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THE REGISTER

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(Includes adopted rules filed through January 8, 1993)

MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: NOVEMBER 16, 1992
See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT DECEMBER 21, 1992

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Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until **March 3, 1993.** Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal.

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.

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NEW JERSEY REGISTER

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EXECUTIVE ORDERS

(a)

OFFICE OF THE GOVERNOR
Governor Jim Florio
Executive Order No. 77(1993)
Composition of State Council on Adult Education and Literacy

Issued: January 7, 1993.
Effective: January 7, 1993.
Expiration: Indefinite.

WHEREAS, on October 29, 1992, I created by Executive Order No. 68, the State Council on Adult Education and Literacy, in order to help improve coordination and delivery of adult education and literacy programs across the State; and

WHEREAS, the interest expressed in response to this event has been extensive and from varied constituencies; and

WHEREAