewater jurisdictions, service areas, and domestic treatment works.

(a) In accordance with the provisions of this section, each wastewater management plan shall include a description of wastewater service areas and DTW necessary to meet anticipated wastewater management needs over a 20-year period. **\*A wastewater management plan may also include such descriptions for shorter or longer periods.\***

1. Each wastewater management plan shall provide for cost-effective, environmentally sound wastewater management, including exist-

ing or new comprehensive regional DTW or regional management where appropriate. Upgrading or expansion of existing regional DTW is generally preferable to construction of additional DTW that would produce additional direct discharges to surface water at new locations.

2. On a case-by-case basis, the Department may require \*[governmental units or other persons that have wastewater management plan responsibility]\* **wastewater management planning agencies** to examine specific wastewater management alternatives as part of the preparation of the wastewater management plan. The Department may require such examination to include analysis of critical economic, social, environmental, or institutional factors pertaining to such alternatives.

(b) **Where municipal or county master plans have been adopted and are in effect under N.J.S.A. 40:55D-28 or N.J.S.A. 40:27-2]\* Subject to the requirements, qualifications, and exceptions listed in (b)3 through 8 below\***, wastewater service areas and DTW shall, to the maximum extent practicable, be identified in such a manner as to provide adequate wastewater service for **the future land uses shown in such master plans, and to be consistent with any sewerage provisions in such master plans. The wastewater management plan shall list all of the municipal and county master plans on which the wastewater management plan is based. However, the requirements of this subsection are subject to the following qualifications and exceptions]\*:**

**\*1. Land uses allowed in zoning ordinances that have been adopted and are in effect under N.J.S.A. 40:55D-62; or**

**2. Future land uses shown in municipal or county master plans that have been adopted and are in effect under N.J.S.A. 40:55D-28 or N.J.S.A. 40:27-2. If such master plans are used, wastewater service areas and DTW shall, to the maximum extent practicable, be identified in a manner consistent with any sewerage provisions in such master plans.**

**3. The wastewater management plan shall list all of the zoning ordinances, municipal master plans, or county master plans on which the wastewater management plan is based. If any zoning ordinance is used, the documentation for the wastewater management plan shall include a copy of the map of the districts in that ordinance, and of the regulations in that ordinance which specify the type, density, and intensity of land use allowed in each district. If any master plan is used, documentation for the wastewater management plan shall include a copy of the map of proposed future land uses contained in that master plan, a copy of any text in the master plan which is needed to interpret the map, and a copy of any provisions in the master plan that address sewerage and waste treatment.\***

**\*[1.]\*4.\* Due regard shall be given to **the degree of likelihood that land development allowed in zoning ordinances will occur in the 20-year period, and to** any substantial differences between dates associated with future land uses shown in **such** master plans and the dates **corresponding with the 20-year periods required by this section** **on which the 20-year periods end**.\***

**\*[2.]\*5.\* If, for particular locations, a zoning **ordinance or** variance under **articles 8 or** **article 9** of the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., allows land development that would generate more wastewater than would the development **allowed in the zoning ordinance or** shown in **such** **the** master **plans** **plan**, then for some or all of those locations the wastewater management plan may be based on the zoning **ordinance or** variance rather than on **such** **the zoning ordinance or the** master **plans** **plan**.\***

**\*[3.]\*6.\* If, for particular locations, preliminary or final subdivision or site plan approvals under article 6 of the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., have allowed land development that would generate more wastewater than would the development **allowed in the zoning ordinance or** shown in **such** **the** master **plans** **plan**, then for those locations the wastewater management plan shall be based on such approvals rather than on **such** **the zoning ordinance or the** master **plans** **plan**.\***

**\*[4.]\*7.\* Wastewater management plans relating to the New Jersey Coastal Zone, the Hackensack Meadowlands District, the Pinelands Area, or the Pinelands National Reserve are subject to the requirements of N.J.A.C. 7:15-3.6 or 3.7, as appropriate.**

**\*[5.]\*8.\* The wastewater management plan may be inconsistent with **such** **zoning ordinances or** master plans for other compelling reasons, provided that the wastewater management plan specifically identifies such inconsistencies and sets forth such reasons with adequate documentation.**

(c) Each wastewater management plan shall include maps of future wastewater service areas, and of specified categories of future DTW, that are necessary to meet anticipated wastewater management needs at the end of the 20-year period\*, **and at the end of any shorter or longer period identified under (a) above**\*. These maps shall depict the following:

1. The location, within or outside the wastewater management plan area, of each existing, expanded, or new DTW, if any, that would not be a sewer or a pumping station, but that would receive sewage that would arise within or be conveyed into or through the wastewater management plan area, if such DTW would require a NJPDES discharge permit and:

i. Directly discharge to surface waters, or onto the land surface (for example, spray irrigation or overland flow facilities); or  
ii. Have a design capacity of 20,000 gallons per day or larger, and store or dispose of sewage by any means;

2. The location of each discharge to surface or ground water from each DTW mapped within the wastewater management plan area under (c)1 above;

3. The location of each existing, expanded, or new pumping station and major interceptor and trunk sewer, if any, that would convey sewage within the wastewater management plan area;

4. The sewer service area, within or outside the wastewater management plan area, for each DTW mapped within the wastewater management plan area under (c)1 above, distinguishing the separate area to be served by each DTW;

5. The sewer service area, within the wastewater management plan area, for each DTW mapped outside the wastewater management plan area under (c)1 above, distinguishing the separate area to be served by each DTW: **and**.\*

6. The area, if any, within the wastewater management plan area that would be served only by either or both of the following:

i. Individual **septic** **subsurface sewage disposal** systems for individual residences; or

ii. Other DTW that would have a design capacity of less than 20,000 gallons per day, and use either subsurface disposal systems or other sewage disposal systems that would have no **direct** discharge to surface water**[.]** **or onto the land surface; and**

7. The area, if any, within the wastewater management plan area that would be served only by either or both of the following:

i. Individual subsurface sewage disposal systems for individual residences; or

ii. Other DTW that would have a design capacity of less than 2,000 gallons per day, and use either subsurface disposal systems or other sewage disposal systems that would have no direct discharge to surface water or onto the land surface.\*

(d) For each DTW mapped within the wastewater management plan area under (c)1 above, each wastewater management plan shall further identify the future DTW that are necessary to meet wastewater management needs by providing, in narrative, outline, or tabular form, the following information applicable to such DTW at the end of the 20-year period\*, **and at the end of any shorter or longer period identified under (a) above**.\*:

1. Owner and, where known, name of the DTW;

2. Name of any other governmental unit or corporation, if any, to be responsible for operating the DTW;

3. Location of the DTW within municipality, county, and WQM planning area, and within any existing district;

4. **[Latitude and longitude, and, where]** **Where** known, NJPDES permit number for any discharges from the DTW;

5. Name of present or proposed NJPDES permittee and any copermitee for any discharges from the DTW;

6. Name and present classification, under N.J.A.C. 7:9-4 and N.J.A.C. 7:9-6, of any surface and ground waters that would receive any discharges from the DTW;

7. Estimate of residential population to be served by the DTW within and outside the wastewater management plan area, **disag-**

gregated by municipality and\* including any major seasonal fluctuations; \*and\*

8. Estimated average flow of wastewater to be received by the DTW, in millions of gallons per day\*, disaggregated by municipality and\* expressed as total flow, as flow arising within and outside the wastewater management plan area, and as flow attributed to each of the following sources: residential, commercial, \*and\* industrial\*.\*[, and infiltration/inflow; and]\*

\*[9. Design capacity of the DTW.]\*

(e) For each DTW mapped outside the wastewater management plan area under (c)1 above, each wastewater management plan shall further identify the future DTW that are necessary to meet wastewater management needs by providing, in narrative, outline, or tabular form, the following information applicable to such DTW at the end of the 20-year period\*, and at the end of any shorter or longer period identified under (a) above\*:

1. Owner and, where known, name of the DTW;

2. Estimate of residential population to be served by the DTW within the wastewater management plan area, \*disaggregated by municipality and\* including any major seasonal fluctuations; and

3. Estimated average flow of wastewater to be conveyed to the DTW from the wastewater management plan area, in millions of gallons per day\*, disaggregated by municipality and\* expressed as total flow and as flow attributed to each of the following sources: residential, commercial, \*and\* industrial\*[, and infiltration/inflow]\*.

(f) \*[There shall be a reasonable relationship, consistent with (b) above, between sewer service areas identified under (c)4 and 5 above and residential population estimates under (d)7 and (e)2 above. Wastewater flow estimates under (d)8 and (e)3 above shall be based on, and reasonably related to, these sewer service areas and residential population estimates. Where actual, accurate gauging is available for a sewer system already in existence, such gauging shall be used as a basis for such flow estimates, with an allowance for future changes in wastewater flow.]\* **\*The wastewater management plan shall document the basis for the estimated flows attributed to residential, commercial, and industrial sources under (d)8 and (e)3 above. Where actual, accurate gauging is available for a sewer system already in existence, such gauging shall be used in preparing these flow estimates, with an allowance for future changes in wastewater flow. There shall be a reasonable relationship between these flow estimates and sewer service areas identified under (c)4 and 5 above. There shall be a reasonable relationship, consistent with (b) above, between these sewer service areas and residential, population estimates under (d)7 and (e)2 above.\*** The average domestic flow from new residences, exclusive of other flow such as industrial flow, commercial flow, and infiltration/inflow, shall be assumed to be 65 gallons per capita per 24-hour period, except that values different than 65 gallons may be considered for this purpose when supported by adequate engineering data.

(g) \*[Design capacities identified under (d)10 above shall be adequate to accommodate these wastewater flow estimates under (d)8 and (e)3 above. Notwithstanding any design capacity identified in an adopted wastewater management plan, the Department may, in the administration of N.J.A.C. 7:14A or N.J.A.C. 7:22, require a different design capacity in order to accommodate peak wastewater flows or implement other requirements of sound engineering practice.]\* **\*Unless expressly stated otherwise in the wastewater management plan, disaggregations of estimated flows by municipality and land use under (d)8 and (e)3 above shall serve only to document the basis for estimates of total flow under those paragraphs, and shall not constitute legally enforceable flow allocations to those municipalities or land uses.**

(h) **If the Department has waived under N.J.A.C. 7:15-5.16(d) the disaggregation by municipality or land use of existing flow to a DTW, then the disaggregation of estimated flow by municipality or land use under (d)8 and (e)3 above shall be limited to disaggregation of future changes in wastewater flow to that DTW.\***

\*[(h)]\*(i)\* A wastewater management plan may identify specific changes to assignments of wastewater management plan responsibility under N.J.A.C. 7:15-5.9, or specific changes to 201 facilities planning responsibilities. Such changes shall take effect upon adoption of the wastewater management plan under N.J.A.C. 7:15-

\*[5.23]\*\*3.4\*. A wastewater management plan may suggest the establishment, modification, or elimination of districts or franchise areas under N.J.S.A. 40:14A-1 et seq., 40:14B-1 et seq., 58:14-1 et seq., or 48:1-1 et seq., but such districts or franchise areas shall be established, modified or eliminated only in the manner provided by law. Inclusion of such suggestions in an adopted wastewater management plan does not, by itself, accomplish such establishment, modification, or elimination.

7:15-5.19 Individual \*[septic]\* **\*subsurface sewage disposal\*** systems and other small domestic treatment works in sewer service areas

(a) In sewer service areas depicted under N.J.A.C. 7:15-5.18(c)4 or 5, a wastewater management plan may require the construction of \*[some or all of the]\* DTW identified in N.J.A.C. 7:15-4.4(a)1 or 2 to be accompanied by construction of collection system sewers that would be used when the depicted sewer service becomes available. This requirement shall exist only if it is specifically stated in the wastewater management plan.

(b) A wastewater management plan shall require that \*[some or all]\* individual \*[septic]\* **\*subsurface sewage disposal\*** systems for individual residences can be constructed in depicted sewer service areas only if \*[adequate]\* **\*legally enforceable\*** guarantees are provided before such construction that use of such septic systems will be discontinued when the depicted sewer service becomes available.

(c) A wastewater management plan shall not apply requirements under (a) or (b) above to individual \*[septic]\* **\*subsurface sewage disposal\*** systems that do not require certifications from the Department under N.J.S.A. 58:11-25.1 or individual permits from the Department under N.J.A.C. 7:14A, unless that wastewater management plan includes adequate arrangements for enforcement of such requirements by one or more substate governmental units.

(d) Estimated wastewater flows under N.J.A.C. 7:15-5.18(d)8 and (e)3 shall include flows that will be received when use of DTW identified in N.J.A.C. 7:15-4.4(a)1 and 2 is discontinued when depicted sewer service becomes available.

7:15-5.20 Specifications for text and graphics

(a) Wastewater management plans should be concise, using the minimum feasible narrative and mapping. All pages, tables, and figures in wastewater management plans shall be legible and numbered.

(b) All maps in wastewater management plans shall use 1:24,000 scale United States Geological Survey quadrangle maps as a base, except that other maps at other scales may be provided as supplements. Each wastewater management plan shall include the following main maps at 1:24,000 scale:

1. A map depicting the existing boundaries of the wastewater management plan area and the existing \*[DTW]\* **\*treatment works\*** and service areas identified under N.J.A.C. 7:15-5.16(a)3 through 9;

2. A map depicting future DTW and service areas identified at the end of the 20-year period under N.J.A.C. 7:15-5.18(c)1 through 6 **\*and a corresponding map for any shorter or longer period identified under N.J.A.C. 7:15-5.18(a). Wherever feasible, the boundaries of future service areas shall coincide with recognizable geographic or political features\***. The existing boundaries of the wastewater management plan area shall also be depicted on \*[that]\* **\*any\*** map **\*under this paragraph\***; and

3. One or more maps depicting the existing boundaries of the wastewater management plan area, and the environmental features identified under N.J.A.C. 7:15-5.17. This map shall also state that development in areas mapped as wetlands, flood prone areas, or designated river areas may be subject to special regulation under Federal or State statutes or rules, and that interested persons should check with the Department for the latest information. Depiction of environmental features shall be for general information purposes only, and shall not be construed to define the legal geographic jurisdiction of such statutes or rules.

(c) Any other mapping required by N.J.A.C. 7:15-5.16 through 5.18 may be included on one or more of the main maps listed in (b) above, or on other 1:24,000 scale maps.

## 7:15-5.21 Geographic overlap between wastewater management plans prohibited

(a) After the effective date of this subchapter, the Governor or his designee shall not adopt a wastewater management plan that maps, under N.J.A.C. 7:15-5.18(c)1 or 4, any DTW or sewer service area outside the existing wastewater management plan area for that wastewater management plan, so long as that DTW or sewer service area is within a separate wastewater management plan area for which a separate, adopted wastewater management plan is in effect.

(b) To avoid geographic overlap prohibited by (a) above, existing assignments of wastewater management plan responsibility may be changed under N.J.A.C. 7:15-5.9, and adopted wastewater management plans may be amended or repealed under N.J.A.C. 7:15-3.4.

## 7:15-5.22 Consultation and endorsements for wastewater management plans

(a) **\*Every wastewater management planning agency that prepares a wastewater management plan, and\* \*Every\* \*every\* governmental unit or other person that prepares \*an amendment to\* a wastewater management plan,\* \*or amendment thereof]\* shall, during such preparation, notify and seek comments from and offer to confer with:**

1. All governmental units that have regulatory or planning jurisdiction over wastewater or land use in that wastewater management plan area, or in any additional sewer service area identified or being considered for identification under N.J.A.C. 7:15-5.16(a)6 or 5.18(c)4. Such governmental units shall include, but not be limited to: designated planning agencies, **\*[governmental units or other persons that have wastewater management plan responsibility]\* \*wastewater management planning agencies\***, county planning boards, municipal governing bodies and planning boards, sewerage authorities, municipal authorities, joint meetings, the Passaic Valley Sewerage Commissioners, the Hackensack Meadowlands Development Commission, the Pinelands Commission, and the Delaware River Basin Commission, as appropriate.

2. All governmental units and public utilities, and all vendors of wastewater treatment systems or services under the "New Jersey Wastewater Treatment Privatization Act", N.J.S.A. 58:27-1 et seq., that:

i. Own, lease, operate, or maintain DTW that receive wastewater that arises within, or that is conveyed into or through, that wastewater management plan area, or in any additional sewer service area identified or being considered for identification under N.J.A.C. 7:15-5.16(a)6 or 5.18(c)4;

ii. Are parties to contracts for such DTW;

iii. Are permittees or co-permittees under N.J.A.C. 7:14A for such DTW; or

iv. Are projected in a draft or previously adopted wastewater management plan for that wastewater management plan area to perform activities listed in (a)2 i, ii or iii above.

3. The criteria in (a)2 i through iv above are exclusive of collection facilities for sewage that arises only on nonresidential property owned or leased by the governmental unit, public utility, or vendor.

(b) Under N.J.A.C. 7:15-3.4\*(d)3 and\*(g)4, **\*[the Department shall generally require]\* endorsements for wastewater management plans \*to]\* \*shall generally\* be requested from, at a minimum, the governing bodies of each of the governmental \*[units]\* \*entities and sewerage agencies\* that are required to be notified under (a) above.**

(c) Wastewater management plans relating to the New Jersey Coastal Zone, the Hackensack Meadowlands District, the Pinelands Area, or the Pinelands National Reserve are also subject to the requirements of N.J.A.C. 7:15-3.6 or 3.7, as appropriate.

## \*[7:15-5.23 Submission and adoption of wastewater management plans

(a) A governmental unit or other person that has wastewater management plan responsibility, but that is not a designated planning agency or the Department, shall submit wastewater management plans or amendments thereof to the appropriate designated planning agency or to the BWQP, and petition the designated planning agency or the Department, as appropriate, to amend the areawide WQM plan to incorporate the wastewater management plans or amendments thereof in accordance with N.J.A.C. 7:15-3.4.

(b) If a designated planning agency or the Department has wastewater management plan responsibility, then that designated planning agency or the Department shall propose amendments to the areawide WQM plan to incorporate wastewater management plan or amendments thereof in accordance with N.J.A.C. 7:15-3.4.

(c) Governmental units or other persons that do not have wastewater management plan responsibility may nevertheless prepare amendments to wastewater management plans and seek their adoption as amendments to areawide WQM plans under N.J.A.C. 7:15-3.4. Any governmental unit or other person that has wastewater management plan responsibility for the affected area shall be requested to endorse such amendments under N.J.A.C. 7:15-3.4(g)3 or 4, and has the duty to provide comments in response to such requests. In deciding whether to adopt such amendments, the comments, if any, received in response to such requests shall be given particular consideration.

(d) Except for wastewater management plans identified in N.J.A.C. 7:15-5.2(a), wastewater management plans and amendments thereof are valid only upon their adoption by the Governor or his designee as amendments to areawide WQM plans under N.J.A.C. 7:15-3.4.\*

## 7:15-5.24\*\*5.23\* Schedule for submission of wastewater management plans

(a) Each **\*[governmental unit or other person that has wastewater management plan responsibility]\* \*wastewater management planning agency\* shall periodically prepare and submit wastewater management plans **\*[in accordance with]\* \*as requests to amend areawide WQM plans under\* N.J.A.C. 7:15-5.23(a) or (b), as appropriate]\* \*3.4\*.** The first such submission shall be made in accordance with the schedule established in (b) through (e) below. Thereafter, an updated wastewater management plan shall be submitted at least once every six years from the date of the previous submission. Alternative schedules for submission of wastewater management plans may be established and changed under (f) **\*or (g)\*** below. **\*Early submissions of wastewater management plans may also be made under (j) below.\*****

(b) The following governmental units shall submit wastewater management plans within 12 months after the effective date of this subchapter or of the creation of the governmental unit, whichever is later, if such units have wastewater management plan responsibility under N.J.A.C. 7:15-5.4 through 5.7:

1. Designated planning agencies;
2. The Passaic Valley Sewerage Commissioners;
3. County utilities authorities;
4. Regional **\*[sewerage]\*** authorities; and
5. Multi-county joint meetings.

(c) Other sewerage authorities, municipal authorities, joint meetings, and municipalities that have wastewater management plan responsibility under N.J.A.C. 7:15-5.6 through 5.8 shall submit wastewater management plans during the period specified in the following table or within 12 months of the creation of the governmental unit, whichever is later:

Table I  
Wastewater Management Plan Submission Schedule

Location of  
Wastewater Management Plan  
Burlington, Cape May, Middlesex,  
Ocean, Passaic, and Union Counties  
Atlantic, Morris, Salem,  
Sussex, and Warren Counties  
Bergen, Essex, Gloucester,  
Hunterdon, and Monmouth Counties  
Camden, Cumberland, Hudson,  
Mercer, and Somerset Counties

Period of Submission  
12 to 24 months after the  
effective date of this subchapter  
24 to 36 months after the  
effective date of this subchapter  
36 to 48 months after the  
effective date of this subchapter  
48 to 60 months after the  
effective date of this subchapter

(d) Notwithstanding the schedule in (b) and (c) above, if an entire wastewater management plan area is already addressed by one or more wastewater management plans identified in N.J.A.C. 7:15-5.2, the governmental unit that has wastewater management plan responsibility for that wastewater management plan area under N.J.A.C. 7:15-5.4 through 5.8 shall submit an updated wastewater management plan for that wastewater management plan area 60 to 72 months after the effective date of this subchapter, or within 12 months of the creation of the governmental unit, whichever is later.

(e) Each WQM plan amendment or WQM plan revision that makes or changes alternative assignments of wastewater management plan responsibility under N.J.A.C. 7:15-5.9 shall include a schedule for submission of the corresponding wastewater management plan. This requirement does not apply to automatic expansions of wastewater management plan areas under N.J.A.C. 7:15-5.11(b).

(f) Alternative schedules for submission of wastewater management plans, different from those set forth under (a) through (e) above, shall be established and subsequently changed only if such alternative schedules or changes thereto are adopted as amendments to areawide WQM plans under N.J.A.C. 7:15-3.4, or as revisions to WQM plans under (g) below. Amendments or revisions that change alternative schedules may establish different alternative schedules, or, where reasonable, may restore schedules set forth under (a) through (e) above. Reasons that may justify the establishment or changing of alternative schedules include, but are not limited to:

1. Coordination of wastewater management plans with the preparation of municipal or county master plans under N.J.S.A. 40:55D-28 or N.J.S.A. 40:27-2, or with reexaminations under N.J.S.A. 40:55D-89;

2. Coordination between adjacent wastewater management plan areas;

3. The need for additional time to perform specific examinations required under N.J.A.C. 7:15-5.18(a)2;

4. Coordination of wastewater management plans with the schedules of the NJPDES programs or of financial assistance programs under N.J.A.C. 7:22; and

5. The need to stagger the submission of wastewater management plans so that the Department can better manage its corresponding workload under N.J.A.C. 7:15-3.4.

(g) With the consent of the Department and \*[of]\* the \*[governmental unit or other person that has wastewater management plan responsibility]\* **\*wastewater management planning agency\***, an alternative schedule for submission of wastewater management plans may be established and changed by a WQM plan revision under N.J.A.C. 7:15-3.5, rather than by a WQM plan amendment under N.J.A.C. 7:15-3.4.

(h) The Department may at any time request a \*[governmental unit or other person that has wastewater management plan responsibility]\* **\*wastewater management planning agency\*** to submit written reports on the progress that such \*[unit or other person]\* **\*agency\*** is making in meeting its wastewater management plan responsibility. Such \*[unit or person]\* **\*agency\*** shall submit such reports to the BWQP within 90 calendar days of receiving such requests.

(i) Each wastewater management plan that updates one or more already existing wastewater management plan shall **\*comply with N.J.A.C. 7:15-5.20 and\*** include:

1. Updated maps and descriptions of the then existing wastewater jurisdictions, service areas, and facilities under N.J.A.C. 7:15-5.16;

2. Updated maps of environmental features under N.J.A.C. 7:15-5.17; and

3. Updated maps and descriptions of future wastewater jurisdictions, service areas, and facilities under N.J.A.C. 7:15-5.18, with due regard to changes in factors discussed in that section, such as adoption of new or amended **\*zoning ordinances or\*** municipal or county master plans.

**\*(j) At the written request of a person who seeks a WQM plan amendment that requires a wastewater management plan under N.J.A.C. 7:15-5.1(a), a wastewater management planning agency may submit a wastewater management plan at any time prior to the period when such submission is required under (b) through (g) above. The establishment of an alternative schedule under (f) or (g) above is not required for such early submission.\***

## HEALTH

### (a)

#### DIVISION OF HEALTH FACILITIES EVALUATION

##### Notice of Administrative Correction

##### Alcoholism Treatment Facilities

##### Standards for Licensure

##### Policies and Procedures for Drug Administration

##### N.J.A.C. 8:42A-13.3

Take notice that the Department of Health has discovered an error in the text of N.J.A.C. 8:42A-13.3, Policies and procedures for drug administration, as its adoption was published in the New Jersey Register at 21 N.J.R. 1681(a) and subsequently incorporated into the New Jersey Administrative Code in the June, 1989 update. A textual omission in proposed N.J.A.C. 8:42A-13.3(a)16 was corrected through a notice of administrative correction published in the April 3, 1989 New Jersey Register at 21 N.J.R. 833(a). This paragraph was filed for adoption with the Office of Administrative Law as without change from proposal. However, in publication of the adoption in the Register and its incorporation into the Code, the language added through the notice of correction to the proposal was omitted.

Full text of the corrected rule follows (additions indicated in boldface thus):

8:42A-13.3 Policies and procedures for drug administration

(a) The facility's policies and procedures shall ensure that the right drug is administered to the right patient in the right amount through the right route of administration and at the right time. Policies and procedures shall include, but not be limited to, the following:

1.-15. (No change.)

16. Policies and procedures concerning the activities of medical and pharmaceutical sales representatives in the facility. **Drug samples shall not be accepted, placed or maintained in stock, distributed, or used in the facility.**

**HIGHER EDUCATION****(a)****NEW JERSEY HIGHER EDUCATION ASSISTANCE AUTHORITY (NJHEAA)****Guaranteed Student Loan Program Policy Governing Educational Institution Compliance; Corrective Measures****Adopted Amendment: N.J.A.C. 9:9-11.1**

Proposed: July 17, 1989 at 21 N.J.R. 1962(a).

Adopted: September 8, 1989 by the New Jersey Higher Education Assistance Authority, Philip W. Koebig, Acting Chairman.

Filed: September 11, 1989 as R.1989 d.519, **without change**.

Authority: N.J.S.A. 18A:72-10.

Effective Date: October 2, 1989.

Expiration Date: October 3, 1993.

**Summary of Public Comments and Agency Responses:**

The New Jersey Higher Education Assistance Authority received one comment regarding the proposal from Stockton State College.

COMMENT: The commenter college supported the proposed amendment on the basis that requiring all Authority loans to meet the same standards, requirements, corrective measures, and appeals provisions will allow the Authority to more effectively supervise the student loan programs in New Jersey.

RESPONSE: The Authority concurs with the college's comment.

Full text of the adoption follows.

9:9-11.1 Standards

(a)-(d) (No change.)

(e) All references to the Stafford Loan Program within this subchapter shall include all New Jersey Higher Education Assistance Authority (NJHEAA) guaranteed loans. These shall include, but not be limited to, the Supplemental Loans for Students (SLS) and Parent Loans for Undergraduate Students (PLUS) Programs.

**INSURANCE****(b)****AUTOMOBILE INSURANCE****Notice of Administrative Correction Adjustment of Losses****N.J.A.C. 11:3-10.4**

Take notice that the Department of Insurance has discovered erroneous cross-references in the text of N.J.A.C. 11:3-10.4, Adjustment of losses. In subsection (e), the references to N.J.A.C. 11:13-1.3 should be to N.J.A.C. 11:3-10.3 in order for the references to make sense within the context of the regulation. This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7(a)3.

Full text of the corrected rule follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):

11:3-10.4 Adjustment of losses

(a)-(d) (No change.)

(e) The following provisions of N.J.A.C. [11:13-1.3] **11:3-10.3** also shall apply to the adjustment of total losses, except that the insurer shall have a total of 14 working days to comply with the requirements of subsections (a), (b), (c), (h), (i), (j) and (k) of N.J.A.C. [11:13-1.3] **11:3-10.3**.

(f)-(g) (No change.)

**(c)****DIVISION OF ACTUARIAL SERVICES****Health Service Corporation Notice of Increased Rates****Adopted New Rules: N.J.A.C. 11:4-32**

Proposed: April 17, 1989 at 21 N.J.R. 973(b).

Adopted: September 11, 1989 by Kenneth D. Merin, Commissioner, Department of Insurance.

Filed: September 11, 1989 as R.1989 d.522, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e) and 17:48E-26d.

Effective Date: October 2, 1989.

Expiration Date: December 2, 1990.

**Summary of Public Comments and Agency Responses:**

A lengthy letter was received from Blue Cross and Blue Shield of New Jersey (BCBSNJ). Primarily, BCBSNJ argued that the intent of the statute, N.J.S.A. 17:48E-26d, is different from the thrust of the rules as proposed, particularly regarding the use of and consideration of trending factors in justifying a rate filing made pursuant to the statute (26d rate filing). BCBSNJ also argued against the Department's general offsetting requirement, and supplied suggestions for amendment of the proposed rules. Another suggestion for an amendment was received from the New Jersey Department of the Public Advocate.

COMMENT: BCBSNJ argued that the intent of the statute, which BCBSNJ quoted in pertinent part as stating "[n]otwithstanding the provisions of subsection c. of this section, a health service corporation may increase rates for hospitalization benefits . . . following an increase in hospital payment rates by the Hospital Rate Setting Commission . . .", is to permit a health service corporation (HSC) to increase rates when actual increases occur as the result of actions taken by the Hospital Rate Setting Commission (HRSC), regardless of what hypothetical increases for other contract provisions were projected at the time of the "full blown" rate application and ruling.

RESPONSE: The Department of Insurance disagrees. The Department interprets the statute as providing a mechanism whereby an HSC may increase its hospitalization rate to a level not anticipated in its most previous rate development, following an action by the HRSC. Any increase would be subject to Department disapproval. However, rates may only be increased to the extent that the HSC has not received any savings in other contract benefit provisions. These savings may be due to trending factors which have been or are expected to be more favorable to the HSC than previously anticipated, or these savings may be due to other factors, such as reduced claims costs, or a reduction in a benefit provision. In any event, these savings should be aggregated against all of the HSC's contracts that contain provisions effected by increases of the HRSC.

COMMENT: BCBSNJ stated that by the Department interpretation, a 26d rate filing could be utilized only when an HSC is either losing money on the specific contract, or profiting to a lesser extent than the approved HRSC increase, effectively negating the need for a 26d filing. BCBSNJ stated that it could file a regular rate increase request, or absorb the loss temporarily and file a comprehensive rate increase application. BCBSNJ stated that "[a] pass-through means a pass through not a pass through offset by other gains."

RESPONSE: The Department disagrees that a 26d rate filing has been made effectively unnecessary under the proposed rules, or that the statute was intended to serve as a pure pass-through vehicle.

The Department maintains that N.J.S.A. 17:48E-26d, by its language, clearly states that only increases in hospitalization rates which are not offset by savings in other benefit provisions under the contract are permissible. Thus, N.J.S.A. 17:48E-26d is not a pure pass-through provision, and should not be viewed as such. The statute does, however, provide HSCs with a relatively quick filing approval procedure in response to HRSC actions. This, in turn, permits the HSC to at least stabilize its financial base, rather than absorbing large costs it had not previously anticipated. It is entirely within the HSC's discretion as to when it perceives a 26d rate filing to be cost-effective, and as such, BCBSNJ may view the filings as unnecessary, but the option shall be available for their use if BCBSNJ ever decides to use it.

COMMENT: BCBSNJ stated that the Legislature intended benefit offsets as accruing due to precipitous events, such as a repeal of the

requirement of coverage for treatment of alcoholism, rather than offsets being based upon the general costs of providing a particular benefit, or set of benefits.

RESPONSE: The Department disagrees. Essentially, BCBSNJ is arguing that trending factors should not be considered in determining offsets. The language of the statute does not specify such a narrow interpretation as BCBSNJ would apply. Further, offsets which would reduce the general costs of providing a particular benefit, accruing due to precipitous events such as BCBSNJ argues, have not been recently observed as an occurrence by this Department, if ever. The Department interprets the statute as having a broader meaning, and is not persuaded by BCBSNJ's argument. The intent of the Legislature is not stated.

COMMENT: BCBSNJ suggested that N.J.A.C. 11:4-32.3(a)5 be amended so that the certification of the HSC's consulting actuary is sufficient to demonstrate that an offset or savings in other benefit provisions under the contract are not available to reduce the rate increase for which the HSC has filed notice.

RESPONSE: The Department disagrees with the suggested amendment. The Department believes that a documented demonstration is necessary, and should be subject to full Departmental review.

COMMENT: BCBSNJ submitted a chart which it suggested should be incorporated within the rules for use as a form for filing.

RESPONSE: Due to the Department's stance concerning the intent of the statute, as evidenced by its responses to BCBSNJ's foregoing comments, the amendatory language suggested by BCBSNJ was not considered appropriate for the purposes of satisfying the rules or statute.

COMMENT: One comment was received from the New Jersey Public Advocate's Office, Division of Rate Counsel. The Division of Rate Counsel urged that N.J.A.C. 11:4-32.3(a) be amended upon adoption to read that "[a] health service corporation shall file with the Commissioner and the Department of the Public Advocate, Division of Rate Counsel, a Notice of Increased Rates. . . ." This amendment was requested by the Division of Rate Counsel in order for the Rate Counsel to make appropriate comments expeditiously regarding the effect on the public interest of any of the rate filings anticipated under the proposed regulation.

RESPONSE: The Department of Insurance recognizes the Public Advocate's concern, and agrees to the suggested amendment with minor language changes.

#### Summary of Changes from the Proposed Rules:

Two changes have been initiated by the Department of Insurance. A grammatical change is required in the definition of the term "Notice of Increased Rates" under N.J.A.C. 11:4-32.2. The word "to" is changed to the word "with" in the first sentence of that definition as a more accurate expression of the filing requirement.

In the second sentence of that same definition, the term "the Corporation" is replaced by the term "a health service corporation", as a matter of consistency in terminology.

The language of N.J.A.C. 11:32.3(a) has been altered to include submission of the Notice of Increased Rates to the Department of the Public Advocate. Subsection (a) will contain the language "", and shall forward to the Department of the Public Advocate, Division of Rate Counsel," to be inserted after the word Commissioner.

**Full text** of the adoption follows (additions to proposal indicated in boldface with asterisks \*thus\*; deletions from proposal indicated in brackets with asterisks \*[thus]\*).

### SUBCHAPTER 32. HEALTH SERVICE CORPORATION NOTICE OF INCREASED RATES

#### 11:4-32.1 Purpose and scope

(a) This subchapter outlines the requirements necessary for a health service corporation to increase rates for all hospitalization benefits in response to hospital payment rate increases authorized by the Hospital Rate Setting Commission pursuant to N.J.S.A. 26:2H-4.1.

(b) This subchapter applies only to individual or group contracts of a health service corporation that provide hospitalization benefits which are not experience rated.

(c) This subchapter applies only when a health service corporation can demonstrate that savings in other non-experience rated contract benefits do not offset the payment rate increases authorized by the Hospital Rate Setting Commission.

#### 11:4-32.2 Definitions

The following words and terms shall have the following meanings when used in this subchapter, unless the context clearly indicates otherwise.

"Commissioner" means the Commissioner of the Department of Insurance.

"Contract rates" means those rates charged by a health service corporation to its individual insureds and insured members for non-experience rated products pursuant to filings with the Commissioner under N.J.S.A. 17:48E-27.

"Department" means the New Jersey Department of Insurance.

"Health service corporation" means a health service corporation established pursuant to the Health Service Corporations Act at N.J.S.A. 17:48E-1 et seq., which is organized, without capital stock and not for profit, for the purpose of establishing, maintaining and operating a nonprofit health service plan, and supplying services in connection with the providing of health care or conducting the business of insurance as provided for within the act, or as otherwise subsequently defined by that act.

"Hospital payment rate" means that base rate schedule approved by the HRSC for inpatient and outpatient health care services and delivery in this State, the projected payments of which are utilized by health service corporations, in part, in determining subscriber rates necessary to cover the health service corporation's costs.

"HRSC" means the Hospital Rate Setting Commission established pursuant to N.J.S.A. 26:2H-4.1.

"Notice of Increased Rates" means a filing of notice of rate change \*[to]\* **\*with\*** the Commissioner made by a health service corporation following an increase in hospital payment rates by the HRSC. This notice applies only to those contracts issued by \*[the Corporation]\* **\*a health service corporation\*** which are not experience rated, include hospitalization benefits, are not reflected or anticipated in the health service corporation's contract rates, and are not offset by savings in other benefit provisions under the contract.

#### 11:4-32.3 General provisions

(a) A health service corporation shall file with the Commissioner **\* , and shall forward to the Department of the Public Advocate, Division of Rate Counsel,\*** a Notice of Increased Rates providing, with full documentation, the required information as set forth below:

1. A health service corporation shall provide the date of the most recent filing from which its current rates are effective.

2. A health service corporation shall provide the proposed date of implementation of the increased contract rates.

3. A health service corporation shall identify those lines of business and/or products to which the increased rates apply. These lines of business shall be non-experience rated and provide hospitalization benefits.

4. A health service corporation shall provide all documentation necessary to demonstrate an increase in payment rates authorized by the HRSC.

i. The rate of increase anticipated by a health service corporation as a result of increases in payment rates authorized by the HRSC that exist in the health service corporation's current contract rates must be clearly identified by supporting analysis.

ii. The unanticipated rate of increase as a result of increases in payment rates authorized by the HRSC must be clearly identified by supporting analysis.

5. A health service corporation must demonstrate that no offset of savings exists which have accrued or may accrue to other non-experience rated benefit provisions over the 12-month period commencing with the health service corporation's most recent filing from which its current rates are effective.

6. Savings shown to exist shall be deducted from the health service corporation's documented increase in hospital payment rates; this difference shall be quantified in dollars and shall be apportioned over a 12-month period to non-experience rated contracts which provide hospitalization benefits.

7. A health service corporation shall provide a schedule of rates with respect to those lines of business for which the Notice of Increased Rate filing is made.

(b) A health service corporation shall file with the Commissioner a Notice of Increased Rates if the health service corporation determines that the actions of the HRSC, absent a savings offset, warrant an increase in the health service corporation's contract rates, but in no event shall a Notice of Increased Rates be filed more frequently than once every calendar quarter.

(c) The Notice of Increased Rates may be disapproved by the Commissioner on or before the day the rates are to become effective, which shall be no later than 20 days following the filing of the Notice. If the Commissioner does not disapprove the filing by the end of the 20th day, then the contract rate increase shall be deemed approved.

(d) The Commissioner, in his or her discretion, may waive the 20 day period, or any portion thereof.

(e) A health service corporation is not relieved of its obligation to notify subscribers affected by the rate changes in accordance with its existing contractual notification requirements, and shall comply with all such notification requirements prior to implementation of any rate increase.

#### 11:4-32.4 Inquiries

All questions and correspondence concerning this subchapter should be directed to:

Chief, Service Corporation Compliance Bureau  
Division of Actuarial Services  
New Jersey Department of Insurance  
CN 325  
Trenton, NJ 08625

(a)

## DIVISION OF ACTUARIAL SERVICES

### Excess Interest Reserves Adjusted for Policy Loans

#### Adopted New Rules: N.J.A.C. 11:4-33

Proposed: May 15, 1989 at 21 N.J.R. 1308(a).

Adopted: September 11, 1989 by Kenneth D. Merin,

Commissioner, Department of Insurance.

Filed: September 11, 1989 as R.1989 d.523, **without change**.

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), 17B:19-8g.

Effective Date: October 2, 1989.

Expiration Date: December 2, 1990.

#### Summary of Public Comments and Agency Responses:

COMMENT: If an insurer elects to credit interest to policy values at rates that exceed the maximum valuation interest rates prescribed under N.J.S.A. 17B:19-8, the loaned portion of a policy would be protected from the risks of the higher rates only as long as (1) the policy loan interest rate remains at least as high as the interest crediting rate and (2) the policy loan is not repaid. There is no guarantee that the insured will maintain a policy loan in effect. The loan could be repaid at any time, even within a day or two of the statement date, putting the insurer back on the risk for the amount of the excess interest and without adequate reserves.

RESPONSE: With respect to item (1), a factor to be considered in determining whether the excess interest reserve will be required on that portion of the policy value encumbered by a policy loan is the relationship between any minimum guaranteed interest rate, the maximum valuation interest rate and the interest rate commitment. Whether the policy loan rate remains as high as the interest crediting rate would also be considered. With respect to item (2), reserves as of the statement date are expected to reflect an insurer's liability as of the statement date. Similarly, reserves would not be included as of the statement date for policies issued after that date, even if issued within a day or two of the statement date.

COMMENT: Better protection for high interest crediting rates can be achieved by investing in a bond whose interest rate exceeds the interest crediting rate. Approaches such as this, matching assets and liabilities, should eliminate the need for excess interest reserves, but, if reserves are to be held, no exceptions should be made.

RESPONSE: The Department would agree that an insurer's assets should support its commitment to its policyholders. However, reserves must be calculated according to the Standard Valuation Law which sets forth the minimum valuation standards for determining reserves, including the maximum interest rates to be used. These rules recognize that

there are situations where an investment risk does not exist on amounts encumbered by policy loans.

COMMENT: The assertion in the summary statement that "each insurer must maintain reserves which are sufficient to provide for all unmatured obligations" is totally correct and should be followed more than it is now. However, the theoretically correct way to do this is for each insurer to annually perform a good and sufficient analysis of reserves. Good and sufficient testing means projecting out all cash flows for the life of the business to see if reserves really are adequate. Most insurers having any volume of universal life and annuities are doing this (although maybe only for GAAP purposes or interest rate crediting purposes). This method is superior to a lot of separate quantitative requirements that may be adequate (or even redundant) in many cases, but in some cases be totally inadequate.

RESPONSE: Again, the Department agrees that an insurer's assets should support its obligations to its policyholders, but the minimum standards for determining reserves are set forth in the Standard Valuation Law.

COMMENT: The life insurance industry needs uniform valuation standards in all states. An actuarial task force is proposing new valuation standards and should be informed of the proposed rules.

RESPONSE: The NAIC task force will be made aware of the rules.

COMMENT: The proposed rules only address some of the currently outstanding reserve valuation issues (other issues include prefunding of persistency kickers—the crediting of excess interest or refund of loans if level premiums are paid for 10 years). An industry-wide regulation that encompasses all required items would be preferred.

RESPONSE: The Department agrees that all the issues mentioned are important, and, while there are currently no established methodologies for determining reserves for such commitments to policyholders, any insurer which makes such a commitment to its policyholders should have developed a methodology for approximating the value of its obligation and should recognize the obligation in its reserve calculations.

COMMENT: The rules as proposed may be of little importance, depending upon how they are interpreted, for the majority of insurers that only have a one year interest guarantee on universal life policies. The extra 1.5 percent to two percent of reserves apparently required are less than target surplus, and would simply cause a shift in allocation of liabilities (insurers could hold less target surplus).

RESPONSE: There is a substantive difference between policy reserves and surplus. While insurers can exercise discretion as to the management and use of surplus, there is little scope, if any, for such discretion over policy reserves.

COMMENT: The proposed rules seem to assume that the reserves held are merely the cash surrender value. In many cases, insurers hold other reserves (such as present value of guaranteed death benefits, or present value of excess interest/persistency kickers) which exceed the cash surrender value. Are these policies then exempt or partially exempt?

RESPONSE: The Department assumes that the reserve calculated represents the greatest present value (calculated using minimum valuation standards) of future guaranteed benefits. It should address all guarantees, such as death benefits or excess interest/persistency kickers.

COMMENT: The proposed rules are not consistent with the NAIC model regulation since the proposed rules apparently discount accumulation values at interest only. The NAIC fixed-premium portion of the universal life model regulation simply requires that the reserve be the present value of guaranteed death benefits, discounted at interest and mortality. A consistent regulation would be preferred. In the NAIC fixed-premium regulation, future interest guarantees (and mortality and expense charges) increase the death benefits that are then discounted at interest and mortality.

RESPONSE: The proposed rules are not inconsistent with the NAIC universal life model regulation. They allow for an insurer that can demonstrate that it is not at risk for interest guarantees on those portions of the fund value encumbered by policy loan to adjust its reserve downward by the amount of the reserve on the loan portion which is attributable to an interest rate in excess of the valuation rate.

COMMENT: The mechanics of the rules are confusing. The normal policy has expense loads and mortality charges. Does N.J.A.C. 11:4-33.3(b) require that the December 31 cash value be accumulated solely at current interest and discounted solely at valuation interest, or is it requiring that the cash value be accumulated at interest, mortality and expense loads and then discounted at valuation interest and mortality? It would seem that all variables are necessary.

**RESPONSE:** The effect of discounting with respect to mortality will be minimal relative to the additional reserve to be set up and hence the regulation does not stipulate discounting with respect to mortality.

**COMMENT:** The extra reserve is not a tax deductible reserve and would impact insurer profits and crediting rates.

**RESPONSE:** The Department's concern is with insurer solvency and, therefore, with whether reserves adequately reflect the insurer's liability to policyholders. The methodology required is a statutory basis and not a tax basis.

**COMMENT:** If insurers are required to modify valuation systems to project values to the end of each policy year, then the extra costs will come directly out of the crediting rate to policyholders. If the rules do require substantial extra reserves, then they will lower policyholder crediting rates and cash values. The nondeductibility of this reserve for tax purposes is also not helpful to policy crediting rates.

**RESPONSE:** The Department recognizes the administrative costs associated with non-traditional products. However, any insurer considering the marketing of non-traditional products should be aware of and should address the administrative aspects before it begins sales of the products. Insurers should adequately reserve for all guarantees to protect against insolvency. High administrative costs are not an excuse for failing to establish adequate reserves. The purpose of these rules is to recognize that situations exist where the insurer is not at risk and a reserve for interest guarantees in excess of the maximum valuation rate need not be established.

**Full text** of the adoption follows.

### SUBCHAPTER 33. EXCESS INTEREST RESERVE ADJUSTMENT

#### 11:4-33.1 Purpose

This subchapter establishes procedures for modifying the calculation of excess interest reserves when a life insurer guarantees to credit policy values with interest which exceeds the maximum valuation rate prescribed in N.J.S.A. 17B:19-8. This subchapter does not limit or restrict any other requirement of law.

#### 11:4-33.2 Applicability and scope

This subchapter applies to all life insurance policies, pure endowment and annuity contracts issued by an insurer transacting business in this State in which the insurer has committed to crediting interest to policy values for any period that extends beyond the valuation date at a rate that exceeds the maximum valuation rate as specified and defined in N.J.S.A. 17B:19-8.

#### 11:4-33.3 Requirements

(a) In addition to the basic policy reserve required under N.J.S.A. 17B:19-8, a life insurer is also required by N.J.S.A. 17B:19-8 to establish an excess interest reserve whenever the insurer has committed to crediting interest to policy values for any period of time that extends beyond the valuation date at a rate that exceeds the maximum valuation interest rate.

(b) The amount of the excess interest reserve required equals the total amount of the excess interest commitment, discounted to the valuation date using an interest rate not greater than the maximum rate prescribed under N.J.S.A. 17B:19-8.

(c) Upon written request by an insurer to the Commissioner, the Commissioner may determine that the excess interest reserve calculated on that portion of the policy value encumbered by a policy loan is not required. In making such determination, the Commissioner shall consider the following:

1. The relationship between any minimum guaranteed interest rate, the maximum valuation interest rate and interest rate commitment; and
2. Such other information which the Commissioner deems necessary to make a determination.

#### 11:4-33.4 Separability

If any provision of this subchapter or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the subchapter and the application of such provision to other persons or circumstances shall not be affected thereby.

## LAW AND PUBLIC SAFETY

(a)

### DIVISION OF MOTOR VEHICLES

#### Enforcement Service

#### Adopted Repeal: N.J.A.C. 13:20-1

Proposed: June 5, 1989 at 21 N.J.R. 1500(b).

Adopted: September 1, 1989 by Glenn R. Paulsen, Director, Division of Motor Vehicles.

Filed: September 7, 1989 as R.1989 d.518, **without change**.

Authority: N.J.S.A. 39:2-3 and P.L. 1983, c.403, §§1 and 45.

Effective Date: October 2, 1989.

**Summary** of Public Comments and Agency Responses:

**No comments received.**

**Full text** of the adopted repeal may be found, pending deletion, in the New Jersey Administrative Code at N.J.A.C. 13:20-1.

## TREASURY-GENERAL

(b)

### DIVISION OF PENSIONS

#### Public Employees' Retirement System

#### Purchases and Eligible Service

#### Adopted New Rule: N.J.A.C. 17:2-5.13

Proposed: July 3, 1989 at 21 N.J.R. 1820(b).

Adopted: August 29, 1989 by the Public Employees' Retirement System, Janice Nelson, Secretary.

Filed: September 6, 1989 as R.1989 d.516, **without change**.

Authority: N.J.S.A. 43:15A-17.

Effective Date: October 2, 1989.

Expiration Date: December 17, 1989.

**Summary** of Public Comments and Agency Responses:

**No comments received.**

**Full text** of the adoption follows.

#### 17:2-5.13 Lump-sum purchases

If a purchase is paid in a lump sum, the member shall receive full credit for the amount of service covered by the purchase upon receipt of the lump-sum payment. The service may be used for any purpose for which it is authorized under the Public Employees' Retirement System Act (N.J.S.A. 43:15A-1 et seq.) and the rules of the retirement system.

(c)

### DIVISION OF PENSIONS

#### Police and Firemen's Retirement System

#### Purchases and Eligible Service

#### Adopted New Rule: N.J.A.C. 17:4-5.7

Proposed: July 3, 1989 at 21 N.J.R. 1821(a).

Adopted: August 29, 1989 by the Police and Firemen's Retirement System, Anthony Ferrazza, Secretary.

Filed: September 6, 1989 as R.1989 d.515, **without change**.

Authority: N.J.S.A. 43:16A-13(7).

Effective Date: October 2, 1989.

Expiration Date: July 1, 1990.

**Summary** of Public Comments and Agency Responses:

**No comments received.**

Full text of the adoption follows.

#### 17:4-5.7 Lump-sum purchases

If a purchase is paid in a lump-sum, the member shall receive full credit for the amount of service covered by the purchase upon receipt of the lump-sum payment. The service may be used for any purpose for which it is authorized under the law governing the Police and Firemen's Retirement System (N.J.S.A. 43:16A-1 et seq.) and the rules of the retirement system.

## TREASURY-TAXATION

### (a)

#### DIVISION OF TAXATION

#### Corporation Business Tax

#### Refunds

#### Adopted Amendments: N.J.A.C. 18:7-10.1, 11.8 and 13.3

#### Adopted Repeal and New Rule: N.J.A.C. 18:7-13.8

Proposed: June 5, 1989 at 21 N.J.R. 1503(b).

Adopted: August 30, 1989 by John R. Baldwin, Director,  
Division of Taxation.

Filed: August 31, 1989 as R.1989 d.508, with substantive changes  
not requiring additional public notice (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 54:10A-27.

Effective Date: October 2, 1989.

Expiration Date: March 14, 1994.

#### Summary of Public Comments and Agency Responses:

One letter was received during the comment period. It raised four points. One related to N.J.A.C. 18:7-11.8(a). The response made clear that the reference is to issuance of the Revenue Agent Report. The writer was also advised that in situations where the taxpayer agrees to certain issues in the Revenue Agent Report but not to others, notification to the Division is required as each issue or group of issues becomes final. Along these lines the Division anticipates proposing amendments to N.J.A.C. 18:7-11.3 in the near future.

Secondly, the writer found reference in N.J.A.C. 18:7-13.8(e) to original return self-assessment unclear and the Division responded that the reference is to CBT-100. The rule as proposed does not address the situation of an amendment to an amendment. If, based on further administrative experience, the Division finds that a rule is needed for a situation where a refund claim is filed within two years of an amended return to the extent of additional tax paid therewith, a proposal will be made at that time.

Third, the writer suggested proposing uniform refund rules for a variety of State taxes. The Division agreed in principle that that would be a good idea. The corporation tax, however, has unique aspects requiring separate rules. In addition, the Division's response referred to a variety of other taxes whose refund limitation periods are different, thus making a uniform rule inappropriate at the present time.

Finally, in response to a query about reference to Form A-3730, the writer was advised that the form is the general refund application currently in use for a variety of taxes, and it is used in an attempt to standardize the processing of refund applications by the audit adjustment branch.

A second letter on the subject matter of the proposal was received after the comment period closed. Notice is taken of it here for the convenience of taxpayers. In connection with a comment on N.J.A.C. 18:7-11.8(a), the writer was given a response similar to that for the first writer.

Next the writer raised a question about changes to the allocation factor in cases of an IRS audit. The Division pointed out that the rule now places the taxpayer and the Division on equal footing and that changes on an IRA-100 deal with periods that may be substantially beyond the five year audit period.

In response to the next comment, the writer was advised that the use of "due date" in N.J.A.C. 18:7-13.8(a) is intended solely for the purpose of refunds and not for assessments and the use of date of receipt was in accordance with N.J.A.C. 18:7-11.7. The writer suggested the possible consolidation of subsections N.J.A.C. 18:7-13.8(a) and (b), but was advised that the Division considered it administratively useful to have a separate provision dealing with amended returns. Use of Form A-3730

and IRA-100 in N.J.A.C. 18:7-13.8(d) is due to internal Division processing considerations but further comments on IRA-100 are given below.

In response to a comment on N.J.A.C. 18:7-13.8(e), the writer was advised that the provision was intended to deal with amendments to original returns and not to amendments to amendments. The Division will consider the possibility of additional rules in this area as experience dictates.

The writer also made observations about the use of particular forms with a Federal amendment, and in response was advised that guidance was supplied in Example 2.

In response to the writer's comments on the use of Form A-3730 in the context of an application for section 8 relief, the Division responded that it would modify the wording contained in N.J.A.C. 18:7-10.1(c) to conform to the present proposal. The Division also made clear that the taxpayer is not precluded from seeking section 8 relief within two years if an A-3730 does not accompany the return.

With regard to Examples 4 and 5, the writer was advised that the term "estimated tax assessment" was used since it is the term employed in the *People's Express Company* case. Results in the two examples differ insofar as an estimated tax assessment is not an erroneous payment.

Finally, in response to some general comments on the use of Form IRA-100, the Division advised the writer that a group had been formed within the Division to study and develop a CBT-100X which may replace the use of IRA-100. In connection with implementing use of the new form, it is anticipated that additional revisions and refinements may be made to the rules based upon this additional experience. However, the rules were considered to be helpful to taxpayers at the present time, and it was determined not to delay their adoption pending the development and introduction of revised corporate tax forms.

#### Summary of Changes

The Division is making a number of changes not detrimental to the public interest in the rules as adopted. They are directed to clarifying several points and making several expressions contained in the proposal more consistent throughout.

In addition, at the suggestion of a member of the public, a technical amendment was made to N.J.A.C. 18:7-10.1(c)3 to bring it into clear conformity with the procedure adopted in N.J.A.C. 18:7-13.8(h).

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks \*thus\*; deletions from proposal indicated in brackets with asterisks \*[thus]\*).

#### 18:7-10.1 Discretionary adjustments of business allocation factor by Director

(a)-(b) (No change.)

(c) Adjustment of the business allocation factor may be made by the Director upon his own initiative or upon request of a taxpayer.

1.-2. (No change.)

3. The taxpayer must also attach a rider to the return \*with a Form A-3730\* setting forth in full the data on which its application is based, together with a computation of the amount of tax which would be due under the proposed method.

#### 18:7-11.8 Time to report change or correction in Federal net income

(a) The report of change or correction in Federal taxable income as the result of an Internal Revenue Service audit must be reported to the Division of Taxation within 90 days of \*[its]\* issuance \*of the report\*.

(b) (No change.)

(c) After the filing of a report of change or correction on an IRA-100, the Director may, within the time prescribed by law, audit the return and compute and assess the tax based upon the issue or issues set forth in the revenue agent report, but neither the Director nor the taxpayer may change the allocation of entire net income and entire net worth within and without New Jersey as theretofore computed.

#### 18:7-13.3 Appeal

(a) Any aggrieved taxpayer may, within 90 days after any final decision, order, finding, assessment or action of the Director made pursuant to the provisions of the Act, appeal therefrom to the Tax Court in accordance with pertinent provisions of the State Tax Uniform Procedure Law (see N.J.S.A. 54:51A-13 et seq.).

## 18:7-13.8 Claims for refund; when allowed

(a) The two year statute of limitations period for filing a claim for refund commences to run from the later of the payment of tax for the taxable year or from the filing of the final return for the taxable year. The due date of the return is deemed the payment date if filing and payment are made prior to the due date. A claim for refund is considered filed on the date it is received by the Division of Taxation (see N.J.A.C. 18:7-11.7(b)).

(b) The two year period for filing a claim for refund relating to an amended return ("additional self-assessment") commences on the later of payment of the additional self-assessment or the filing of an amended return reflecting the additional self-assessment.

(c) For purposes of the application of this rule only:

1. A Tentative Return and Application for Extension of Time to File New Jersey Corporation Business Tax Return (CBT-200T) and an installment voucher are not returns;

2. A Corporation Business Tax Return (CBT-100) is a return; and

3. A Report of Changes in Corporate Taxable Net Income by the U.S. Internal Revenue Service (IRA-100) is an amended return.

(d) Where a taxpayer files a Report of Changes in Corporate Taxable Net Income by the U.S. Internal Revenue Service pursuant to N.J.A.C. 18:7-11.8(a) that results in a diminution of entire net income for any year, the two year limitation period for filing a claim for refund based on that diminution for the return year at issue begins on the date that the timely filed Form IRA-100 is filed with the Division. A copy of refund Form A-3730 may accompany such form. Unless the IRA-100 is filed in timely fashion under N.J.A.C. 18:7-11.8(a), the refund claim will not be considered.

(e) Where a taxpayer files an amended return with the \*[United States Treasury Department]\* **\*Internal Revenue Service\*** (Form 1120X) and files an amended return with the State of New Jersey within 90 days pursuant to N.J.A.C. 18:7-11.8(b), to be considered a timely refund claim such claim must be filed with the Division of Taxation within two years of the later of filing or payment of the original return self assessment **\*(CBT-100)\***.

(f) Where the Director makes an assessment and taxpayer properly protests the assessment pursuant to N.J.A.C. 18:7-13.2, taxpayer may establish that it made an erroneous overpayment based upon a different issue for a period covered by the assessment. The Director upon audit and verification will credit the erroneous overpayment of tax to the account of the taxpayer to offset the amount of the deficiency assessment pursuant to N.J.S.A. 54:49-16. After a final determination has been issued, taxpayer has 90 days in which to appeal to the Tax Court if it is dissatisfied with the determination. The offset procedure is not considered a refund action pursuant to N.J.S.A. 54:49-14.

(g) Where the Director assesses additional tax by way of a deficiency assessment or final determination and the taxpayer pays the deficiency, the taxpayer may not convert an assessment proceeding into a refund action by filing a refund claim within two years of the date of the payment of the deficiency assessment or final determination. In such case, taxpayer's remedy is to contest the assessment in a timely fashion by filing a complaint with the \*[New Jersey]\* Tax Court within 90 days of the action of the Director to be reviewed. This is in accordance with N.J.S.A. 54:10A-19.2, N.J.S.A. 54:51A-14a, and R.8:4-1(b).

(h) If taxpayer believes that it is entitled to relief pursuant to N.J.S.A. 54:10A-8, and it believes that a remedy based upon the rationale explicitly addressed by N.J.A.C. 18:7-8.3(b) is not adequate, such relief request is deemed a refund claim. The taxpayer is required to file its return and pay its tax in accordance with the statute, plainly noting on the filed return its claim for "Section 8 relief" and supplying supporting materials in accordance with N.J.A.C. 18:7-10.1. In addition, a copy of form A-3730, Claim for Refund, must accompany the return as filed. This application constitutes a refund claim and is subject in any event to the same period of limitations as any other claim for refund.

(i) Unless these rules provide otherwise, the claim for refund required to be filed with the Director is made on Form A-3730 (Claim for Refund) and is addressed to:

Audit Adjustment Branch  
50 Barrack Street, CN 019  
Trenton, NJ 08646-0019

Example 1: Taxpayer is delinquent in filing its final return. However, the installment payments of estimated tax were sufficient to pay the tax appearing on the return. If taxpayer subsequently learns that the amount shown on the delinquent final return as filed was in excess of its true liability, a claim for refund of such overpayment is considered timely if filed within two years of the filing of the delinquent CBT-100. A penalty for late filing of the CBT-100 may be imposed under N.J.S.A. 54:49-4.

Example 2: One year after filing a CBT-100 and paying the tax liability shown thereon, a taxpayer discovers an error in its payroll figures and thereupon files a Form 1120X with the Internal Revenue Service reflecting a larger expense deduction. Within 90 days of filing the Form 1120X, taxpayer files an amended CBT-100 claiming a refund for an overpayment of tax. Upon audit and verification the refund will be granted. If the refund application had been received after the two year limitation period had expired, it would not have been granted even if the taxpayer had complied with the proper 90 day notification period and even if the time for filing an 1120X Federally had not elapsed. The two year statute is controlling. The application, however, will remain on file and be applicable to any offset procedures pursuant to N.J.S.A. 54:49-16.

Example 3: Taxpayer receives a deficiency assessment with which it disagrees. It does not contest the assessment with the Division or in Tax Court. It pays the assessment and subsequently discovers that the identical issue upon which the assessment was based was decided in favor of another taxpayer and adversely to the State. It files a claim for refund within two years of having made its payment of the assessment. Since it did not contest its assessment in a timely fashion in accordance with N.J.S.A. 54:10A-19.2, the claim must be rejected. The assessment proceeding is not converted to a refund action by filing a refund claim.

Example 4: Taxpayer did not contest an estimated tax assessment **\*(N.J.S.A. 54:49-5)\***. More than two years after having paid it, the taxpayer concludes that it was erroneous. Subsequently, taxpayer files a Report of Changes in Corporate Taxable Net Income by the U.S. Internal Revenue Service (IRA-100) relating to the same tax year and upon which additional tax is due. Taxpayer may no longer claim a refund of any portion of the tax paid on the estimated tax assessment, nor have such funds applied to the self-assessment arising out of changes by the Internal Revenue Service to its income for that year.

Example 5: Taxpayer files a return in 1980. In 1984 the Director makes an assessment for underpayment of tax. Taxpayer protests within 30 days and an informal hearing is held pursuant to N.J.A.C. 18:7-13.2. At the hearing within the time a deficiency assessment may be made, taxpayer establishes that it made an erroneous overpayment based upon a different issue for a period covered by the assessment. The Director will credit the erroneous overpayment of tax to the account of the taxpayer to offset the amount of the deficiency assessment. N.J.S.A. 54:49-16. However, if the offset had exceeded the assessment, no credit for return years not part of the audit period or for a deficiency of another state tax and no refund of the excess amount to the taxpayer is available, since the taxpayer failed to make a timely refund application. After a final determination is issued pursuant to the informal hearing, taxpayer has 90 days in which to appeal the decision to the Tax Court.

## OTHER AGENCIES

(a)

## ELECTION LAW ENFORCEMENT COMMISSION

## Notice of Administrative Correction

## Public Financing; General Election for the Office of Governor

## Independent Expenditures

## N.J.A.C. 19:25-15.28

Take notice that the Election Law Enforcement Commission has discovered an incorrect cross-reference in the text of N.J.A.C. 19:25-15.28, Independent expenditures. The reference in subsection (a) to N.J.A.C. 19:25-12.5 has no relevance to the reporting of independent expenditures; the correct reference is to N.J.A.C. 19:25-12.7. This notice is published pursuant to N.J.A.C. 1:30-2.7(a)3.

Full text of the corrected rule follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):

19:25-15.28 Independent expenditures

(a) Independent expenditures shall not be deemed to be expenditures within the meaning of N.J.S.A. 19:44A-7, but all such expenditures shall be subject to all of the reporting and disclosure requirements of the act. Each person or political committee making independent expenditures who is required to file election reports pursuant to N.J.A.C. 19:25-[12.5]12.7 shall include in the reports required under the act a sworn statement on a form provided by the commission that such independent expenditure was not made with the cooperation or prior consent of, or consultation with or at the request or suggestion of, the candidate or any person or committee acting on behalf of the candidate.

(b) (No change.)

(b)

## EXECUTIVE COMMISSION ON ETHICAL STANDARDS

## Subpoena for Witnesses

## Adopted Amendment: N.J.A.C. 19:61-3.2

Proposed: June 5, 1989 at 21 N.J.R. 1507(b).

Adopted: September 11, 1989 by the Executive Commission on

Ethical Standards, Rita Strmensky, Acting Executive Director.

Filed: September 11, 1989 as R.1989 d.521, **without change**.

Authority: N.J.S.A. 52:13D-12 et seq. and N.J.S.A. 52:13D-21(f).

Effective Date: October 2, 1989.

Expiration Date: July 7, 1991.

Summary of Public Comments and Agency Responses:

**No comments received.**

Full text of the adoption follows.

19:61-3.2 Subpoena for witnesses

(a) If the Commission shall determine that the testimony of any person or persons is required, it may issue a subpoena in the name of the Commission requiring such person or persons to appear and testify before the Commission, Commission member, or Administrative staff member thereof, from day to day until the examination of such person or persons shall be completed. The Chairman or, in his or her absence, the next-senior member, may make the determination, on behalf of the Commission, to issue a subpoena.

(b)-(c) (No change.)

(c)

## EXECUTIVE COMMISSION ON ETHICAL STANDARDS

## Procedures for Rulemaking Petitions

## Adopted New Rule: N.J.A.C. 19:61-5.5

Proposed: June 5, 1989 at 21 N.J.R. 1508(a).

Adopted: September 11, 1989 by the Executive Commission on

Ethical Standards, Rita Strmensky, Acting Executive Director.

Filed: September 11, 1989 as R.1989 d.520, **with substantive**

**changes** not requiring additional public notice and comment

(see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 52:13D-12 et seq., 52:14B-4(f) and N.J.A.C.

1:30-3.6.

Effective Date: October 2, 1989.

Expiration Date: July 7, 1991.

Summary of Public Comments and Agency Responses:

**No comments received.**

Summary of Changes Between Proposal and Adoption:

The Executive Commission on Ethical Standards is adopting N.J.A.C. 19:61-5.5 with the changes set forth below so as to avoid reiterating N.J.A.C. 1:30-3.6 and N.J.S.A. 52:14B-4(f). With this change, the Commission will simply refer to the applicable law and Code, necessary for petitioning a rule change in the Administrative Code, as it is not necessary to repeat what is already published. Furthermore, such reference to the applicable law and Code assures consistency and minimizes the need for adjustments in the Commission's Code as such stated law and Code are amended in the future.

This change is not a substantive change as it does not change the meaning or value of the proposed rule; enlarge or curtail who or what will be affected; affect what is being prescribed, proscribed or mandated; or enlarge or curtail the scope of the proposed rule and the burden it imposes on those affected. Therefore, it is not necessary to repropose this rule.

Full text of the adoption follows (additions indicated in boldface with asterisks \*thus\*; deletions indicated in brackets with asterisks \*[thus]\*):

19:61-5.5 \*[Procedures for rulemaking petitions]\*\***Procedure to request Commission action to promulgate, amend or repeal rules\***

\*(a) N.J.S.A. 52:14B-4(f) maintains that, "An interested person may petition an agency to promulgate, amend or repeal any rule." Such petition shall clearly and precisely state the following:

1. The petitioner's name;
2. The substance or nature of the rulemaking which is requested;
3. The reasons for the request and the petitioner's interest in the request; and
4. References to the authority of the Commission to take the requested action.

(b) Within 15 days after receipt of a petition, the Commission shall file a notice with the Office of Administrative Law, for publication in the next available New Jersey Register. The notice of petition shall include:

1. The name of the petitioner;
2. The substance or nature of the rulemaking action which is requested;
3. The problem or purpose which is the subject of the request; and
4. The date the petition was received by the Commission.

(c) Within 30 days of receiving the petition, the Commission shall mail to the petitioner, and file with the Office of Administrative Law for publication in the New Jersey Register, a notice of action on the petition which shall include:

1. The name of the petitioner;
2. The New Jersey Register citation for the notice of petition, if that notice appeared in a previous Register;
3. Certification by the Commission head that the petition was duly considered pursuant to law;

4. The nature or substance of the Commission action upon the petition; and
  5. A brief statement of the reasons for the Commission action.
- (d) Commission action on a petition may include:
1. Denying the petition;
  2. Filing a notice of proposed rule or a notice of pre-proposal for a rule with the Office of Administrative Law; or
  3. Referring the matter for further deliberation, the nature of which shall conclude upon a specified date. The results of these further deliberations shall be mailed to the petitioner and submitted to the Office of Administrative Law for publication in the New Jersey Register.]\*

**\*(a) Persons requesting Commission action to promulgate, amend or repeal rules shall comply with Chapter 27, Laws of New Jersey 1981, Section II (N.J.S.A. 52:14B-4(f)) and any amendments thereto and any implementing rules as adopted by the Office of Administrative Law.**

**(b) Such persons may obtain forms for petitioning this Commission's Administrative Code Rules, from the Executive Commission on Ethical Standards.**

**(c) When considering the petition, the Commission shall comply with time lines and procedures contained in Chapter 27, Laws of New Jersey 1981 Section II (N.J.S.A. 52:14B-4(f)).\***

Recodify existing 19:61-5.5 as 5.6 (No change in text.)

# PUBLIC NOTICES

## BANKING

### (a)

#### THE COMMISSIONER

#### Notice of Supplemental Determination of Reciprocal States Pursuant to Public Law 1986, Chapter 5

Take notice that Mary Little Parell, Commissioner of Banking, on August 2, 1989, issued the following supplemental Determination:

New Jersey Public Law 1986, Chapter 5 (N.J.S.A. 17:9A-370 et seq.) (hereinafter "the Statute"), which became generally effective on April 28, 1986, permitted interstate bank holding company acquisitions in New Jersey on a reciprocal basis. The Statute provided for implementation on first a regional and then a nationwide basis.

The regional phase became effective on August 24, 1986, pursuant to a Decision and Determination of Reciprocity dated August 8, 1986.

The nationwide phase became effective on January 1, 1988 pursuant to a Decision and Determination of Effective Date and Reciprocal States for Nationwide Reciprocity (hereinafter "National Reciprocity Decision") dated June 22, 1987 (see 19 N.J.R. 1572(b)). For the public benefit, the National Reciprocity Decision is reproduced in its entirety following this supplemental Determination.)

The National Reciprocity Decision is hereby supplemented as set forth below.

I hereby find that threshold reciprocity pursuant to the Statute exists between New Jersey and the following "eligible states" as defined in the Statute; and that said "eligible states" have reciprocal legislation in effect as of the stated dates\*:

Full text of the June 22, 1987 National Reciprocity Decision follows:

New Jersey Public Law 1986, Chapter 5 (hereinafter "the Statute"), which became generally effective on April 28, 1986, established a two-phase process for the introduction of reciprocal interstate bank holding company acquisitions in New Jersey.

The first phase was the recognition of a Central Atlantic Region with the reciprocal states of Kentucky, Ohio and Pennsylvania. That phase became effective on August 24, 1986 pursuant to a Decision and Determination of Reciprocity issued by the New Jersey Commissioner of Banking on August 8, 1986.

The second phase provided in the Statute is the recognition of nationwide reciprocal privileges under the following formula:

"Eligible state" means any state which meets either or both of the following conditions:

(1) **Regional phase**; and

(2) Any state or territory of the United States, when at least 13 states in addition to this state (for this purpose the District of Columbia is included as a state, but all other territories are excluded), at least four (other than this state) of which are among the 10 states (other than this state) with the largest amount of commercial bank deposits, have reciprocal legislation in effect.

P.L. 1986, Ch.5, Sec. 1.f.,  
N.J.S.A. 17:9A-370, f.

The term "reciprocal legislation" is defined in the Statute as follows: . . . statutory law of a state of the United States (including the District of Columbia) which authorizes or permits a bank holding company located in this State to acquire banks or bank holding companies located in that state on terms and conditions substantially the same as the terms and conditions pursuant to which a bank holding company located in that state may acquire banks or bank holding companies located in that state. The fact that the law of that other state imposes limitations or restrictions on the acquisition of banks or bank holding companies located in that state by a bank or bank holding company located in this State shall not necessarily mean that the law of that state is not reciprocal legislation; provided, however, that if the law of the other state limits acquisitions by a bank or bank holding company located in this State to banks or bank holding companies which are not in competition with banks or bank holding companies located in or chartered by that state or to banks or bank holding companies which do not have customary banking deposit and commercial loan powers, the law of that other state shall not be reciprocal legislation. If the reciprocal legislation of that other state imposes limitations or restrictions on the acquisition or ownership of a bank or bank holding company located in that state by a bank holding company located in this State, substantially the same limitations and restrictions shall be applicable to the eligible bank holding company located in that other state with respect to its acquisition of banks or bank holding companies located in this State.

P.L. 1987, Ch.5, Sec. 1.i.,  
N.J.S.A. 17:9A-370, i.

This definition of reciprocal legislation implicitly recognizes the broad diversity of interstate banking laws among the states and territories, and expresses the legislative intent of New Jersey to harmonize its law with those of the other jurisdictions to the maximum degree reasonably feasible. Accordingly, the New Jersey definition of reciprocal legislation by its terms establishes two levels of analysis that must be considered for each potential acquisition in New Jersey. Those analytical steps may be referred to as follows:

a. **Threshold Reciprocity**—Does the other jurisdiction permit a New Jersey bank holding company to make acquisitions there on "terms and conditions substantially the same" as the terms and conditions applicable to its own bank holding companies making acquisitions there?

b. **Particular Limitations or Restrictions**—Once threshold reciprocity is recognized, does the interstate law of the other jurisdiction impose "limitations or restrictions" on the acquisition or ownership of a banking institution there by a New Jersey bank holding com-

State/Territory	Statute	Reciprocal Effective Date
Colorado	Colo. Rev. Stat. §11-6.4-101 et seq. (1988)	1-1-91
Idaho	Idaho Code §26-2603 et seq. (1988)	Current
Illinois	Ill. Ann. Stat. ch. 17, para. 2501 et seq. (Smith-Hurd 1988)	12-1-90
Indiana	Ind. Code Ann. §28-2-16-1 et seq. (Burns 1988)	7-1-92
Louisiana	La. Rev. Stat. Ann. §531 et seq. (West 1989)	Current
Nebraska	Neb. Rev. Stat. §8-901 et seq. (1988)	1-1-91
Nevada	Nev. Rev. Stat. Ann. §666.070 et seq. (Michie 1988)	Current
New Mexico	N.M. Stat. Ann. §58-26-1 et seq. (1988)	1-1-90
Oregon	Or. Rev. Stat. §715.010 et seq. (1987)	Current
Puerto Rico	P.R. Laws Ann. tit. 7, §1 et seq. (Supp. 1988)	Current
South Dakota	S.D. Codified Laws Ann. §51-16-40 et seq. (1989)	Current
Vermont	Vt. Stat. Ann. tit. 8, §1051 et seq. (1988)	2-1-90

\*Based on currently existing legislation in the named states and assuming no material adverse change in such legislation in the future.)

All interested persons are hereby advised that all persons making transactions and thereafter controlling banks located in New Jersey pursuant to P.L. 1986, Chapter 5 are reminded that they are required to comply with all applicable provisions of the New Jersey Banking Act, as supplemented and revised (N.J.S.A. 17:9A-1 et seq.), and with all regulations issued thereunder, in addition to complying with applicable provisions of federal law and the laws of other affected states.

pany? If so, then substantially the same limitations and restrictions shall be applicable when bank holding companies from that jurisdiction seek to make acquisitions in New Jersey.

The question of the effective date for nationwide reciprocity under the New Jersey statute depends on a finding of threshold reciprocity with a sufficient number of states.

I hereby find that threshold reciprocity pursuant to the New Jersey statute exists between New Jersey and the following states, based upon the following data and my review of the statutes cited:

State/ Territory	Statute	Reciprocal Effective Date	Whether Among Top Ten Deposit States (Based on 12-31-86 FDIC Figures)
Alaska	Stat. Sec. 06.05.235 (Michie 1985)	Current	—
Arizona	Rev. Stat. Ann. Sec. 6-321 to 327 (West 1974; Supp. 1986)	Current	—
California	Fin. Code Sec. 3750 to 3761 (West Supp. 1987)	1-1-91	—
Delaware	Code Ann. Title 5, Sec. 841 (Michie Supp. 1987-1988)	1-1-88	—
Kentucky	Rev. Stat. Ann. Sec. 287.900 to 910 (Michie Supp. 1986)	Current	—
Maine	Rev. Stat. Ann. Title 9B, Sec. 1011 to 1019 (Michie 1964; Supp. 1986)	Current	—
Michigan	Stat. Ann. Sec. 23.710(130b) (Callaghan 1983 Supp. 1987)	10-10-88	—
New York	Banking Law Sec. 141 to 143b. (McKinney 1971; Supp. 1987)	Current	Yes
Ohio	Rev. Code Ann. Sec. 1101.01 to 1103.14 (Anderson 1968; Supp. 1986)	Current	Yes
Oklahoma	Stat. Ann. Title 6 Sec. 502 to 506 (West 1984; Supp. 1987)	7-1-87	—
Pennsylvania	Stat. Ann. Title 7 Sec. 115 to 116 (Purdon Supp. 1987)	Current	Yes
Rhode Island	Gen. Laws. Sec. 19-30-2 (Michie Supp. 1986)	7-1-88	—
Texas	Rev. Civ. Stat. Ann. Sec. 342-912 to 914 (Vernon Supp. 1987)	Current	Yes
Utah	Code Ann. Sec. 7-1-102 (Allen Smith Co. 1982; Michie Supp. 1987)	12-31-87	—
Washington	Rev. Code Ann. Sec. 30.04.230 (West 1986)	7-1-87	—

W. Virginia	Code Sec. 31A-8A-1 to 7 (Michie Supp. 1986)	1-1-88	—
Wyoming	Stat. Sec. 13-9-301 to 305 (Michie 1987) as amended	Current	—

It remains to be determined what particular "limitations or restrictions" may be applicable to acquisitions of New Jersey banking institutions by eligible out-of-state bank holding companies under the New Jersey definition of reciprocal legislation. This and other types of specific determinations required under New Jersey statute and regulations can be made more fairly and effectively in the context of a specific acquisition application, and I therefore do not reach any findings on such particular "limitations or restrictions" in this decision.

Now, therefore, based upon the foregoing interpretation and findings, it is, on this 22nd day of June, 1987, **decided and determined** as follows under P.L. 1986, Chapter 5, Section 1:

1. As of January 1, 1988, any state or territory of the United States will be an "eligible state";

2. As of January 1, 1988,<sup>1</sup> eligible states which have reciprocal legislation in effect are:

Alaska	New York	Utah
Arizona	Ohio	Washington
Delaware	Oklahoma	West Virginia
Kentucky	Pennsylvania	Wyoming
Maine	Texas	

3. As of the following stated dates,<sup>1</sup> eligible states which have reciprocal legislation in effect are:

State	Reciprocal Date
California	1-1-91
Michigan	10-10-88
Rhode Island	7-1-88

4. This determination will be supplemented and revised from time to time in response to legislative enactments in the eligible states.

All interested persons are hereby advised that all persons making transactions and thereafter controlling banks located in New Jersey pursuant to P.L. 1986, Chapter 5 are reminded that they are required to comply with all applicable provisions of the New Jersey Banking Act, as supplemented and revised (N.J.S. 17:9A-1 et seq.), and with all regulations issued thereunder, in addition to complying with applicable provisions of federal law and the laws of other affected states.

<sup>1</sup>Based on currently existing legislation in the named states and assuming no material change in such legislation in the interim.

## ENVIRONMENTAL PROTECTION

### (a)

#### DIVISION OF PARKS AND FORESTRY

##### Notice of Availability of Grants

##### Open Lands Management Program

Take notice that in compliance with P.L. 1987, c.7 (N.J.S.A. 52:14-34.4) the Department of Environmental Protection hereby announces the availability of the following State grant funds:

###### A. Name of program:

Open Lands Management Program. Authority: Open Lands Management Act, P.L. 1983, c.560 (N.J.S.A. 13:1B-15.133 et seq.), and Open Lands Management rules, N.J.A.C. 7:2-12.

###### B. Purpose:

The purpose of the Open Lands Management Program is to provide financial assistance and in-kind services for the development and maintenance of privately owned land for public recreational purposes. If an application for funding is approved, the landowner and the State sign an agreement known as an access covenant, which guarantees public access for a specified period of time, for specified recreational purposes, to a specific parcel of private land.

**C. Amount of money in the program:**

The Department anticipates that \$110,000 will be available for funding Open Lands Management projects in Fiscal Year (FY) 1990, which ends on June 30, 1990.

**D. Individuals or organizations who may apply for funding under this program:**

Any person, including but not necessarily limited to individuals, corporations, clubs, associations and non-profit organizations, who owns real property in fee simple, may apply for financial assistance under this program.

**E. Qualifications needed by an applicant to be considered for the program:**

To be eligible for financial assistance under this program, the applicant must meet the following criteria:

1. The applicant must have a fee simple interest in real property; the property must include open space which is not dominated by man-made structures; and the property must be free of any known public health hazards.

2. The applicant must specify a project to be funded. Eligible projects include: installing fences, providing parking areas, installing and building boat or canoe launch areas, planting trees and shrubs for screening, installing litter and trash cans, and constructing and maintaining trails. Liability insurance, legal filing fees and costs of repairing damage due to vandalism may also be considered.

3. The applicant must make the eligible real property available to the public for passive recreational activities. Such activities may include: trail use, water related activities, and other outdoor recreational use.

**F. Procedure for potential applicants:**

Grants awarded under the Open Lands Management Program are governed by the Open Lands Management rules at N.J.A.C. 7:2-12.

Applications for Open Lands Management grants may be requested from:

Celeste Tracy or Larry Miller  
Open Lands Management Program  
Office of Natural Lands Management  
Division of Parks and Forestry  
New Jersey Department of Environmental Protection  
CN 404  
Trenton, New Jersey 08625-0404  
(609) 984-1339

**G. Deadline by which applications must be submitted:**

Applications for funding during FY 1990 must be submitted by March 15, 1990.

**H. Date by which applicant shall be notified or preliminary approval or disapproval:**

Within 30 days of receipt, the Department shall evaluate applications for funding under this program and either disapprove or grant preliminary approval of the application.

(a)

**DIVISION OF PARKS AND FORESTRY****Natural Areas System  
Management Plan for Cheesequake Natural Area**

Authority: N.J.S.A. 13:1B-3; 13:1B-15.4 et seq.; 13:1B-15.12a et seq.; and 13:1D-9.

**Take notice** that in accordance with N.J.A.C. 7:2-11.8 and the recommendation of the Natural Areas Council (Council), Christopher J. Daggett, Commissioner, Department of Environmental Protection, has adopted amendments to the management plan for Cheesequake Natural Area.

The Cheesequake Natural Area, located within Cheesequake State Park in Old Bridge Township, Middlesex County, is a State-owned parcel administered as part of the Natural Areas System by the Department's Division of Parks and Forestry (Division) through Cheesequake State Park. On May 29, 1985, the Department adopted a management plan for the Cheesequake Natural Area. The amendments to this management plan concern access to the existing Nature Center within the Natural Area from a parking area proposed for construction outside the Natural Area.

The management plan for the Cheesequake Natural Area is hereby amended to allow the Division of Parks and Forestry to create access from the proposed parking area to the existing Nature Center in accordance with the "Nature Center Trail Location Plan" prepared by the

Office of Capital Planning and Development. Creation of such access is subject to the following conditions:

1. The Division will rehabilitate the existing Fern Trail.
2. The Division will create a new trail, on grade, connecting the Fern Trail to the Nature Center following contours and in a meandering path.
3. The Division will install appropriate signage to indicate that vehicle access from the new parking area to the Nature Center is limited to vehicles serving handicapped individuals.
4. The Division will pave handicapped parking spaces in the new parking area and either pave a path or install a boardwalk from those spaces to the existing Nature Center ramp.
5. The Division will avoid cutting large diameter trees and dead standing trees during the access project.
6. Division staff will perform the final flagging of the connecting trail and clearing for the access project. Any changes in the trail plan will be reviewed by Division staff.
7. The Department will make a determination of whether the access project requires a wetlands permit for stream crossing. If a wetlands permit is required, the Division will obtain the permit before proceeding with the access project.
8. The Division will post boundary signs along the Natural Area border of the Fern Trail.
9. The Division will close and attempt to revegetate the existing Red Trail which runs between the Nature Center and the Fern Trail.
10. The Division will avoid destroying a population of ground pine which was identified by Council staff during an inspection of the project site.

This notice is published as a matter of public information.

(b)

**DIVISION OF WATER RESOURCES****Notice of Receipt of Petition for Rulemaking  
Areawide Water Quality Management Plans and  
Associated Permits**

Petitioner: Carole Balmer

**Take notice** that on August 9, 1989, the Department of Environmental Protection (Department) received a petition for rulemaking concerning Areawide Water Quality Management Plans and associated permits. Petitioner requests that the Department amend and repeal the process for review for proposed amendments to Areawide Water Quality Management Plans and associated permits including, but not limited to, stream encroachment permits, (N.J.A.C. 7:13), Freshwater Wetlands (N.J.A.C. 7:7A), Safe Drinking Water Act regulations (N.J.A.C. 7:10), New Jersey Pollutant Discharge Elimination System, (N.J.A.C. 7:14A) and Statewide Water Quality Management Planning (N.J.A.C. 7:15) to include a synopsis of long term anticipated secondary impacts resulting from the approval of granted permits and approvals. The petitioner contends that under the Federal Clean Water Act, 33 U.S.C. §1251, the Department is not in minimal compliance if the aforementioned issues are not addressed and resolved.

The Department will contact the petitioner and request clarification of the petition in accord with the requirements of N.J.A.C. 7:1-1.2, adopted August 7, 1989, at 21 N.J.R. 2302(a). Once the Department receives this clarification, it shall, in accordance with the provisions of N.J.A.C. 1:30-3.6, subsequently mail to the petitioner, and file with the Office of Administrative Law, a notice of action on the petition.

(c)

**DIVISION OF WATER RESOURCES****Amendment to the Ocean County Water Quality  
Management Plan  
Public Notice**

**Take notice** that on July 3, 1989, pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the "Water Quality Management Planning and Implementation Process" Regulations (N.J.A.C. 7:15-3.4), an amendment to the Ocean County Water Quality Management Plan was adopted by the Department. The Ocean County Utilities Authority's Central (OCUA) Service Area Wastewater Management Plan provides for increasing the planned flows to the Central Plant

to 43.284 million gallons per day (MGD) (47.284 Seasonal Total); and the utilization of an on-site wastewater treatment facility with subsurface disposal at the site of the Jackson Township Middle School. Additionally, the WMP delineates sewer service areas for the following municipalities: Dover Township, Island Heights Borough, the Island Beach communities (Mantoloking Borough, Brick Township—Island portion, Lavallette Borough, Seaside Heights and Seaside Park Boroughs), Berkeley Township, Beachwood Borough, South Toms River Borough, Pine Beach Borough, Ocean Gate Borough, Lacey Township and Ocean Township.

(a)

**DIVISION OF WATER RESOURCES**

**Notice of Amendment to the Statewide Water Quality Management Program Plan**

**Take notice** that on September 6, 1989, pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., an amendment to the Statewide Water Quality Management Program Plan ("Statewide WQM Plan") was adopted by the Department of Environmental Protection ("Department"). This amendment is effective upon the publication of this notice in the New Jersey Register. The amendment repeals all of the "Water Quality and Wastewater Management Policies and Procedures" contained in Chapter III of the Statewide WQM Plan, and replaces the text on page III-1 of that Plan with the following statement:

"All of the 'Water Quality and Wastewater Management Policies and Procedures' that were contained in Chapter III of the Statewide WQM Plan that the Department adopted on December 5, 1985 have been repealed. This repeal did not restore the policies, procedures, population forecasts, and population projections that were replaced or superseded by those 'Water Quality and Wastewater Management Policies and Procedures'. For further information about policies and procedures for water quality and wastewater management, consult the Statewide Water Quality Management Planning rules, N.J.A.C. 7:15."

The Department adopted a Statewide WQM Plan on December 5, 1985 (see 18 N.J.R. 110(b)). Chapter III of the Statewide WQM Plan contained "Water Quality and Wastewater Management Policies and Procedures". The Department adopted this amendment to the Statewide WQM Plan in order to consolidate Statewide water quality and wastewater management policies and procedures in the Statewide Water Quality Management Planning rules, and to eliminate certain policies and procedures that were outdated or unnecessary. Simultaneously, on September 6, 1989, the Department adopted new Statewide Water Quality Management Planning rules at N.J.A.C. 7:15. These rules are promulgated in this issue of the New Jersey Register.

**Summary of Public Comments and Agency Responses:**

Notice of this amendment was published on September 6, 1988 at 20 N.J.R. 2327(a). Notice was also published on September 6, 1988 as a legal notice in four New Jersey newspapers: The Courier-Post (Camden County), The Star-Ledger (Essex County), The Press (Atlantic City), and The Times (Trenton). A similar notice, together with a copy of the proposed Statewide Water Quality Management Planning rules, was provided by a letter, dated September 6, 1988, sent to over 1,100 parties. Public hearings were held on October 20 and 24, 1988, to provide interested persons the opportunity to present testimony on the proposed amendment and on the proposed Statewide Water Quality Management Planning rules, and the public comment period was open until November 10, 1988. Comments submitted during the public comment period became part of the official record of the administrative procedure, and were carefully reviewed by the Department.

Several persons submitted written statements described by those persons as comments on the proposed amendment to the Statewide WQM Plan (or, in one case, as comments on the "Proposed Statewide Water Quality Management Program Plan"), but containing comments on the proposed Statewide Water Quality Management Planning rules, N.J.A.C. 7:15. A number of other persons submitted comments on the proposed rules but did not mention the proposed amendment to the Statewide WQM Plan. A summary of all comments on the proposed Statewide Water Quality Management Planning rules and the Department's responses is published elsewhere in this issue of the New Jersey Register, and is not repeated here. As discussed in comment number 5 in that summary, six commenters commended the Department for consolidating Statewide water quality and wastewater management policies and procedures in a single set of rules. The following is a summary of other

comments on the proposed amendment to the Statewide WQM Plan, and a summary of the Department's responses.

**COMMENT:** Because the public notice for the proposed amendment is vague and unspecific, the "Right to Know" is severely hampered, and interested persons cannot make informed comments. The public notice gives no foundation for the repeal of the policies and procedures in Chapter III except to consolidate Statewide water quality and wastewater management policies. The statement in the public notice that the Department is proposing to eliminate certain policies and procedures that are outdated and unnecessary is vague and arbitrary. The public notice does not indicate whether the proposed rules at N.J.A.C. 7:15 are more relaxed or stringent than the present rules, and is arbitrarily vague as to the ways in which four of the wastewater policies in Chapter III are modified in the proposed rules. Because taxpayers must absorb the liability for wastewater facilities, it is arbitrary not to define how these policies were modified, so that the public may understand their responsibility.

**RESPONSE:** The public notice for the proposed amendment stated that the Statewide WQM Plan was available for inspection at the office of the Department's Division of Water Resources, Bureau of Water Quality Planning, and at the Office of Administrative Law. Because the Statewide WQM Plan was made available for inspection, it was not necessary for the public notice to summarize the contents of each of the "Water Quality and Wastewater Management Policies and Procedures" in Chapter III of that Plan.

Consolidating Statewide water quality and wastewater management policies and procedures in a single set of rules is an entirely adequate reason for repealing all of the policies and procedures in Chapter III of the Statewide WQM Plan. Experience has shown that persons who seek to locate such policies and procedures have been inconvenienced and confused by the need to refer to both N.J.A.C. 7:15 and Chapter III. Consolidating such policies and procedures in N.J.A.C. 7:15 makes the water quality management planning program easier to understand. The comment did not present any reasons why such policies and procedures should be retained in Chapter III.

The "Water Quality and Wastewater Management Policies and Procedures" in Chapter III of the Statewide WQM Plan were clearly identified in that Plan. The public notice for the proposed amendment named the policies in Chapter III that were contained in modified form in proposed N.J.A.C. 7:15, and stated that the Department proposed to eliminate the other policies and procedures in Chapter III, which were not contained in proposed N.J.A.C. 7:15. Because the Statewide WQM Plan was available for inspection as noted above, the public notice provided adequate identification of the policies and procedures in Chapter III that the Department proposed to eliminate. The comment did not present any reasons why such policies and procedures should not be eliminated. The elimination of policies and procedures that are outdated or unnecessary is not an arbitrary action.

With regard to the contents of proposed N.J.A.C. 7:15, the public notice for the proposed amendment expressly stated that "simultaneously, in this issue of the New Jersey Register, the Department is proposing to repeal the present planning rules, N.J.A.C. 7:15, and is proposing new Statewide Water Quality Management Planning rules at N.J.A.C. 7:15." The full text of the proposed new rules, together with a summary of the same, was published in the September 6, 1988 issue of the New Jersey Register at 20 N.J.R. 2198(a). The public notice published at 20 N.J.R. 2198(a) provided adequate notice concerning the content of the proposed new rules.

(Parts of this comment may also be considered a comment on the proposed Statewide Water Quality Management Planning rules. Therefore, see also the Department response to comment number 2 on those rules, published elsewhere in this issue of the New Jersey Register.)

**COMMENT:** The public, who must bear the liability for these wastewater facilities, are also the recipients of the result of these wastewater treatment plants. Without proper delineation of aquifers, outcrops, drainage basins, flood fringes, watershed boundaries, and implementation of wetland and floodplain regulations, there are no protections for potable water supplies. The Department has been severely remiss in this area, resulting in misleading and fabricated submissions by applicants for permits for these facilities.

**RESPONSE:** The Department agrees that there is a need for the proper delineation of aquifers and their outcrops, drainage basins, flood fringe areas, watershed boundaries, and for the implementation of wetlands and floodplain regulations. However, none of the "Water Quality and Wastewater Management Policies and Procedures" in Chapter III of the Statewide WQM Plan set forth requirements concerning how these delineations should be performed or how these regulations should be

implemented. Thus, the repeal of these policies and procedures does not affect these delineations and regulations. Moreover, the comment included no specific recommendations about how the Statewide WQM Plan should be changed to address the commenter's concerns. The issues raised by the commenter are more appropriately addressed through specific programs currently administered or being developed by the Department, such as the aquifer recharge area mapping program (N.J.S.A. 58:11A-12 et seq.), the flood hazard area delineation program (N.J.A.C. 7:13-7), the freshwater wetlands permit program (N.J.A.C. 7:7A), the stream encroachment permit program (N.J.A.C. 7:13), and the NJPDES rules concerning permit application requirements for wastewater facilities (N.J.A.C. 7:14A).

(This comment may also be considered a comment on the proposed Statewide Water Quality Management Planning rules. Therefore, see also the Department response to comment number 220 on those rules, published elsewhere in this issue of the New Jersey Register.)

**COMMENT:** The Landis Sewerage Authority is the designated 201 Agency for its service area which includes the City of Vineland. The Landis Sewerage Authority should be designated as the Water Quality Management Plan Agency for this area.

**RESPONSE:** As defined in N.J.A.C. 7:15-1.5, the term "designated planning agency" means an agency designated by the Governor to conduct areawide WQM planning pursuant to Section 4 of the Water Quality Planning Act (N.J.S.A. 58:11A-4). While the Landis Sewerage Authority was designated as a 201 Facilities Planning Agency (as depicted in the Lower Delaware WQM Plan), the Governor has not designated the Landis Sewerage Authority as the designated planning agency for the Lower Delaware WQM Planning Area. Because the Governor's power to designate planning agencies under N.J.S.A. 58:11A-4 has not been delegated to the Department, the Department has no authority to make such designations in the Statewide WQM Plan. The repeal of the "Water Quality and Wastewater Management Policies and Procedures" contained in Chapter III of the Statewide WQM Plan has no effect on the Governor's designation of planning agencies under N.J.S.A. 58:11A-4. A sewerage authority may become a "wastewater management planning agency" as defined in N.J.A.C. 7:15-1.5 without becoming a "designated planning agency".

(This comment may have been intended as a comment on the proposed Statewide Water Quality Management Planning rules. Therefore, see also the Department response to comment number 36 on those rules, published elsewhere in this issue of the New Jersey Register.)

## (a)

### DIVISION OF WATER RESOURCES

#### Amendment to the Cape May County Water Quality Management Plan

#### Public Notice

**Take notice** that on June 16, 1989 pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the "Water Quality Management Planning and Implementation Process" Regulations (N.J.A.C. 7:15-3.4), an amendment to the Cape May County Water Quality Management Plan was adopted by the Department. This amendment is to expand the sewer service area of the Lower Township Municipal Utilities Authority to include the site of the Lower Township Elementary School, Block 753.01, Lot 4.01.

## HUMAN SERVICES

### (b)

#### DEVELOPMENTAL DISABILITIES COUNCIL

##### Charity Racing Days Grant Program

**Take notice** that, in compliance with N.J.S.A. 52:14-34.4 et seq., the New Jersey Developmental Disabilities Council hereby announces the availability of the following grant program:

**A. Name of Program**—Charity Racing Days for the Developmentally Disabled Program.

**B. Purpose**—To distribute funds received by the New Jersey Racing Commission to nonprofit organizations in New Jersey which expend funds for direct services in full-time programs to individuals who are developmentally disabled.

**C. Amount of Monies in Program**—The amount of monies available is based on money collected on designated racing days by the N.J. Racing Commission in compliance with N.J.S.A. 5:5-44.2, and distributed proportionally among eligible organizations on the basis of an incidence and service formula as defined in N.J.A.C. 10:141.

**D. Organizations which may apply for funding under this program**—Agencies which may apply for Charity Racing Days monies must be nonprofit organizations located in N.J. which expend funds for direct services in full-time programs to residents who are developmentally disabled. Agencies must be affiliated with a national organization of the same type and purpose.

**E. Qualifications needed by an applicant to be considered for the program**—An eligible organization shall be a full-time service provider to individuals who are developmentally disabled which expends funds for direct services and has its main purpose either:

1. The provision of services; or
2. The raising of funds on behalf of a single other organization whose sole purpose is the provision of eligible services.

All funds raised shall be contributed to the provision of eligible services (except minimal costs for administration and fund raising).

At least 75% of the recipients of eligible services provided by the organization must be developmentally disabled.

**F. Procedure for eligible organizations to apply**—Application can be requested from:

Susan Richmond  
Research Specialist  
NJ Developmental Disabilities Council  
108-110 North Broad Street, CN 700  
Trenton, New Jersey 08625  
(609) 292-3745

**G. Address for applications to be submitted**—Same as F above.

**H. Deadline by which applications must be submitted**—Completed applications must be submitted by October 31, 1989.

**I. Date by which applicant shall be notified of approval or disapproval**—Applicants shall receive notice of approval or disapproval within 60 days after deadline for receipt of applications.

(a)

**DIVISION OF YOUTH AND FAMILY SERVICES**

**Notice of Technical Revisions  
State Plan for Title IV-E of the Social Security Act**

Take notice that the New Jersey Department of Human Services, Division of Youth and Family Services, has made technical revisions to the State Plan for Title IV-E of the Social Security Act, effective October 1, 1988, by including citations to applicable statutes and regulations. This plan addresses Federal funding available to support eligible children in foster care and adoption. Copies of the plan may be obtained by writing to:

Division of Youth and Family Services  
Office of Policy, Planning, and Support  
1 South Montgomery Street, CN-717  
Trenton, New Jersey 08625

**LAW AND PUBLIC SAFETY**

(b)

**OFFICE OF THE ATTORNEY GENERAL**

**Notice of Availability of the Quarterly Report of  
Legislative Agents for the Second Quarter of 1989**

Take notice that Peter N. Perretti, Jr., Attorney General of the State of New Jersey, in compliance with N.J.S.A. 52:13C-23(h), hereby publishes Notice of the Availability of the Quarterly Report of Legislative Agents for the Second Quarter of 1989, accompanied by a Summary of the Quarterly Report.

At the conclusion of the Second Quarter of 1989, the Notices of Representation filed with this office reflect that 633 individuals are registered as Legislative Agents. Legislative Agents are required by law to submit in writing a Quarterly Report of their activity in attempting to influence legislation during each calendar quarter. The aforesaid report shall be filed between the first and tenth days of each calendar quarter for such activity that occurred during the preceding calendar quarter. (N.J.S.A. 52:13C-22(b)).

A complete Quarterly Report of Legislative Agents, consisting of the Summary and copies of all Quarterly Reports filed by Legislative Agents for the Second Calendar Quarter of 1989, has been filed separately for reference with the following offices: the Office of the Governor, the Office of the Attorney General, the Office of Legislative Services (Bill Room), the Office of Administrative Law, and the State Library. Each is available for inspection in accordance with the practices of those offices.

The Summary Report includes the following information:

—The names of registered Agents, their registration numbers, their business addresses and whom they represent.

—A list of Agents who have filed Quarterly Reports by Statutory and Compilation Deadlines for this quarter.

—A list of Agents whose Quarterly Reports were not received by the Compilation Deadline for this quarter.

Following is a listing of all new Legislative Agents who have filed Notices of Representation during the Second Calendar Quarter of 1989:

- No. 519 Joseph P. Bordo, representing Non-Profit Social Service.
- No. 26 James P. Dugan, representing Hannoch Weisman.
- No. 26 Louise Stanton, representing Hannoch Weisman.
- No. 45 James R. Silkens, representing NJ Savings League.
- No. 26 Robert J. DelTufo, representing Hannoch Weisman.
- No. 522 Paul N. Bontempo, representing American Paper Institute.
- No. 523 Kevin F. Crowe, representing Norris, McLaughlin & Marcus.
- No. 524 Ira Stern, representing International Ladies Garment Workers Union—New Jersey Region.
- No. 526 Phyllis M. Forsyth, representing Crum and Forster Corp.
- No. 527 George Tyler, representing Toll Brothers.
- No. 528 Richard Franklin Rodgers, representing Federal Express Corp.
- No. 529 Michael David Underwood, representing Brotherhood of Locomotive Engineers.
- No. 393 Jean Louise Willis, Ph.D., representing American Ass'n of University Women—New Jersey Division Inc.
- No. 530 Betty Kraemer, representing N.J. Education Association.
- No. 27 Therese A. Lowenthal, representing League of Women Voters.
- No. 531 William Stanley Turkus, representing N.J. A.B.A.T.E. Inc.

- No. 53 Marianne E. Rhodes, representing N.J. Builders Ass'n.
- No. 53 Joanne M. Harkins, representing N.J. Builders Ass'n.
- No. 53 Andrew C. Cattano, representing N.J. Builders Ass'n.
- No. 53 Robert F. Holst, representing N.J. Builders Ass'n.
- No. 532 Peter D. Hutcheon, representing Norris, McLaughlin & Marcus.
- No. 533 Carrie Muller Wainwright, representing N.J. Business & Industry Ass'n.
- No. 534 Dawn E. Perrotta, representing Southern N.J. Hospital Council.
- No. 144 Arthur F. Herrmann, representing Jamieson, Moore, Peskin & Spicer.
- No. 535 Dolores A. Phillips, representing N.J. Environmental Federation.
- No. 536 Sheri B. Bango, representing Greater Cherry Hill Chamber of Commerce.
- No. 537 Carl Zeitz, representing Independent Lobbyist.
- No. 538 Marie A. Curtis, representing N.J. Environmental Lobby.
- No. 539 Nancy Strouse Foster, representing Episcopal Diocese of Newark.
- No. 540 Lois A. Cuccinello, representing Office & Professional Employees Int. Union Local 32 AFL-CIO.
- No. 53 Elizabeth E. Mohoney, representing N.J. Builders Ass'n.
- No. 541 John K. Antholis, representing Alamo-Rent-A-Car Inc. & N.J. Independent Car Rental Agencies.

Following is a listing of all Legislative Agents who have filed Notices of Termination during the Second Calendar Quarter of 1989:

LEGISLATIVE AGENT	REGISTRATION NUMBER
John B. Adcock	385
Edgar Archer	262
William H. Baker	11
Douglas Wm. Barnert	322
Debra Biczak	348
Martin L. Blatt	315
Stephen A. Blumenthal	352
John D. Bolduc	110
Theodore I. Botter	132
Peter A. Buchsbaum	161
Edward A. Burke	67
Sandra H. Byrne	467
Robert J. Christie	356
Elizabeth Croxton	250
Laura DiClerico	335
Wendy Edelson	474
J. Byron Fanning	251
Sherri Fleisher	411
James A. Forcinito	119
Ronald A. Frano	227
James E. Furlong, III	99
Dennis N. Giordano	286
Diana Graham	453
Katherine Hartman	88
Warren Hill	45
Frederick W. Hillman	75
Kourtney Hobokan	171
Michelle E. Hoffman	19
K. Michael Irish	129
David W. Johnson	487
Linda Joseph	200
Victoria M. Kessler	236
Charles J. Koltz, Jr.	397
Rona E. Korman	294
H. Michael Lacey	30
Diane B. Legreide	370
Rita M. Martin	302
Richard C. McDonough	180
Lois Patricia Moran	521
Patrick O'Connor	409
Walter Qualls	296
Pauline B. Reeping	399
Peter R. Richards	17
Thomas Salomone	481
Peter G. Sheridan	2
Richard R. Sorrentino	441

Neil W. Talling	56
Edward Tristram	20
Paul VanRyn	134
Joseph W. Walsh	95
Jonathan Young	275
Leon Zuckerman	64

For further information contact the Legislative Agents Unit at (609) 984-9371.

## (a)

**DIVISION OF MOTOR VEHICLE SERVICES****Notice of Common Carrier Applicant**

Take notice that Glenn Paulsen, Director, Division of Motor Vehicle Services, pursuant to the authority of N.J.S.A. 39:5E-11, hereby lists the name and address of an applicant who has filed an application for common carrier's Certificate of Public Convenience Permit.

COMMON CARRIER (NON-GRANDFATHER)  
Cemport, Inc.  
972 McCarter Hwy.  
Newark, New Jersey 07102

Protests in writing and verified under oath may be presented by interested parties to the Director, Division of Motor Vehicle Services, 25 South Montgomery St., Trenton, New Jersey 08666, within 20 days (October 22, 1989) following the publication of an application.

**TREASURY-GENERAL**

## (b)

**OFFICE OF THE TREASURER****Charitable Agency Application for the Public Employee Charitable Fund-Raising Campaign**

Take notice that Feather O'Connor, Treasurer, State of New Jersey, pursuant to the Public Employees' Charitable Fund-Raising Act, P.L. 1985, c.140 and N.J.A.C. 17:28-3.2(b)1, announces that the Department of the Treasury will be accepting applications via the DIVISION OF CONSUMER AFFAIRS until December 1, 1989 from charitable fund-raising agencies wishing to participate in the State Employees' Charitable Fund-Raising Campaign for 1990-1991.

For the purposes of this notice, "Charitable Fund-Raising Agency" shall mean a voluntary not-for-profit organization that provides health, welfare, or human care services to individuals. A charitable fund-raising agency shall be eligible to participate in the 1990-1991 Campaign if it meets the following requirements:

If it is an affiliated charitable agency (For this purpose affiliated charitable agency shall mean a charitable agency which is affiliated with a charitable fund-raising organization for the purpose of directly sharing in funds raised by the organization.)

**OR**

a. The agency is exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code;

b. The agency qualifies for tax deductible contributions under Section 170(b)(1)(A)(vi) or (viii) of the Internal Revenue Code;

c. The agency is not a private foundation as described in Section 509 of the Internal Revenue Code;

d. The agency is incorporated under or subject to the provisions of Title 15 of the Revised Statutes or Title 15A of the New Jersey Statutes and the "Charitable Fund-Raising Act of 1971," P.L. 1971, c.469 (C. 45:17A-1 et seq.);

e. The agency demonstrates to the satisfaction of the State Treasurer that a significant portion of funds raised in each of its two fiscal years preceding its application to participate in a campaign consists of individual contributions from citizens of the State;

f. The agency shall have raised at least \$15,000 from individual citizens of New Jersey in each of its two fiscal years preceding its application to participate in a State campaign.

Copies of the attached applications may be received from the DIVISION OF CONSUMER AFFAIRS, CHARITIES REGIS-

TRATION or the information requested therein may be submitted along with a cover letter. Completed applications or requests for application forms should be addressed to:

ANNE MALLET  
CHARITIES REGISTRATION  
DIVISION OF CONSUMER AFFAIRS  
P.O. BOX 254  
(located at 1100 Raymond Blvd.—Room 518)  
NEWARK, NJ 07102

Applications can also be requested by calling (201) 648-4704.

The application form for affiliated charitable fund-raising agencies follows:

**APPLICATION—AFFILIATED AGENCIES**

1. Name of AGENCY and name under which it intends to conduct charitable fund-raising campaigns among public employees.

2. Name and address of the charitable fund-raising organization with which agency is affiliated.

The application form for non-affiliated charitable fund-raising agencies follows:

**APPLICATION—NON-AFFILIATED\***

1. Name of agency and name under which it intends to conduct charitable fund-raising campaigns among public employees.

2. Address for agency and addresses of any agency offices within the state.

3. Names and addresses of officers, directors, trustees and executive personnel of agency.

4. Place and date agency was formed.

5. Has agency received tax exempt status pursuant to Section 501(c)(3) of the Internal Revenue Code? Yes \_\_\_ No \_\_\_

Please attach a copy of your IRS letter of determination.

6. Is agency a private foundation as defined in Section 509(a) of the Internal Revenue Code? Yes \_\_\_ No \_\_\_

7. Date on which fiscal year of agency ends.

8. Has agency registered as a charitable fund-raising organization pursuant to N.J.S.A. 45:17A-1 et seq.? Yes \_\_\_ No \_\_\_ If no, is agency exempt from registration requirement? Yes \_\_\_ No \_\_\_ Explanation:

9. Does the agency qualify for tax deductible contributions pursuant to Section 170(b)(1)(A)(vi) or (viii) of the Internal Revenue Code? Yes \_\_\_ No \_\_\_ Section qualified under \_\_\_\_\_. Please attach a copy of your IRS letter of determination.

10. Please attach a copy of the agency charter and all amendments thereto.

11. Please submit and certify the following financial data for each of the two fiscal years preceding this application:

(a) Amount of funds raised;

(b) What percentage of those funds consisted of individual contributions from citizens of New Jersey:

\*Please Note: Unaffiliated charitable agencies, which were found eligible by the State Treasurer to participate in the 1990-1991 Campaign, shall be required only to submit to the State Treasurer via DIVISION OF CONSUMER AFFAIRS, CHARITIES REGISTRATION their most recent financial information specified in question 11 above. (N.J.A.C. 17:28-3.4e). However, we are requesting that an updated list of Directors, Trustees, Officers and Campaign chairpersons also be included.

## (c)

**DIVISION OF BUILDING AND CONSTRUCTION****Architect-Engineer Selection****Notice of Assignments—Month of August 1989**

Solicitation of design services for major projects are made by notices published in construction trade publications and newspapers and by direct notification of professional associations/societies and listed, pre-qualified New Jersey consulting firms. For information on DBC's pre-qualification and assignment procedures, call (609) 984-6979.

Last list dated June 1, 1989.

**TREASURY-GENERAL**

You're viewing an archived copy from the New Jersey State Library.

**PUBLIC NOTICES**

The following assignments have been made:

DBC#	PROJECT	A/E	CCE				
				C384	Boiler Replacement Marlboro Camp (E. Jersey St. Prison) Marlboro, NJ	John C. Morris Assoc.	\$215,000
M1025	Spray Irrigation Field Modifications Ancora Psychiatric Hospital Hammonton, NJ	Kupper Assoc.	Not Known	P622	Renovations Administration Building Ringwood State Park Passaic County, NJ	Wank Adams Slavin Assoc.	\$1,200,000
C344	Roof Monitoring Services Reroof Buildings 3, 5 & 6 Trenton State Prison	Roof Maintenance Systems	\$11,250 Services		COMPETITIVE PROPOSALS		
M683	Roof Monitoring Services Reroof 7 ICF Cottages Vineland Developmental Ctr. Vineland, NJ	Roof Maintenance Systems	\$37,500 Services		Wank Adams Slavin Assoc.	\$128,000 Lump Sum	
M770	Roof Monitoring Services Reroof Administration & Multi-Purpose Building Woodbridge Developmental Center Woodbridge, NJ	Roof Maintenance Systems	\$21,125 Services	T224	Testing Lab Renovations Buildings 2, 3, 4 and 9 DOT Complex Trenton, NJ	Syska & Hennessy	\$4,500,000
M796	Roof Monitoring Services Reroof Stratton Building Trenton Psychiatric Hospital Trenton, NJ	Roof Maintenance Systems	\$17,125 Services		COMPETITIVE PROPOSALS		
I028	Roof Monitoring Services Roof Replacement Kean College of NJ Union, NJ	Roof Maintenance Systems	\$16,000 Services	P637	High Breeze Farm Study Wawayanda State Park Sussex County, NJ	Beyer Blinder Belle	\$108,400 Services
A590	Project Management and Control Consulting Services Div. of Building & Construction	Patrick J. McMackin, P.E.	\$70,000 Services		COMPETITIVE PROPOSALS		
P635	Structural Evaluation Managers Cottage Allaire Village Allaire State Park Farmingdale, NJ	Leon Fuller Parham Assoc.	\$2,000 Services	A564	Renovations & Additions Document Control Center & Annex Division of Taxation Trenton, NJ	The Harsen & Johns Partnership	\$1,750,000
M505	Testing Services No. Jersey Developmental Ctr. Totowa, NJ	Shimel & Sor Testing Labs	\$2,715 Services		COMPETITIVE PROPOSALS		
P588	Signage Standards Liberty State Park Jersey City, NJ	Vollmer Assoc.	\$29,662 Services		The Harsen & Johns Partnership	\$209,330 Lump Sum	
					Armstrong Jordan Pease	\$210,000 Lump Sum	

# EXECUTIVE ORDER NO. 66(1978) EXPIRATION DATES

Pursuant to N.J.A.C. 1:30-4.4, all expiration dates are now affixed at the chapter level. The following table is a complete listing of all current New Jersey Administrative Code expiration dates by **Title** and **Chapter**. If a chapter is not cited, then it does not have an expiration date. In some instances, however, exceptions occur to the chapter-level assignment. These variations do appear in the listing along with the appropriate chapter citation, and are noted either as an exemption from Executive Order No. 66(1978) or as a subchapter-level date differing from the chapter date.

Current expiration dates may also be found in the loose-leaf volumes of the Administrative Code under the **Title** Table of Contents for each executive department or agency and on the **Subtitle** page for each group of chapters in a Title. Please disregard all expiration dates appearing elsewhere in a Title volume.

This listing is revised monthly and appears in the first issue of each month.

<b>OFFICE OF ADMINISTRATIVE LAW—TITLE 1</b>			
<b>N.J.A.C.</b>	<b>Expiration Date</b>		
1:1	5/4/92	3:21	2/2/92
1:5	10/20/91	3:22	5/12/94
1:6	5/4/92	3:23	7/6/92
1:6A	5/4/92	3:24	8/18/94
1:7	5/4/92	3:25	8/17/92
1:10	5/4/92	3:26	12/31/90
1:10A	5/4/92	3:27	9/16/90
1:10B	10/6/91	3:28	12/17/89
1:11	5/4/92	3:30	10/17/88
1:13	5/4/92	3:32	10/1/93
1:13A	4/3/94	3:33	9/18/94
1:20	5/4/92	3:38	10/5/92
1:21	5/4/92	3:41	10/16/90
1:30	2/14/91	3:42	4/4/93
1:31	6/17/92		

## PERSONNEL (CIVIL SERVICE)—TITLE 4/4A

<b>N.J.A.C.</b>	<b>Expiration Date</b>
4:1	1/28/90
4:2	1/28/90
4:3	6/4/89
4:4	12/5/91
4:6	5/5/91
4A:1	10/5/92
4A:2	10/5/92
4A:3	9/6/93
4A:4	6/6/93
4A:5	10/5/92
4A:6	1/4/93
4A:7	10/5/92
4A:9	10/5/92
4A:10	11/2/92

## AGRICULTURE—TITLE 2

<b>N.J.A.C.</b>	<b>Expiration Date</b>
2:1	9/3/90
2:2	1/17/94
2:3	8/21/94
2:5	8/21/94
2:6	9/3/90
2:9	7/7/91
2:16	5/7/90
2:22	7/6/92
2:23	7/18/93
2:24	2/11/90
2:32	6/1/92
2:33	3/6/94
2:48	11/27/90
2:50	5/1/92
2:52	6/7/90
2:53	3/3/91
2:54	Exempt (7 U.S.C. 601 et seq. 7 C.F.R. 1004)
2:68	11/7/93
2:69	11/7/93
2:70	5/7/90
2:71	7/8/93
2:72	7/8/93
2:73	7/8/93
2:74	7/8/93
2:76	7/31/94
2:90	6/24/90

## COMMUNITY AFFAIRS—TITLE 5

<b>N.J.A.C.</b>	<b>Expiration Date</b>
5:2	4/10/94
5:3	9/1/93
5:4	10/5/92
5:10	11/17/93
5:11	3/10/94
5:12	1/1/90
5:13	12/24/92
5:14	12/1/90
5:15	5/1/94
5:17	6/1/89
5:18	2/1/90
5:18A	2/1/90
5:18B	2/1/90
5:19	2/1/93
5:22	12/1/90
5:23	3/1/93
5:24	9/1/90
5:25	3/1/91
5:26	3/1/91
5:27	6/1/90
5:28	12/20/90
5:29	6/18/91
5:30	6/29/93
5:31	12/1/89
5:37	11/18/90
5:38	10/27/93
5:51	9/1/93

## BANKING—TITLE 3

<b>N.J.A.C.</b>	<b>Expiration Date</b>
3:1	1/6/91
3:2	4/15/90
3:6	3/3/91
3:7	9/16/90
3:11	5/1/94
3:13	11/17/91
3:17	6/18/91
3:18	1/19/93
3:19	3/17/91

N.J.A.C.	Expiration Date
5:70	7/9/92
5:71	3/1/90
5:80	5/20/90
5:91	6/16/91
5:92	6/16/91
5:100	5/5/94

N.J.A.C.	Expiration Date
7:17	4/7/91
7:18	8/6/91
7:19	4/15/90
7:19A	2/19/90
7:19B	2/19/90
7:20	5/6/90
7:20A	12/16/93
7:22	1/5/92
7:23	6/9/94
7:24	5/19/91
7:25	2/18/91
7:25A	5/6/90
7:26	11/4/90
7:26B	12/21/92
7:27	Exempt
7:27B-3	Exempt
7:28	10/7/90
7:29	3/18/90
7:29B	2/1/93
7:30	12/4/92
7:31	6/20/93
7:36	11/21/93
7:37	Exempt
7:38	9/18/90
7:45	2/6/94

**DEPARTMENT OF MILITARY AND VETERANS' AFFAIRS—TITLE 5A**

N.J.A.C.	Expiration Date
5A:2	5/20/90

**EDUCATION—TITLE 6**

N.J.A.C.	Expiration Date
6:2	2/6/94
6:3	7/8/93
6:8	1/5/92
6:11	12/12/90
6:12	4/2/91
6:20	8/9/90
6:21	8/9/90
6:22	9/3/90
6:22A	12/19/93
6:24	4/2/91
6:26	1/24/90
6:27	1/24/90
6:28	4/10/94
6:29	3/25/90
6:30	7/5/93
6:31	1/24/90
6:39	8/14/94
6:43	4/7/91
6:46	10/5/92
6:53	7/7/92
6:64	1/11/93
6:68	4/12/90
6:69	6/4/91
6:70	1/25/90
6:78	11/7/93
6:79	11/25/92

**ENVIRONMENTAL PROTECTION—TITLE 7**

N.J.A.C.	Expiration Date
7:1	9/16/90
7:1A	6/5/92
7:1C	6/17/90
7:1D	11/28/93
7:1E	7/15/90
7:1F	4/20/92
7:1G	10/1/89
7:1H	7/24/90
7:1I	7/18/93
7:2	6/24/93
7:3	3/21/93
7:4A	9/18/94
7:6	6/9/94
7:7	5/12/94
7:7A	6/6/93
7:7E	7/24/90
7:7F	1/19/93
7:8	2/5/93
7:9	1/21/91
7:9A	8/21/94
7:10	9/1/94
7:11	5/13/93
7:12	4/11/93
7:13	7/14/94
7:14	4/27/94
7:14A	6/2/94
7:14B	12/21/92
7:15	10/2/94

N.J.A.C.	Expiration Date
8:7	9/16/90
8:8	4/12/94
8:9	2/18/91
8:13	9/8/92
8:19	6/28/90
8:20	3/4/90
8:21	11/18/90
8:21A	4/1/90
8:22	8/4/91
8:23	12/17/89
8:24	5/2/93
8:25	5/19/93
8:26	8/4/91
8:31	11/5/89
8:31A	3/18/90
8:31B	10/15/90
8:31C	1/20/92
8:33	10/7/90
8:33A	4/15/90
8:33B	10/7/90
8:33C	7/17/91
8:33E	6/23/92
8:33F	1/14/90
8:33G	7/17/94
8:33H	7/19/90
8:33I	9/15/91
8:33J	4/24/94
8:33K	3/27/94
8:33M	7/17/94
8:33N	5/15/94
8:34	11/15/93
8:39	6/20/93
8:40	4/15/90
8:41	2/17/92
8:42	8/17/92
8:42A	6/19/94
8:42B	7/18/93
8:43	1/21/91
8:43A	9/3/90
8:43B	1/21/91
8:43E	12/11/92
8:43F	3/18/90
8:43G	9/8/91
8:43H	8/21/94
8:43I	3/21/93
8:44	11/2/93
8:45	5/20/90

**HEALTH—TITLE 8**

N.J.A.C.	Expiration Date	N.J.A.C.	Expiration Date
8:48	8/20/89	10:68	7/7/91
8:51	9/16/90	10:69	6/6/93
8:52	12/15/91	10:69A	4/20/93
8:53	8/4/91	10:69B	11/21/93
8:57	6/18/90	10:70	6/16/91
8:59	10/1/89	10:71	1/6/91
8:60	5/3/90	10:72	8/27/92
8:61	10/6/91	10:80	5/19/94
8:65	12/2/90	10:81	8/24/94
8:70	8/19/93	10:82	8/24/94
8:71	2/17/94	10:83	1/19/94
		10:85	1/30/90
		10:87	1/27/94
		10:89	9/11/90
		10:90	10/14/92
		10:94	1/6/91
		10:95	8/23/89
		10:97	5/15/94
		10:99	2/19/90
		10:109	3/17/91
		10:112	2/17/89
		10:120	8/21/91
		10:121	3/13/89
		10:121A	12/7/92
		10:122	5/15/94
		10:122A	Exempt
		10:122B	9/10/89
		10:123	7/29/90
		10:124	12/7/92
		10:125	7/16/89
		10:126	11/7/93
		10:127	8/26/93
		10:129	10/11/89
		10:130	9/19/88
		10:131	12/7/92
		10:132	1/5/92
		10:141	2/7/94

**HIGHER EDUCATION—TITLE 9**

N.J.A.C.	Expiration Date
9:1	2/21/94
9:2	6/17/90
9:3	9/27/93
9:4	10/30/91
9:5	1/21/91
9:6	5/20/90
9:6A	1/4/93
9:7	2/28/93
9:8	11/4/90
9:9	10/3/93
9:11	4/17/94
9:12	4/17/94
9:14	5/20/90
9:15	8/21/94

**HUMAN SERVICES—TITLE 10**

N.J.A.C.	Expiration Date
10:1	11/7/93
10:2	1/5/92
10:3	11/21/93
10:4	1/3/88
10:6	2/21/89
10:12	1/5/92
10:13	7/18/93
10:14	5/16/93
10:31	6/5/94
10:36	8/18/91
10:37	11/4/90
10:38	5/28/91
10:39	2/21/94
10:40	5/11/94
10:41	3/20/94
10:42	8/18/91
10:43	8/21/94
10:44	10/3/88
10:44A	11/21/93
10:44B	4/15/90
10:45	9/19/88
10:47	11/4/90
10:48	1/21/91
10:49	8/12/90
10:50	3/3/91
10:51	10/28/90
10:52	2/19/90
10:53	4/29/90
10:54	3/3/91
10:55	3/11/90
10:56	8/26/91
10:57	3/3/91
10:58	3/3/91
10:59	3/3/91
10:60	8/27/90
10:61	3/3/91
10:62	3/3/91
10:63	11/29/89
10:64	3/3/91
10:65	8/25/94
10:66	12/15/93
10:67	3/3/91

**CORRECTIONS—TITLE 10A**

N.J.A.C.	Expiration Date
10A:1	7/6/92
10A:3	10/6/91
10A:4	7/21/91
10A:5	10/6/91
10A:6	11/2/92
10A:8	11/16/92
10A:9	1/20/92
10A:10-6	8/17/92
10A:16	4/6/92
10A:17	12/15/91
10A:18	7/6/92
10A:19	8/21/94
10A:22	7/5/93
10A:31	2/4/90
10A:32	3/4/90
10A:33	5/2/94
10A:34	4/6/92
10A:70	Exempt
10A:71	4/15/90

**INSURANCE—TITLE 11**

N.J.A.C.	Expiration Date
11:1	2/3/91
11:1-20	6/24/90
11:1-22	6/24/90
11:2	12/2/90
11:3	1/6/91
11:4	12/2/90
11:5	10/28/93
11:7	10/19/92
11:10	7/15/90
11:12	10/27/91
11:13	11/12/92

N.J.A.C.  
11:15  
11:16  
11:17

Expiration Date  
12/3/89  
2/3/91  
4/18/93

N.J.A.C.  
13:25  
13:26  
13:27  
13:28  
13:29  
13:30  
13:31  
13:32  
13:33  
13:34  
13:35  
13:36  
13:37  
13:38  
13:39  
13:39A  
13:40  
13:41  
13:42  
13:43  
13:44  
13:44B  
13:44C  
13:44D  
13:45A  
13:45B  
13:46  
13:47  
13:47A  
13:47B  
13:47C  
13:48  
13:49  
13:51  
13:54  
13:58  
13:59  
13:60  
13:70  
13:71  
13:75  
13:76  
13:77  
13:78

Expiration Date  
3/18/90  
9/26/93  
4/1/90  
5/16/93  
6/3/90  
4/15/90  
12/12/91  
10/23/92  
3/18/90  
10/26/93  
11/19/89  
11/19/89  
2/11/90  
10/7/90  
6/19/94  
7/7/91  
9/3/90  
9/3/90  
10/31/93  
9/1/93  
8/7/94  
11/2/92  
7/18/93  
8/7/94  
12/16/90  
4/17/94  
6/3/90  
2/2/92  
10/5/92  
2/21/94  
6/9/94  
1/21/91  
12/16/93  
4/27/92  
10/5/91  
9/7/89  
9/16/90  
1/20/92  
2/25/90  
2/25/90  
6/5/94  
6/27/93  
2/1/93  
3/20/94

**LABOR—TITLE 12**

N.J.A.C.  
12:3  
12:5  
12:6  
12:15  
12:16  
12:17  
12:18  
12:20  
12:35  
12:41  
12:45  
12:46  
12:47  
12:48  
12:49  
12:51  
12:56  
12:57  
12:58  
12:60  
12:90  
12:100  
12:105  
12:110  
12:112  
12:120  
12:175  
12:190  
12:195  
12:200  
12:210  
12:235

Expiration Date  
12/19/93  
9/19/93  
10/17/93  
8/19/90  
4/1/90  
1/6/91  
3/7/93  
8/14/94  
8/5/90  
1/17/94  
5/2/93  
5/2/93  
5/2/93  
5/2/93  
6/30/91  
9/26/90  
9/26/90  
9/26/90  
3/21/93  
12/17/89  
11/5/89  
1/21/91  
1/19/93  
9/6/93  
5/3/90  
11/28/93  
1/4/93  
6/24/93  
8/5/90  
9/6/93  
5/5/91

**COMMERCE, ENERGY, AND ECONOMIC DEVELOPMENT—TITLE 12A**

N.J.A.C.  
12A:9  
12A:10-1  
12A:11  
12A:12  
12A:50  
12A:54  
12A:60  
12A:80  
12A:81  
12A:82  
12A:100-1  
12A:120  
12A:121

Expiration Date  
3/7/93  
8/15/89  
9/21/92  
9/21/92  
8/15/93  
8/15/93  
11/21/93  
2/6/94  
2/6/94  
2/6/94  
9/8/91  
9/6/93  
12/5/93

**PUBLIC UTILITIES—TITLE 14**

N.J.A.C.  
14:1  
14:3  
14:5  
14:6  
14:9  
14:10  
14:10-6  
14:11  
14:17  
14:18

Expiration Date  
12/16/90  
5/6/90  
12/16/90  
3/3/91  
4/15/90  
9/8/91  
9/5/91  
1/27/92  
4/24/94  
7/29/90

**LAW AND PUBLIC SAFETY—TITLE 13**

N.J.A.C.  
13:1  
13:2  
13:3  
13:4  
13:10  
13:13  
13:18  
13:19  
13:20  
13:21  
13:22  
13:23  
13:24

Expiration Date  
7/5/93  
8/5/90  
4/25/93  
1/21/91  
3/27/94  
6/17/90  
4/1/90  
8/18/94  
12/18/90  
12/16/90  
1/7/90  
5/26/94  
11/5/89

**ENERGY—TITLE 14A**

N.J.A.C.  
14A:2  
14A:3  
14A:5  
14A:6  
14A:7  
14A:8  
14A:11  
14A:13  
14A:14  
14A:20  
14A:21  
14A:22

Expiration Date  
4/17/89  
10/7/90  
10/19/88  
8/6/89  
9/16/90  
9/20/89  
9/20/89  
2/2/92  
1/30/94  
2/3/91  
11/21/90  
6/4/89

**STATE—TITLE 15**

N.J.A.C.	Expiration Date
15:2	5/2/93
15:3	7/7/91
15:5	2/17/92
15:10	2/18/91

N.J.A.C.	Expiration Date
17:16	12/2/90
17:19	3/18/90
17:20	9/26/93
17:25	5/26/94
17:27	10/7/93
17:28	9/13/90
17:29	10/18/90
17:30	5/4/92
17:32	3/21/93
17:33	4/17/94

**TRANSPORTATION—TITLE 16**

N.J.A.C.	Expiration Date
16:1	8/5/90
16:1A	6/16/94
16:5	3/6/94
16:6	8/7/94
16:7	3/6/94
16:13	5/7/89
16:20A	12/17/89
16:20B	12/17/89
16:21	9/3/90
16:21A	8/20/89
16:22	2/3/91
16:25	8/15/93
16:25A	7/18/93
16:26	9/5/94
16:27	9/8/91
16:28	6/1/93
16:28A	6/1/93
16:29	6/1/93
16:30	6/1/93
16:31	6/1/93
16:31A	6/1/93
16:32	4/15/90
16:41	7/28/92
16:41A	2/19/90
16:41B	3/4/90
16:43	9/3/90
16:44	5/25/93
16:45	9/18/94
16:49	3/18/90
16:51	4/6/92
16:53	7/17/94
16:53A	4/15/90
16:53B	7/3/94
16:53C	6/16/93
16:53D	5/3/94
16:54	4/7/91
16:55	6/14/93
16:56	8/7/94
16:60	6/14/93
16:61	6/14/93
16:62	4/15/90
16:72	3/31/91
16:73	1/30/92
16:75	5/13/93
16:76	2/6/94
16:77	1/21/90
16:78	10/7/90
16:79	10/20/91
16:80	11/7/93
16:81	11/7/93
16:82	9/5/94

**TREASURY-TAXATION—TITLE 18**

N.J.A.C.	Expiration Date
18:1	7/21/94
18:2	9/6/93
18:3	3/14/94
18:5	3/14/94
18:6	3/14/94
18:7	3/14/94
18:8	2/24/94
18:9	6/7/93
18:12	7/29/93
18:12A	7/29/93
18:14	7/29/93
18:15	7/29/93
18:16	7/29/93
18:17	7/29/93
18:18	3/14/94
18:19	3/14/94
18:22	2/24/94
18:23	2/24/94
18:23A	8/5/90
18:24	6/7/93
18:25	1/6/91
18:26	6/7/93
18:30	4/2/89
18:35	6/7/93
18:36	2/4/90
18:37	8/5/90
18:38	2/16/93
18:39	9/8/92

**OTHER AGENCIES—TITLE 19**

N.J.A.C.	Expiration Date
19:3	5/26/93
19:3B	Exempt (N.J.S.A. 13:17-1)
19:4	5/26/93
19:4A	6/20/93
19:8	7/5/93
19:9	10/17/93
19:10	9/5/94
19:12	8/7/91
19:16	8/7/91
19:17	6/8/93
19:25	1/9/91
19:30	10/7/90
19:40	8/24/94
19:41	5/12/93
19:42	5/12/93
19:43	4/27/94
19:44	9/29/93
19:45	3/24/93
19:46	4/28/93
19:47	4/28/93
19:48	10/13/93
19:49	3/24/93
19:50	5/12/93
19:51	8/14/91
19:52	9/25/91
19:53	4/28/93
19:54	3/24/93
19:61	7/7/91
19:65	7/7/91
19:75	1/13/94

**TREASURY-GENERAL—TITLE 17**

N.J.A.C.	Expiration Date
17:1	5/6/93
17:2	12/17/89
17:3	8/15/93
17:4	7/1/90
17:5	12/2/90
17:6	11/22/93
17:7	12/19/93
17:8	6/27/90
17:9	10/3/93
17:10	5/6/93
17:12	8/15/89

# REGISTER INDEX OF RULE PROPOSALS AND ADOPTIONS

The research supplement to the New Jersey Administrative Code

## A CUMULATIVE LISTING OF CURRENT PROPOSALS AND ADOPTIONS

The **Register Index of Rule Proposals and Adoptions** is a complete listing of all active rule proposals (with the exception of rule changes proposed in this Register) and all new rules and amendments promulgated since the most recent update to the Administrative Code. Rule proposals in this issue will be entered in the Index of the next issue of the Register. **Adoptions promulgated in this Register have already been noted in the Index by the addition of the Document Number and Adoption Notice N.J.R. Citation next to the appropriate proposal listing.**

Generally, the key to locating a particular rule change is to find, under the appropriate Administrative Code Title, the N.J.A.C. citation of the rule you are researching. If you do not know the exact citation, scan the column of rule descriptions for the subject of your research. To be sure that you have found all of the changes, either proposed or adopted, to a given rule, scan the citations above and below that rule to find any related entries.

**At the bottom of the index listing for each Administrative Code Title is the Transmittal number and date of the latest looseleaf update to that Title. Updates are issued monthly and include the previous month's adoptions, which are subsequently deleted from the Index. To be certain that you have a copy of all recent promulgations not yet issued in a Code update, retain each Register beginning with the August 7, 1989 issue.**

**If you need to retain a copy of all currently proposed rules, you must save the last 12 months of Registers.** A proposal may be adopted up to one year after its initial publication in the Register. Failure to adopt a proposed rule on a timely basis requires the proposing agency to resubmit the proposal and to comply with the notice and opportunity-to-be-heard requirements of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.), as implemented by the Rules for Agency Rulemaking (N.J.A.C. 1:30) of the Office of Administrative Law. If an agency allows a proposed rule to lapse, "Expired" will be inserted to the right of the Proposal Notice N.J.R. Citation in the next Register following expiration. Subsequently, the entire proposal entry will be deleted from the Index. See: N.J.A.C. 1:30-4.2(c).

### Terms and abbreviations used in this Index:

**N.J.A.C. Citation.** The New Jersey Administrative Code numerical designation for each proposed or adopted rule entry.

**Proposal Notice (N.J.R. Citation).** The New Jersey Register page number and item identification for the publication notice and text of a proposed amendment or new rule.

**Document Number.** The Registry number for each adopted amendment or new rule on file at the Office of Administrative Law, designating the year of adoption of the rule and its chronological ranking in the Registry. As an example, R.1989 d.1 means the first rule adopted in 1989.

**Adoption Notice (N.J.R. Citation).** The New Jersey Register page number and item identification for the publication notice and text of an adopted amendment or new rule.

**Transmittal.** A series number and supplement date certifying the currency of rules found in each Title of the New Jersey Administrative Code: Rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

**N.J.R. Citation Locator.** An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to find the issue of publication of a rule proposal or adoption.

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**MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: SUPPLEMENT JULY 17, 1989**

**NEXT UPDATE: SUPPLEMENT AUGUST 21, 1989**

**Note: If no changes have occurred in a Title during the previous month, no update will be issued for that Title.**

# N.J.R. CITATION LOCATOR

If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register	If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register
20 N.J.R. 2417 and 2498	October 3, 1988	21 N.J.R. 955 and 1036	April 17, 1989
20 N.J.R. 2499 and 2610	October 17, 1988	21 N.J.R. 1037 and 1178	May 1, 1989
20 N.J.R. 2611 and 2842	November 7, 1988	21 N.J.R. 1179 and 1474	May 15, 1989
20 N.J.R. 2843 and 2948	November 21, 1988	21 N.J.R. 1475 and 1598	June 5, 1989
20 N.J.R. 2949 and 3046	December 5, 1988	21 N.J.R. 1599 and 1762	June 19, 1989
20 N.J.R. 3047 and 3182	December 19, 1988	21 N.J.R. 1763 and 1934	July 3, 1989
21 N.J.R. 1 and 88	January 3, 1989	21 N.J.R. 1935 and 2148	July 17, 1989
21 N.J.R. 89 and 224	January 17, 1989	21 N.J.R. 2149 and 2426	August 7, 1989
21 N.J.R. 225 and 364	February 6, 1989	21 N.J.R. 2427 and 2690	August 21, 1989
21 N.J.R. 365 and 588	February 21, 1989	21 N.J.R. 2691 and 2842	September 5, 1989
21 N.J.R. 589 and 658	March 6, 1989	21 N.J.R. 2843 and 3042	September 18, 1989
21 N.J.R. 659 and 810	March 20, 1989	21 N.J.R. 3043 and 3204	October 2, 1989
21 N.J.R. 811 and 954	April 3, 1989		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
<b>ADMINISTRATIVE LAW—TITLE 1</b>				
1:1-5.4	Nonlawyer representation	21 N.J.R. 2693(a)		
1:1-14.11	Transcripts of OAL proceedings: pre-proposal	21 N.J.R. 1181(b)		
1:6A	Special education hearings	21 N.J.R. 2693(a)		
1:10	Public welfare hearing rules: administrative change			21 N.J.R. 2288(a)

Most recent update to Title 1: TRANSMITTAL 1989-4 (supplement July 17, 1989)

<b>AGRICULTURE—TITLE 2</b>				
2:3	Livestock and poultry importations	21 N.J.R. 1477(a)	R.1989 d.455	21 N.J.R. 2470(a)
2:5	Equine infectious anemia and avian influenza	21 N.J.R. 1479(a)	R.1989 d.454	21 N.J.R. 2472(a)
2:24-2.1	Over-wintering of bees	20 N.J.R. 2951(a)		
2:34-2	Equine Advisory Board rules	21 N.J.R. 2151(a)		
2:76	State Agricultural Development Committee rules	21 N.J.R. 1601(a)	R.1989 d.453	21 N.J.R. 2472(b)
2:76-3.12	Farmland preservation programs: deed restrictions	21 N.J.R. 1183(a)	R.1989 d.451	21 N.J.R. 2472(c)
2:76-4.11	Municipally-approved farmland preservation programs: deed restrictions	21 N.J.R. 1183(b)	R.1989 d.452	21 N.J.R. 2473(a)
2:76-6.16	Farmland Preservation Program: easement purchase evaluation criteria	21 N.J.R. 2152(a)		

Most recent update to Title 2: TRANSMITTAL 1989-6 (supplement June 19, 1989)

<b>BANKING—TITLE 3</b>				
3:1-2.25, 2.26	Filing and application fees for banks, savings banks, and savings and loan associations	21 N.J.R. 1601(b)	R.1989 d.449	21 N.J.R. 2473(b)
3:1-6.1, 6.2, 7.1, 7.2, 7.4, 7.5, 9.6	DOB fees for services	21 N.J.R. 2398(a)	R.1989 d.510	21 N.J.R. 3082(a)
3:6-13.3, 13.5, 14.1, 14.2	Filing and application fees for banks, savings banks, and savings and loan associations	21 N.J.R. 1601(b)	R.1989 d.449	21 N.J.R. 2473(c)
3:6-13.3, 13.5, 14.1, 14.2	DOB application fees	Emergency (expires 9-1-89)	R.1989 d.406	21 N.J.R. 2397(a)
3:11-5.1, 11.9	Filing and application fees for banks, savings banks, and savings and loan associations	21 N.J.R. 1601(b)	R.1989 d.449	21 N.J.R. 2473(c)
3:11-5.1, 11.9	DOB application fees	Emergency (expires 9-1-89)	R.1989 d.406	21 N.J.R. 2397(a)
3:13-3.2	DOB fees for services	21 N.J.R. 2398(a)	R.1989 d.510	21 N.J.R. 3082(a)
3:17-2.1, 2.2, 3.9, 6.1, 6.2, 6.6, 6.10, 7.1	Consumer Loan Act rules	21 N.J.R. 2399(a)	R.1989 d.511	21 N.J.R. 3083(a)
3:18-10.1	License fees	21 N.J.R. 2401(a)	R.1989 d.509	21 N.J.R. 3083(a)
3:19-1.7	DOB fees for services	21 N.J.R. 2398(a)	R.1989 d.510	21 N.J.R. 3082(a)
3:23-2.1	License fees	21 N.J.R. 2401(a)	R.1989 d.509	21 N.J.R. 3083(a)
3:24	Check cashing business standards	21 N.J.R. 1765(a)	R.1989 d.486	21 N.J.R. 2956(a)
3:24-5.1	Check cashing facilities: administrative correction			21 N.J.R. 2784(a)
3:33-1	Proposed interstate acquisition: determination of eligibility	21 N.J.R. 814(a)	R.1989 d.500	21 N.J.R. 2957(a)
3:38-1.1, 1.2	License fees	21 N.J.R. 2401(a)	R.1989 d.509	21 N.J.R. 3083(b)
3:38-1.8	DOB fees for services	21 N.J.R. 2398(a)	R.1989 d.510	21 N.J.R. 3082(a)

Most recent update to Title 3: TRANSMITTAL 1989-3 (supplement June 19, 1989)

<b>CIVIL SERVICE—TITLE 4</b>				
4:1-16.1-16.6, 24.2	Repeal (see 4A:8)	20 N.J.R. 2955(b)		
4:1-16.6, 16.15, 25.1	Repeal rules	21 N.J.R. 1766(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
4:2-7.7(c)	Repeal (see 4A:3-4.11)	21 N.J.R. 1184(a)		
4:2-16.1, 16.2	Repeal (see 4A:8)	20 N.J.R. 2955(b)		
4:2-16.6, 16.8	Repeal rules	21 N.J.R. 1766(a)		
4:3-16.1, 16.2	Repeal (see 4A:8)	20 N.J.R. 2955(b)		

**Most recent update to Title 4: TRANSMITTAL 1988-4 (supplement July 17, 1989)**

**PERSONNEL—TITLE 4A**

4A:1-4.1	Delegation approval in local service	21 N.J.R. 1766(a)		
4A:2-1.2, 1.4, 2.5, 2.7, 3.1, 3.7	Appeals and discipline	21 N.J.R. 1766(a)		
4A:3-4.11	State service: downward title reevaluation pay adjustments	21 N.J.R. 1184(a)		
4A:3-4.17, 4.21	Compensation: State service	21 N.J.R. 2429(a)		
4A:4-2.1, 2.15, 3.4, 5.5	Promotional examinations: eligible lists	21 N.J.R. 2429(a)		
4A:4-2.3, 2.9, 2.15, 5.2, 6.3-6.6, 7.3	Selection and appointment	21 N.J.R. 1766(a)		
4A:6-1.5	Sick leave: State service	21 N.J.R. 2429(a)		
4A:8	Layoffs	20 N.J.R. 2955(b)		
4A:8	Layoffs: change of public hearing dates	20 N.J.R. 3171(a)		
4A:10-1.1	Information requested of appointing authority	21 N.J.R. 2429(a)		
4A:10-2.2	Vacated position and permanent appointment	21 N.J.R. 1766(a)		

**Most recent update to Title 4A: TRANSMITTAL 1989-2 (supplement July 17, 1989)**

**COMMUNITY AFFAIRS—TITLE 5**

5:11-8.5	Recovery of relocation assistance costs	21 N.J.R. 1039(a)	R.1989 d.402	21 N.J.R. 2288(b)
5:12	Homelessness Prevention Program	21 N.J.R. 2845(a)		
5:14-4	Neighborhood Preservation Balanced Housing Program: affordability controls	21 N.J.R. 2153(a)		
5:15-3.1, 3.4	Emergency shelters for homeless	21 N.J.R. 1509(a)	R.1989 d.412	21 N.J.R. 2288(c)
5:18-1.4, 1.5, 2.4A, 2.5, 2.7, 2.8, 4.1, 4.7, 4.9, 4.11, 4.13	Uniform Fire Code inspection, safety and enforcement provisions	21 N.J.R. 2431(a)		
5:18-2.6, 2.7, 2.11, 2.18, 3.2, 4.9, 4.18	Uniform Fire Code: administrative corrections	_____	_____	21 N.J.R. 3085(a)
5:18-2.7	Uniform Fire Code and Building Subcode: tents and tensioned membrane structures requiring permits	21 N.J.R. 1654(a)		
5:18-2.8	Uniform Fire Code: life hazard use registration fees and permit fees	21 N.J.R. 2126(a)	R.1989 d.513	21 N.J.R. 3084(a)
5:18-2.8	Uniform Fire Code: correction to fee schedule	_____	_____	21 N.J.R. 2402(a)
5:18-3.2	Uniform Fire Code: casino hotel fire safety plan	21 N.J.R. 2845(b)		
5:18A-2.6	Fire Code Enforcement: fee collection remittance	21 N.J.R. 2126(a)	R.1989 d.513	21 N.J.R. 3084(a)
5:18A-3.3	Duties of fire officials	21 N.J.R. 2431(a)		
5:18A-4	Repeal (see 5:18C)	21 N.J.R. 1655(a)		
5:18A-4.9	Fire Code Enforcement: administrative correction	_____	_____	21 N.J.R. 3085(a)
5:18C	Uniform Fire Code: fire service training and certification	21 N.J.R. 1655(a)		
5:23-2.18A	Utility load management devices: installation programs	21 N.J.R. 233(a)		
5:23-2.18A	Utility load management devices: public hearing concerning installation programs	21 N.J.R. 1185(b)		
5:23-3.5	Uniform Construction Code: educational facility use group	21 N.J.R. 2783(a)		
5:23-3.14	Uniform Fire Code and Building Subcode: tents and tensioned membrane structures requiring permits	21 N.J.R. 1654(a)		
5:23-4.3	Uniform Construction Code: assumption of local enforcement powers	20 N.J.R. 1764(a)	R.1989 d.435	21 N.J.R. 2474(a)
5:23-4.3	UCC: assumption of local enforcement powers	21 N.J.R. 2436(a)		
5:23-4.17, 4.18, 4.19, 4.20	Uniform Construction Code: municipal and departmental fees	21 N.J.R. 2127(a)	R.1989 d.512	21 N.J.R. 3086(a)
5:23-4.24A	Uniform Construction Code: alternative plan review program for large projects	21 N.J.R. 1770(a)		
5:23-7.2-7.6, 7.8, 7.9, 7.11, 7.12, 7.17, 7.18, 7.30, 7.37, 7.41, 7.55-7.57, 7.61, 7.67, 7.68, 7.71-7.73, 7.75, 7.76, 7.80-7.82, 7.87, 7.94-7.97	Barrier Free Subcode	21 N.J.R. 2774(a)		
5:26-2.3, 2.4	Planned real estate development full disclosure: registration and exemption fees	21 N.J.R. 2127(a)	R.1989 d.512	21 N.J.R. 3086(a)
5:27-3.3	Rooming and boarding houses: emergency eviction of a resident	21 N.J.R. 93(a)		
5:52-1	Volunteer coaches' safety orientation and training skills programs: minimum standards	21 N.J.R. 2159(a)		

N.J.A.C. CITATION		PROPOSAL (N.J.R. CITATION)	NOTICE STATE DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
5:80-6.1, 6.5, 6.6	Housing and Mortgage Finance Agency: sale of project by nonprofit sponsor to for-profit sponsor: use of DCE/CDE accounts	21 N.J.R. 1509(b)	R.1989 d.524	21 N.J.R. 3090(a)
5:80-9.13	Housing and Mortgage Finance Agency: notice of rent increases	21 N.J.R. 2160(a)		
5:91-1.2, 4.5, 6.2, 7.1-7.6	Council on Affordable Housing: mediation and post mediation process	21 N.J.R. 1773(a)		
5:92-8.4	Council on Affordable Housing: developer agreements	21 N.J.R. 1185(c)		
5:92-12.3	Option to buy sales units: administrative correction	_____	_____	21 N.J.R. 2475(a)
5:92-12 App.	Uniform deed restrictions and liens: controls on affordability	21 N.J.R. 1988(a)	R.1989 d.527	21 N.J.R. 3091(a)
5:92-18	Council on Affordable Housing: municipal conformance with State Development and Redevelopment Plan	21 N.J.R. 1186(a)		
5:100	Ombudsman for institutionalized elderly: practice and procedure	21 N.J.R. 1510(a)		
5:100	Ombudsman practice and procedure: extension of comment period	21 N.J.R. 1995(a)		

Most recent update to Title 5: TRANSMITTAL 1989-7 (supplement July 17, 1989)

**MILITARY AND VETERANS' AFFAIRS (formerly DEFENSE)—TITLE 5A**

Most recent update to Title 5A: TRANSMITTAL 1989-1 (supplement July 17, 1989)

**EDUCATION—TITLE 6**

6:3-1.18	Certification of school business administrators	21 N.J.R. 2915(a)		
6:8-9	Elementary and secondary school summer sessions	21 N.J.R. 2441(c)		
6:11-4.3, 8.2, 8.4, 8.5	Certification of bilingual and ESL teachers	21 N.J.R. 2721(a)		
6:11-5.1-5.7, 7.2	Provisional certification of first-year teachers	21 N.J.R. 2717(a)		
6:11-10.4, 10.10, 10.11, 10.14	Certification of school business administrators	21 N.J.R. 2915(a)		
6:20-2	Local district bookkeeping and accounting	21 N.J.R. 2919(a)		
6:20-2A	Double entry bookkeeping and GAAP accounting	21 N.J.R. 2919(a)		
6:21	Pupil transportation	21 N.J.R. 2724(a)		
6:24-5.4	Tenure charges against persons within Human Services, Corrections and Education	21 N.J.R. 1939(b)		
6:26	Repeal (see 6:8-9)	21 N.J.R. 2441(c)		
6:27	Repeal (see 6:8-9)	21 N.J.R. 2441(c)		
6:28-4.5	Special education home instruction: administrative correction	_____	_____	21 N.J.R. 2288(d)
6:29-9.2, 9.3, 9.5, 9.6	Substance abuse control and education	21 N.J.R. 1603(a)	R.1989 d.480	21 N.J.R. 2784(b)
6:30-2.3	Adult education: administrative correction	_____	_____	21 N.J.R. 2475(b)
6:31	Bilingual education	21 N.J.R. 2443(a)		
6:39-1	Statewide assessment of pupil proficiency in core studies	21 N.J.R. 1605(a)	R.1989 d.479	21 N.J.R. 2786(a)
6:70	Library network services	21 N.J.R. 1940(a)		

Most recent update to Title 6: TRANSMITTAL 1989-6 (supplement July 17, 1989)

**ENVIRONMENTAL PROTECTION—TITLE 7**

7:1-1.2	Petition for rulemaking procedure	21 N.J.R. 102(a)	R.1989 d.419	21 N.J.R. 2302(a)
7:1-1.2	Petition for rulemaking procedure: extension of comment period	21 N.J.R. 1289(a)		
7:1C-1.2-1.5, 1.7-1.9, 1.13, 1.14	90-day construction permits	21 N.J.R. 819(a)	R.1989 d.436	21 N.J.R. 2530(a)
7:1G	Worker and Community Right to Know	21 N.J.R. 1944(a)		
7:2-11.12	Natural Areas System: West Pine Plains	21 N.J.R. 1480(b)		
7:2-11.12	Designation of West Pine Plains to Natural Areas System: extension of comment period	21 N.J.R. 2240(b)		
7:4A	Historic Preservation Grant Program	21 N.J.R. 958(c)	R.1989 d.492	21 N.J.R. 2958(a)
7:5C	Endangered Plant Species Program	21 N.J.R. 2847(a)		
7:9-2	Repeal (see 7:9A)	20 N.J.R. 1790(a)	R.1989 d.450	21 N.J.R. 2534(a)
7:9-4.4, 4.5, 4.6, 4.14, 4.15, Indexes A-G	Surface water quality standards	20 N.J.R. 1597(a)	R.1989 d.420	21 N.J.R. 2302(b)
7:9A	Individual subsurface sewage disposal systems	20 N.J.R. 1790(a)	R.1989 d.450	21 N.J.R. 2534(a)
7:10	Safe Drinking Water Act	21 N.J.R. 1945(a)	R.1989 d.514	21 N.J.R. 3098(a)
7:13	Flood hazard area control	21 N.J.R. 371(a)	R.1989 d.415	21 N.J.R. 2350(a)
7:13	Flood hazard area control: extension of comment period	21 N.J.R. 1046(a)		
7:13	Flood Hazard Area Control: waiver of Executive Order No. 66(1978) expiration provision	21 N.J.R. 1481(a)		
7:13-7.1(d)	Redelineation of Bound Brook within South Plainfield and Edison	20 N.J.R. 3051(b)	R.1989 d.501	21 N.J.R. 2962(a)
7:13-7.1(d)	Redelineation of West Branch Rahway River, West Orange	21 N.J.R. 605(a)	R.1989 d.445	21 N.J.R. 2672(a)
7:13-7.1(d)	Redelineation of Ramapo River in Mahwah	21 N.J.R. 1046(b)	R.1989 d.446	21 N.J.R. 2671(a)
7:13-7.1(d)	Redelineation of Ramapo River: extension of comment period	21 N.J.R. 1482(a)		

N.J.A.C. CITATION	PROPOSAL ACTION	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:14A-4.7	Hazardous waste management: polychlorinated biphenyls (PCBs)	21 N.J.R. 1047(a)	
7:14A-12.22, 12.23	Sewer connection ban exemptions	21 N.J.R. 2240(c)	
7:14B-1.3, 1.4, 1.6, 2.1-2.5, 2.7, 2.8, 3.1, 3.2, 3.4, 3.5, 4-12, 15	Underground storage tank systems	21 N.J.R. 2242(a)	
7:14B-13	Underground Storage Tank Improvement Fund loan program	21 N.J.R. 2265(a)	
7:15	Statewide water quality management planning	20 N.J.R. 2198(a)	R.1989 d.517
7:15-3.4	Correction to proposed new rule	20 N.J.R. 2478(a)	
7:19-6.10(c), (d)2	Reduction of privilege to withdraw water: notice of rule invalidity	_____	21 N.J.R. 2786(b)
7:22A-1, 2, 3, 6	Sewage Infrastructure Improvement Act grants	21 N.J.R. 1948(a)	
7:25-1.5, 24	Leasing of Atlantic Coast bottom for aquaculture	21 N.J.R. 1482(b)	R.1989 d.502
7:25-2.20	Higbee Beach Wildlife Management Area	21 N.J.R. 2849(a)	
7:25-5	1989-1990 Game Code	21 N.J.R. 1289(b)	R.1989 d.418
7:25-6	1990-1991 Fish Code	21 N.J.R. 1775(b)	
7:26-1.4, 7.4, 7.7, 8.2, 8.3, 8.4, 8.13, 9.1, 9.2, 10.6, 10.7, 10.8, 11.3, 11.4, 12.1	Hazardous waste management: polychlorinated biphenyls (PCBs)	21 N.J.R. 1047(a)	
7:26-3A	Regulated medical wastes	21 N.J.R. 2109(a)	R.1989 d.506
7:26-5	Hazardous and solid waste management: civil administrative penalties and adjudicatory hearings	21 N.J.R. 2734(a)	
7:26-6.5	Interdistrict and intradistrict solid waste flow: Bergen County	21 N.J.R. 1486(b)	
7:26-8.2, 12.3	Radioactive mixed wastes	21 N.J.R. 1053(a)	
7:26-9.10, 9.13, App. A	Hazardous waste facility liability coverage: corporate guarantee option	21 N.J.R. 823(a)	
7:26-10.6, 11.3	Interim status hazardous waste facilities: closure and post-closure requirements	21 N.J.R. 1054(a)	
7:26-16.5, 16.13	Solid and hazardous waste operations: licensing of individuals	21 N.J.R. 2275(a)	
7:26B-1.3, 1.5, 1.6, 1.7, 1.8, 1.9, 3.3, 5.2, 7.5, 9.2, 10.1, 13.1	Environmental Cleanup Responsibility Act rules	21 N.J.R. 402(a)	R.1989 d.403
7:27-10.2	Sulphur contents standards: administrative correction	_____	21 N.J.R. 2991(a)
7:27-16.3	Vapor control during marine transfer operations	21 N.J.R. 1960(a)	
7:27-23.2, 23.3, 23.4, 23.5	Volatile organic substances in consumer products	21 N.J.R. 1055(a)	
7:27A-3	Air pollution control: civil administrative penalties and adjudicatory hearings	21 N.J.R. 729(a)	
7:45-1.2, 1.3, 2.6, 2.11, 4.1, 6, 9, 11.1-11.5	Delaware and Raritan Canal State Park review zone rules	21 N.J.R. 828(a)	

**Most recent update to Title 7: TRANSMITTAL 1989-7 (supplement July 17, 1989)**

**HEALTH—TITLE 8**

8:18	Catastrophic Illness in Children Relief Fund Program	21 N.J.R. 1781(a)	
8:31-30	Health care facility construction: plan review fee (recodify as 8:31-1)	21 N.J.R. 2447(a)	
8:31A-9.1	SHARE hospital reimbursement: labor proxies	21 N.J.R. 2922(a)	
8:31B-3.24	Hospital reimbursement: administrative correction	_____	21 N.J.R. 2475(c)
8:31B-3.66	Hospital reimbursement: adjusted admission fee ceiling	21 N.J.R. 1606(a)	R.1989 d.472
8:31B-3.73	Hospital reimbursement: rates adjustment and reconciliation	21 N.J.R. 1606(b)	R.1989 d.471
8:31B-4.15	Hospital reimbursement: uniform uncompensated care add-on	21 N.J.R. 1487(a)	R.1989 d.491
8:31B-4.37, 7.3	Reinsurance Program and charity care: Statewide uncompensated care add-on	21 N.J.R. 2448(a)	
8:31B-4.38-4.40	Hospital reimbursement: uncompensated care	21 N.J.R. 2449(a)	
8:31B-4.62	Hospital reimbursement: MICU services	21 N.J.R. 2453(a)	
8:31B-5.3	Hospital reimbursement: administrative correction	_____	21 N.J.R. 2476(a)
8:31B-7.9	Uncompensated Care Trust Fund cap	21 N.J.R. 1487(b)	R.1989 d.490
8:31B-7.10	Uncompensated Care Trust Fund: debt recovery through tax rebate and refund set-off	21 N.J.R. 2923(a)	
8:31C-1.2, 1.3, 1.4, 1.6, 1.12, 1.17	Residential alcoholism treatment facilities: rate setting and reimbursement	21 N.J.R. 2454(a)	
8:33C	Perinatal services: Certificate of Need review process	21 N.J.R. 1187(a)	R.1989 d.417
8:33F	End-Stage Renal Disease (ESRD) services: certification of need	21 N.J.R. 2923(b)	
8:33G	Computerized tomography services: certificate of need process	21 N.J.R. 1061(a)	R.1989 d.416

N.J.A.C. CITATION	PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
8:33L-1.2, 2.1, 2.2, 2.4, 2.6, 2.7	Home health agency services	21 N.J.R. 2455(a)	
8:39-29.4	Licensed nursing homes: non-prescription medications	21 N.J.R. 1607(a)	
8:39-44	Respite care services	21 N.J.R. 2924(a)	
8:42A-13.3	Alcoholism treatment facilities: administrative corrections		21 N.J.R. 3172(a)
8:43B-1-17	Hospital licensing standards (repeal)	21 N.J.R. 2925(a)	
8:43B-11.1, 11.3, 11.4	Rehabilitation hospitals: standards for licensure	21 N.J.R. 1067(a)	R.1989 d.432 21 N.J.R. 2476(b)
8:43B-18	Anesthesia (recodify to 8:43G-6)	21 N.J.R. 2925(a)	
8:43E-3	Adult closed acute psychiatric beds: certification of need	21 N.J.R. 1785(a)	
8:43E-4.5	Child and adolescent acute psychiatric beds: need formula	21 N.J.R. 2459(a)	
8:43G-1, 2, 5, 19, 21, 22, 24, 26, 29, 30, 31, 35	Hospital licensure: administration, obstetrics, oncology, pediatrics, plant safety, psychiatry, physical and occupational therapy, renal dialysis, respiratory care, postanesthesia care	21 N.J.R. 2926(a)	
8:43G-3	Hospital licensure: compliance with mandatory rules and advisory standards	21 N.J.R. 1608(a)	
8:43G-4	Hospital licensure: patient rights	21 N.J.R. 2160(a)	
8:43G-6	Anesthesia	21 N.J.R. 2925(a)	
8:43G-7	Hospital licensure: cardiac services	21 N.J.R. 2162(a)	
8:43G-8	Hospital licensure: central supply	21 N.J.R. 1609(a)	
8:43G-9	Hospital licensure: critical and intermediate care	21 N.J.R. 2167(a)	
8:43G-10	Hospital licensure: dietary standard	21 N.J.R. 1611(a)	
8:43G-11	Hospital licensure: discharge planning	21 N.J.R. 1612(a)	
8:43G-12	Hospital licensure: emergency department	21 N.J.R. 1613(a)	
8:43G-13	Hospital licensure: housekeeping and laundry	21 N.J.R. 1616(a)	
8:43G-14	Hospital licensure: infection control and sanitation	21 N.J.R. 1618(a)	
8:43G-15	Hospital licensure: medical records	21 N.J.R. 2171(a)	
8:43G-16	Hospital licensure: medical staff standard	21 N.J.R. 1621(a)	
8:43G-17	Hospital licensure: nurse staffing	21 N.J.R. 1623(a)	
8:43G-18	Hospital licensure: nursing care	21 N.J.R. 1624(a)	
8:43G-20	Hospital licensure: employee health	21 N.J.R. 2173(a)	
8:43G-23	Hospital licensure: pharmacy	21 N.J.R. 1626(a)	
8:43G-25	Hospital licensure: post mortem standard	21 N.J.R. 1628(a)	
8:43G-27	Hospital licensure: quality assurance	21 N.J.R. 1630(a)	
8:43G-28	Hospital licensure: radiology	21 N.J.R. 2174(a)	
8:43G-32, 34	Hospital licensure: same-day stay: surgery	21 N.J.R. 2177(a)	
8:43G-33	Hospital licensure: social work	21 N.J.R. 1631(a)	
8:43H	Rehabilitation hospitals: standards for licensure	21 N.J.R. 1067(a)	R.1989 d.432 21 N.J.R. 2476(b)
8:43H-23, 24	Licensure of comprehensive rehabilitation hospitals: physical plant; functional requirements	21 N.J.R. 1188(a)	R.1989 d.433 21 N.J.R. 2494(a)
8:52-4.6	Local boards of health: basic educational program concerning HIV infection	21 N.J.R. 2696(a)	
8:59	Worker and Community Right to Know Act rules	21 N.J.R. 1253(a)	
8:59-App. A, B	Worker and Community Right to Know: preproposed Hazardous Substance List and Special Health Hazard Substance List	21 N.J.R. 1194(a)	
8:70-1.5	Interchangeable drug products: substitution of unlisted generics	20 N.J.R. 2623(a)	
8:71	Interchangeable drug products (see 21 N.J.R. 63(c), 756(a), 1429(c))	20 N.J.R. 2356(a)	R.1989 d.380 21 N.J.R. 2108(b)
8:71	Interchangeable drug products (see 21 N.J.R. 755(b), 1429(b))	20 N.J.R. 3078(a)	R.1989 d.379 21 N.J.R. 2108(a)
8:71	Interchangeable drug products (see 21 N.J.R. 2107(c))	21 N.J.R. 662(a)	R.1989 d.487 21 N.J.R. 2996(a)
8:71	Interchangeable drug products	21 N.J.R. 1488(a)	R.1989 d.488 21 N.J.R. 2996(b)
8:71	Interchangeable drug products	21 N.J.R. 1790(a)	R.1989 d.489 21 N.J.R. 2997(a)

**Most recent update to Title 8: TRANSMITTAL 1989-7 (supplement July 17, 1989)**

**HIGHER EDUCATION—TITLE 9**

9:1-5.1, 5.2, 5.4, 5.5, 5.8, 5.10	Proprietary institutions and academic degree standards	21 N.J.R. 1632(a)	R.1989 d.443 21 N.J.R. 2498(a)
9:2-4.1	Alternate benefit program: eligibility for enrollment	21 N.J.R. 1268(a)	R.1989 d.442 21 N.J.R. 2499(a)
9:4-1.3, 1.9, 1.10, 2.1-2.15, 7.5	County community colleges: governance and administration	21 N.J.R. 1269(a)	
9:4-7.6	Evaluation of community college presidents	21 N.J.R. 2697(a)	
9:9-11.1	Guaranteed Student Loan Program: institution compliance	21 N.J.R. 1962(a)	R.1989 d.519 21 N.J.R. 3173(a)
9:11-1.5	Educational Opportunity Fund: eligibility for undergraduate grants	21 N.J.R. 1489(a)	R.1989 d.468 21 N.J.R. 2788(a)
9:11-1.8	Educational Opportunity Fund: duration of student eligibility	21 N.J.R. 1963(a)	
9:15	Graduate medical education program	21 N.J.R. 1271(a)	R.1989 d.441 21 N.J.R. 2500(a)

**Most recent update to Title 9: TRANSMITTAL 1989-3 (supplement July 17, 1989)**

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
<b>HUMAN SERVICES—TITLE 10</b>				
10:11-1	Instructional staff tenure	21 N.J.R. 2849(b)		
10:36-3	State psychiatric facilities: transfers of involuntarily committed patients	21 N.J.R. 2751(a)		
10:38	Interim Assistance Program for discharged psychiatric hospital clients	21 N.J.R. 2280(a)		
10:39	Community residences for mentally ill: licensure standards	21 N.J.R. 1995(b)		
10:43	Guardians for developmentally disabled persons: determination of need	20 N.J.R. 2850(a)	R.1989 d.430	21 N.J.R. 2501(a)
10:45	Guardianship services for developmentally disabled persons	21 N.J.R. 607(a)		
10:48-2	Control of viral hepatitis B among developmentally disabled	20 N.J.R. 2437(a)	R.1989 d.410	21 N.J.R. 2507(a)
10:49-1.1	Medicaid program: newborn care	21 N.J.R. 965(a)	R.1989 d.397	21 N.J.R. 2383(a)
10:49-1.1	Medicaid eligibility: administrative correction	_____	_____	21 N.J.R. 2789(a)
10:49-1.1, 1.2	New Jersey Care: presumptive eligibility for prenatal medical care	21 N.J.R. 1791(a)	R.1989 d.498	21 N.J.R. 2998(a)
10:49-1.1, 1.7-1.10, 1.14, 1.17, 1.19, 1.20, 1.22, 1.24, 1.26	Medicaid Administration Manual	21 N.J.R. 417(b)	R.1989 d.499	21 N.J.R. 3000(a)
10:52-1.2	Bed reserve in long-term care facilities	21 N.J.R. 1634(a)		
10:53-1.2	Bed reserve in long-term care facilities	21 N.J.R. 1634(a)		
10:63	Long Term Care Services Manual	21 N.J.R. 2752(a)		
10:63-1.13, 1.16	Bed reserve in long-term care facilities	21 N.J.R. 1634(a)		
10:63-1.16	Long-term care facilities: preproposal concerning pre-admission screening of Medicaid patients	21 N.J.R. 2773(a)		
10:63-3.9-3.12	Reimbursement of long-term care facilities: fixed property and movable equipment	20 N.J.R. 2560(a)		
10:63-3.10	Reimbursement of long-term care facilities under CARE Guidelines: correction	20 N.J.R. 2968(a)		
10:65	Medical Day Care Program	21 N.J.R. 1794(a)	R.1989 d.504	21 N.J.R. 3005(a)
10:66-1.5	Independent clinic providers: prior authorization for mental health services	21 N.J.R. 1794(b)	R.1989 d.503	21 N.J.R. 3005(b)
10:70-3.4	Medicaid program: newborn care	21 N.J.R. 965(a)		
10:72-3.4	Medicaid program: newborn care	21 N.J.R. 965(a)		
10:72-6.1, 6.3	New Jersey Care: presumptive eligibility for prenatal medical care	21 N.J.R. 1791(a)	R.1989 d.498	21 N.J.R. 2998(a)
10:81	Public Assistance Manual	21 N.J.R. 1795(a)	R.1989 d.496	21 N.J.R. 3006(a)
10:81-8.22, 8.23	Public Assistance Manual: Medicaid coverage of newborn children	21 N.J.R. 967(a)	R.1989 d.448	21 N.J.R. 2513(a)
10:81-11.6	Child Support Program: incentive payment methodology	21 N.J.R. 663(a)	R.1989 d.465	21 N.J.R. 2789(b)
10:82	Assistance Standards Handbook; AFDC Program	21 N.J.R. 1811(a)	R.1989 d.497	21 N.J.R. 3014(a)
10:85-3.2	General Assistance: residency and municipal responsibility	21 N.J.R. 835(a)	R.1989 d.398	21 N.J.R. 2384(a)
10:85-3.3	General Assistance: income and eligibility	21 N.J.R. 836(b)		
10:87-2.13, 2.30, 2.33, 2.36, 2.37, 4.8, 5.9, 6.2, 9.7	Food Stamp Program revisions	21 N.J.R. 1636(a)	R.1989 d.464	21 N.J.R. 2790(a)
10:91	Commission for the Blind and Visually Impaired: operations and procedures	21 N.J.R. 2753(a)		
10:95	Repeal (see 10:91)	21 N.J.R. 2753(a)		
10:120	Youth and Family Services hearings	20 N.J.R. 2742(a)	R.1989 d.300	21 N.J.R. 2513(b)
10:120	Youth and Family Services hearings: reopening of comment period	21 N.J.R. 1580(a)		
10:122-3.3, 4.7	Child care centers: administrative correction	_____	_____	21 N.J.R. 2385(a)
10:123-1	Financial eligibility for Social Services Program	21 N.J.R. 2438(a)		
10:125	Youth and Family Services capital funding program	21 N.J.R. 1514(a)		
10:133	Personal Attendant Services Program	21 N.J.R. 273(b)		
10:141-1.4	Charity Racing Days for Developmentally Disabled: distribution of proceeds	21 N.J.R. 610(a)	R.1989 d.494	21 N.J.R. 3016(a)

Most recent update to Title 10: TRANSMITTAL 1989-7 (supplement July 17, 1989)

**CORRECTIONS—TITLE 10A**

10A:16-2.9	Infirmity care	21 N.J.R. 969(a)		
10A:16-5.2, 5.6	Medical and health services: guardianship of an adult inmate	21 N.J.R. 2851(a)		
10A:16-11	Special Medical Units	21 N.J.R. 111(a)		
10A:17-8	Recreation and leisure time activities	21 N.J.R. 665(a)	R.1989 d.470	21 N.J.R. 2793(a)
10A:19	Public information	21 N.J.R. 1490(a)	R.1989 d.440	21 N.J.R. 2517(a)
10A:22-4	Expungement or sealing of inmate records	21 N.J.R. 2852(a)		
10A:31	Adult county correctional facilities	21 N.J.R. 2853(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
10A:34-2.16, 2.20	Municipal detention facilities: surveillance of detainees; reporting deaths	21 N.J.R. 969(b)	R.1989 d.401	21 N.J.R. 2385(a)
<b>Most recent update to Title 10A: TRANSMITTAL 1989-6 (supplement July 17, 1989)</b>				
<b>INSURANCE—TITLE 11</b>				
11:1-3, 7, 8, 13	Repeal (see 11:17A, 17B, 17C, 17D)	21 N.J.R. 1317(a)		
11:1-5.1	FAIR Plan surcharge	21 N.J.R. 1816(a)	R.1989 d.478	21 N.J.R. 2796(a)
11:1-26	Insurer profitability information: annual publication	21 N.J.R. 2181(a)		
11:1-27	Insurer record retention and production for examination	21 N.J.R. 2210(a)		
11:2-3	Credit life and credit accident and health insurance: preproposal	20 N.J.R. 2969(b)		
11:2-11.1, 11.6, 11.18, 23.3, 23.5, 23.8	Life and health insurance advertising: administrative corrections	_____	_____	21 N.J.R. 2289(c)
11:2-23.8	Life and health insurance advertising: administrative correction	_____	_____	21 N.J.R. 2290(a)
11:2-24	High-risk investments by insurers	21 N.J.R. 838(a)		
11:3-8.2, 8.4	Nonrenewal of automobile policies	21 N.J.R. 1306(a)		
11:3-10.4	Adjustment of losses: administrative correction	_____	_____	21 N.J.R. 3173(b)
11:3-16	Private passenger automobile rate filings	21 N.J.R. 2182(a)		
11:3-18	Review of rate filings for private passenger automobile coverage	21 N.J.R. 839(a)		
11:3-25.4	Residual market equalization charges: suspension of certain changes to N.J.A.C. 11:3-25.4; new public comment period	21 N.J.R. 2208(a)		
11:3-29	Automobile insurance personal injury protection: medical fee schedules	21 N.J.R. 842(b)		
11:3-30	Motor vehicle self-insurance	21 N.J.R. 2876(a)		
11:4-9	Life and health insurance: unfiled policy forms	21 N.J.R. 1492(a)		
11:4-11.6	Insurer record retention and production for examination	21 N.J.R. 2210(a)		
11:4-16.6, 16.8, App.: 23, App.	Sixty five-and-older health insurance coverage	21 N.J.R. 2877(a)		
11:4-32	Health service corporations: notice of increased rates	21 N.J.R. 973(b)	R.1989 d.522	21 N.J.R. 3173(c)
11:4-33	Life insurers: excess interest reserve adjustment	21 N.J.R. 1308(a)	R.1989 d.523	21 N.J.R. 3175(a)
11:4-34	Long-term care insurance	21 N.J.R. 1964(a)		
11:5-1.10	Real estate broker and salesperson employment agreement	21 N.J.R. 1308(b)	R.1989 d.424	21 N.J.R. 2519(a)
11:5-1.10	Real estate broker and salesperson employment agreement: correction to proposal summary	21 N.J.R. 1494(a)		
11:5-1.12	Record maintenance by real estate brokers	21 N.J.R. 1310(a)	R.1989 d.425	21 N.J.R. 2520(a)
11:5-1.14	License lending by real estate licensees	21 N.J.R. 1311(a)	R.1989 d.426	21 N.J.R. 2522(a)
11:5-1.15	Advertising by licensed real estate brokers	21 N.J.R. 1312(a)	R.1989 d.447	21 N.J.R. 2522(b)
11:5-1.16	Real estate contracts: "agreement to honor" provision	21 N.J.R. 2438(b)		
11:5-1.18	Supervision of primary real estate offices	21 N.J.R. 1312(b)	R.1989 d.427	21 N.J.R. 2523(a)
11:5-1.19	Supervision of branch real estate offices	21 N.J.R. 1313(a)	R.1989 d.428	21 N.J.R. 2523(b)
11:5-1.28	Approval real estate schools: pre-proposal	21 N.J.R. 1641(a)		
11:5-3, 4, 5	Formal proceedings by Real Estate Commission	21 N.J.R. 1314(a)	R.1989 d.429	21 N.J.R. 2524(a)
11:13-1.2, 1.3	Farm-owners insurance	21 N.J.R. 1641(b)		
11:15	Hospital workers' compensation: group self-insurance	21 N.J.R. 1817(a)		
11:15-2.2, 2.13, 2.21	Joint insurance funds for local government units	21 N.J.R. 1494(b)	R.1989 d.507	21 N.J.R. 3017(a)
11:16-2	Reports to National Automobile Theft Bureau	21 N.J.R. 2901(a)		
11:17A, 17B, 17C, 17D	Insurance producer conduct: marketing; commissions and fees; funds management; administrative penalties	21 N.J.R. 1317(a)		
11:18-1	Medical Malpractice Reinsurance Recovery Fund surcharge	21 N.J.R. 2698(a)		
<b>Most recent update to Title 11: TRANSMITTAL 1989-7 (supplement July 17, 1989)</b>				
<b>LABOR—TITLE 12</b>				
12:15-1.3-1.7	Unemployment Compensation and State Plan Temporary Disability: 1990 rates	21 N.J.R. 2700(a)		
12:20	Board of Review: appeals of unemployment benefit determinations	21 N.J.R. 1496(a)	R.1989 d.473	21 N.J.R. 2797(a)
12:20-6	Unemployment and disability insurance appeals: telephone hearings	21 N.J.R. 1644(a)	R.1989 d.474	21 N.J.R. 2798(a)
12:41-1	Job Training Partnership Act/N.J. Jobs Training Act: grievance procedures	21 N.J.R. 1498(a)	R.1989 d.475	21 N.J.R. 2799(a)
12:45-1	Vocational rehabilitation services	20 N.J.R. 3107(a)		
12:45-3	Vocational rehabilitation services: vehicle modification requirements	21 N.J.R. 2213(b)		
12:46-12:49	Repeal (see 12:45-1)	20 N.J.R. 3107(a)		
12:100	Safety and health standards for public employees	21 N.J.R. 2224(a)		
12:100-4.2, 5.2	Public employee safety and health: hazardous waste operations and emergency response	21 N.J.R. 1646(a)	R.1989 d.476	21 N.J.R. 2800(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
12:100-4.2, 10, 17	Safety standards for firefighters	21 N.J.R. 1090(a)		
12:100-4.2, 10, 17	Safety standards for firefighters: public hearing	21 N.J.R. 1500(a)		
12:100-9.2	Public employee safety and health: work in confined spaces	21 N.J.R. 1647(a)	R.1989 d.477	21 N.J.R. 2800(b)
12:102-1	Field sanitation for seasonal farm workers	21 N.J.R. 2224(b)		
12:235-1.6	Workers' Compensation: 1990 maximum rates	21 N.J.R. 2701(a)		

**Most recent update to Title 12: TRANSMITTAL 1989-6 (supplement July 17, 1989)**

**COMMERCE, ENERGY, AND ECONOMIC DEVELOPMENT—TITLE 12A**

12A:10-1, 2 (17:13, 17:14)	Small businesses, urban development enterprises; minority and female subcontractor participation	Emergency (expires 10-13-89)	R.1989 d.481	21 N.J.R. 2810(a)
12A:55	Solar energy systems: criteria for sales and use tax exemption	21 N.J.R. 282(a)		
12A:55	Solar energy systems criteria for sales and use tax exemptions: extension of comment period	21 N.J.R. 1969(a)		
12A:61	Energy emergencies (formerly at 14A:2)	21 N.J.R. 1272(a)		

**Most recent update to Title 12A: TRANSMITTAL 1989-5 (supplement July 17, 1989)**

**LAW AND PUBLIC SAFETY—TITLE 13**

13:1-4.5	Police Training Commission: instructor certification	21 N.J.R. 1647(b)	R.1989 d.485	21 N.J.R. 3019(a)
13:2-20.2	Transportation by retail licensee: administrative correction			21 N.J.R. 2385(c)
13:19	Driver control service	21 N.J.R. 1817(b)	R.1989 d.493	21 N.J.R. 3019(b)
13:19-13	Supplemental motor vehicle insurance surcharges	21 N.J.R. 1817(b)	R.1989 d.493	21 N.J.R. 3019(b)
13:20-1	Division of Motor Vehicles: enforcement officer rules	21 N.J.R. 1500(b)	R.1989 d.518	21 N.J.R. 3176(a)
13:20-3	Repeal (see 13:24)	21 N.J.R. 2460(a)		
13:24	Emergency vehicle equipment	21 N.J.R. 2460(a)		
13:30-1.2, 2.18, 8.1	Board of Dentistry licensure and registration fees	21 N.J.R. 2466(a)		
13:30-1.5, 1.15, 1.16, 2.11, 2.12, 2.13, 6.9, 6.10	Board of Dentistry: administrative corrections			21 N.J.R. 2386(a)
13:30-2.19	Inactive dental hygienists: resumption of practice	21 N.J.R. 1500(c)	R.1989 d.460	21 N.J.R. 2801(a)
13:30-8.12	Board of Dentistry: accuracy of dental insurance forms	21 N.J.R. 2226(a)		
13:35	Board of Medical Examiners rules	21 N.J.R. 2226(b)		
13:35-6.2	Pronouncement and certification of death	21 N.J.R. 1969(b)		
13:35-8.18	Hearing aid dispensers: continuing education	21 N.J.R. 1648(a)		
13:36	State Board of mortuary science	21 N.J.R. 1971(a)		
13:36-3.5, 3.6, 3.7	Mortuary science: examination requirements and review procedure	21 N.J.R. 1820(a)		
13:37-2.3, 3.5, 4.4	Nursing practice: temporary permit holders	21 N.J.R. 1648(b)		
13:38-1.2	Practice of optometry: unlawful advertising	21 N.J.R. 2467(a)		
13:42-1.2	Board of Psychological Examiners: written examination fee	21 N.J.R. 1649(a)	R.1989 d.467	21 N.J.R. 2801(b)
13:44	Board of Veterinary Medical Examiners	21 N.J.R. 1501(a)	R.1989 d.459	21 N.J.R. 2801(c)
13:44-2.11	Advertising of veterinary practice: administrative correction			21 N.J.R. 3019(c)
13:44C-3.2, 7.2	Audiology and speech language pathology: licensure and practice	21 N.J.R. 2702(a)		
13:44D	Public movers and warehousemen	20 N.J.R. 2364(a)	R.1989 d.400	21 N.J.R. 2386(b)
13:45B-4	Temporary help service firms	20 N.J.R. 2684(a)		
13:47-2.8	Legalized games of chance: organization ID numbers	21 N.J.R. 698(a)	R.1989 d.399	21 N.J.R. 2396(b)
13:47-7.1	Bingo games	21 N.J.R. 698(b)	R.1989 d.431	21 N.J.R. 2526(a)
13:47-14.3	Rental or use of premises for bingo games	21 N.J.R. 2233(a)		
13:47A-10	Registration of securities	21 N.J.R. 2903(a)		
13:70-3.40	Horse racing: admittance of children to race track	21 N.J.R. 1972(a)		
13:71-5.18	Harness racing: admittance of children to race track	21 N.J.R. 1972(b)		
13:75-1.6	Violent crimes compensation	21 N.J.R. 2910(a)		
13:80-1	Solid and hazardous waste information awards	21 N.J.R. 2911(a)		

**Most recent update to Title 13: TRANSMITTAL 1989-7 (supplement July 17, 1989)**

**PUBLIC UTILITIES—TITLE 14**

14:0	Telecommunications for deaf: pre-proposal concerning Statewide 24-hour dual party relay center	21 N.J.R. 1653(a)		
14:2	Public movers: administrative deletion			21 N.J.R. 3020(a)
14:3-3.2	Customer's proof of identity	21 N.J.R. 2004(a)		
14:3-3.6	Utility service discontinuance	21 N.J.R. 1650(a)		
14:3-4.5, 4.10	Billing disputes and meter test options	21 N.J.R. 1650(b)		
14:3-4.7	Water meter accuracy and billing adjustments	21 N.J.R. 1651(a)		
14:3-7.5	Return of customer deposits	21 N.J.R. 1652(a)		
14:3-7.13	Late payment charges	21 N.J.R. 1652(b)		
14:3-10.15	Annual filing of customer lists by solid waste collectors: annual reports	21 N.J.R. 2702(b)		
14:3-11	Earned return analysis of utility rates	21 N.J.R. 2003(a)		
14:3-11	Earned return analysis of utility rates: extension of comment period	21 N.J.R. 2704(a)		

N.J.A.C. CITATION	PROPOSAL/NOTICE STATEMENT (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
14:9-3.3	Water meter accuracy and billing adjustments	21 N.J.R. 1651(a)	
14:10-6	Telecommunications: Alternative Operator Service (AOS) providers	20 N.J.R. 3115(a)	R.1989 d.463
14:11-7.2, 7.6-7.9	Solid waste uniform tariff	21 N.J.R. 2704(b)	21 N.J.R. 2801(d)

Most recent update to Title 14: TRANSMITTAL 1989-2 (supplement May 15, 1989)

**ENERGY—TITLE 14A**

14A:2	Energy emergencies (expired rules to be adopted as new at 12A:61)	21 N.J.R. 1272(a)	
14A:6-2	Business Energy Improvement Program	21 N.J.R. 2005(a)	
14A:8	Energy Facility Review Board	21 N.J.R. 2009(a)	
14A:11	Reporting by energy industries of energy information	21 N.J.R. 2009(b)	
14A:22	Commercial and Apartment Conservation Service Program	21 N.J.R. 2010(a)	

Most recent update to Title 14A: TRANSMITTAL 1989-2 (supplement July 17, 1989)

**STATE—TITLE 15**

Most recent update to Title 15: TRANSMITTAL 1989-1 (supplement February 21, 1989)

**PUBLIC ADVOCATE—TITLE 15A**

Most recent update to Title 15A: TRANSMITTAL 1989-1 (supplement July 17, 1989)

**TRANSPORTATION—TITLE 16**

16:1A-1.3	Filing of rulemaking petitions	21 N.J.R. 2233(b)	
16:5	Right-of-way acquisitions	21 N.J.R. 2713(a)	
16:6	Right-of-way acquisitions and relocation assistance	21 N.J.R. 1273(a)	R.1989 d.421
16:21A	Bridge Rehabilitation and Improvement Bond Act rules	21 N.J.R. 2716(a)	21 N.J.R. 2290(b)
16:23	Public hearings and route location approval	21 N.J.R. 2913(a)	
16:25-1.1, 1.7, 2.2, 7A, 13	Installation of fiber optic cable along limited access highways	21 N.J.R. 2234(b)	
16:26-1, 2, 3	Bureau of Electrical Engineering: release of traffic signal information; drawbridge operations; reimbursed highway safety lighting	21 N.J.R. 1653(b)	R.1989 d.458
16:28-1.72, 1.77	School and speed limit zones along U.S. 206 in Hamilton and Route 29 in Stockton	21 N.J.R. 1501(b)	R.1989 d.411
16:33	Repeal (see 16:45)	21 N.J.R. 1972(c)	R.1989 d.505
16:41A-1.1, 2.2, 2.4, 2.5, 2.9, 2.10, 2.11, 3.1, 3.2, 3.3, 3.15, 3.19, 3.20, 4.2, 4.4, 5.2, 5.4, 6.1, 6.4, 7.1	Outdoor Advertising Tax Act rules	21 N.J.R. 2237(a)	21 N.J.R. 3020(b)
16:44-1.1	Contract administration: prequalification committee	21 N.J.R. 2240(a)	
16:44-5.5	Contract administration: verification of bid calculations	21 N.J.R. 2239(a)	
16:45	Construction control: contractor claims; substantial completion	21 N.J.R. 1972(c)	R.1989 d.505
16:46-1, 2	Drawbridge operations; reimbursed highway safety lighting	21 N.J.R. 2468(a)	21 N.J.R. 3020(b)
16:53D-1.1	Zone of rate freedom: 1990 percentage maximums	21 N.J.R. 2914(a)	
16:56	Airport Safety Improvement Aid	21 N.J.R. 1502(a)	R.1989 d.413
16:82	NJ TRANSIT: availability of public records	21 N.J.R. 284(b)	R.1989 d.462

Most recent update to Title 16: TRANSMITTAL 1989-7 (supplement July 17, 1989)

**TREASURY-GENERAL—TITLE 17**

17:2	Public Employees' Retirement System	21 N.J.R. 2429(a)	
17:2-4.3	Public Employees' Retirement System: school year members	21 N.J.R. 979(a)	R.1989 d.423
17:2-5.13	Public Employees' Retirement System: lump-sum service purchases	21 N.J.R. 1820(b)	R.1989 d.516
17:2-6.27	Public Employees' Retirement System: benefit coverage during work-related travel	21 N.J.R. 1285(a)	R.1989 d.422
17:4-5.7	Police and Firemen's Retirement System: lump-sum service purchases	21 N.J.R. 1821(a)	R.1989 d.515
17:9-2.6, 2.7	State Health Benefits Program: effective date of coverage	21 N.J.R. 1503(a)	R.1989 d.469
17:9-2.18, 3.1	State Health Benefits Program: continuation of coverage for disabled children	21 N.J.R. 885(a)	
17:12	Purchase Bureau rules	Emergency (expires 10-13-89)	R.1989 d.481
17:13 (12A:10-1)	Goods and services contracts for small businesses, urban development enterprises and micro businesses	Emergency (expires 10-13-89)	R.1989 d.481

N.J.A.C. CITATION	PROPOSED STATUTORY	ADOPTION NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
17:14 (12A:10-2)	Minority and female subcontractor participation in State construction contracts	Emergency (expires 10-13-89)	R.1989 d.481	21 N.J.R. 2810(a)
17:16-17.3	Common Pension Fund A: investment limitations	21 N.J.R. 1821(b)	R.1989 d.466	21 N.J.R. 2808(a)

**Most recent update to Title 17: TRANSMITTAL 1989-6 (supplement July 17, 1989)**

**TREASURY-TAXATION—TITLE 18**

18:1-1.1, 1.2	Organization of Division of Taxation	Exempt	R.1989 d.437	21 N.J.R. 2526(b)
18:7-8.10	Corporation Business Tax: sales of certain services to a regulated investment company	21 N.J.R. 1106(a)	R.1989 d.439	21 N.J.R. 2527(a)
18:7-11.8, 13.3, 13.8	Corporation Business Tax: refund procedures	21 N.J.R. 1503(b)	R.1989 d.508	21 N.J.R. 3177(a)
18:7-14.20	Tax Clearance Certificate	Exempt	R.1989 d.437	21 N.J.R. 2526(b)
18:24-1.4, 12.5	Sales and Use Tax: receipts	21 N.J.R. 1107(a)		
18:24-5.11	Fabricator/contractor sales and use tax liability	21 N.J.R. 439(a)	R.1989 d.438	21 N.J.R. 2528(a)
18:26-2.12	Transfer Inheritance and Estate Tax: renunciation or disclaimer	21 N.J.R. 1822(a)		

**Most recent update to Title 18: TRANSMITTAL 1989-4 (supplement June 19, 1989)**

**TITLE 19—OTHER AGENCIES**

19:3-1.1-1.4, 1.6	Hackensack Meadowlands District: subdivision, zoning and permit fees	21 N.J.R. 2949(a)		
19:4-6.24, 6.25	Hackensack Meadowlands District: penalties, entry and inspection	21 N.J.R. 2949(a)		
19:8-1.12	Garden State Parkway: transportation of hazardous materials	21 N.J.R. 1974(a)	R.1989 d.484	21 N.J.R. 3021(a)
19:8-8.1	Garden State Parkway: special permits for oversize vehicles	21 N.J.R. 1974(b)	R.1989 d.483	21 N.J.R. 3021(c)
19:8-12	Garden State Parkway: petitions for rules	21 N.J.R. 1975(a)	R.1980 d.482	21 N.J.R. 3021(b)
19:9-6	Turnpike Authority: petitions for rules	21 N.J.R. 2440(a)		
19:9-7	Organization of Turnpike Authority	Exempt	R.1989 d.444	21 N.J.R. 2528(b)
19:10-6.1	PERC: rulemaking petitions	21 N.J.R. 1505(a)	R.1989 d.461	21 N.J.R. 2808(b)
19:20-2	Use of authority facilities	21 N.J.R. 887(b)		
19:25-15.28	Public financing of general election for Governor: administrative correction	_____	_____	21 N.J.R. 3179(a)
19:25-15.29	Coordinated expenditures in general election for Governor	Emergency (expires 10-2-89)	R.1989 d.456	21 N.J.R. 2673(a)
19:25-15.48	Candidate statement of qualification: administrative correction	_____	_____	21 N.J.R. 2530(a)
19:61-3.2	Executive Commission on Ethical Standards: subpoena for witnesses	21 N.J.R. 1507(b)	R.1989 d.521	21 N.J.R. 3179(b)
19:61-3.2, 5.5	Subpoena for witnesses: rulemaking petitions: extension of comment period	21 N.J.R. 2441(b)		
19:61-5.5	Rulemaking petitions	21 N.J.R. 1508(a)	R.1989 d.520	21 N.J.R. 3179(c)

**Most recent update to Title 19: TRANSMITTAL 1989-6 (supplement July 17, 1989)**

**TITLE 19 SUBTITLE K—CASINO CONTROL COMMISSION/CASINO REINVESTMENT DEVELOPMENT AUTHORITY**

19:40	Commission operations and procedures	21 N.J.R. 1975(b)	R.1989 d.495	21 N.J.R. 3022(b)
19:41-7.2B	Reporting of proposed foreign gaming operations	21 N.J.R. 129(b)		
19:41-8	Receipt and processing of applications	21 N.J.R. 1975(b)	R.1989 d.495	21 N.J.R. 3022(b)
19:41-8.6	Withdrawal of application for licensure	21 N.J.R. 130(a)		
19:41-10	Professional practice (recodify to 19:40-5)	21 N.J.R. 1975(b)	R.1989 d.495	21 N.J.R. 3022(b)
19:42-8.1	Hearings on rules	21 N.J.R. 1975(b)	R.1989 d.495	21 N.J.R. 3022(b)
19:45-1.1, 1.9, 1.9A, 1.15	Transportation expense reimbursement to patrons	21 N.J.R. 2953(a)		
19:45-1.1, 1.25	Slot machine payoffs by casino check; special slot tokens	21 N.J.R. 2954(a)		
19:45-1.3	Section 99 submissions	21 N.J.R. 1506(a)	R.1989 d.457	21 N.J.R. 2808(c)
19:45-1.28	Deposit of checks from gaming patrons	21 N.J.R. 1288(a)	R.1989 d.434	21 N.J.R. 2530(b)
19:47-2.6, 2.9	Insurance wagers in blackjack	21 N.J.R. 2441(a)		
19:49-3.1, 3.2, 3.3	Junket reporting requirements	20 N.J.R. 2648(b)		
19:52-1.3	Musical entertainment	20 N.J.R. 2649(a)		
19:53-1.5	Employment of minority and female workers	21 N.J.R. 1823(a)		
19:53-2.7	Casino business with minority and women's enterprises: quarterly reporting	21 N.J.R. 1507(a)	R.1989 d.414	21 N.J.R. 2301(a)

**Most recent update to Title 19K: TRANSMITTAL 1989-6 (supplement June 19, 1989)**

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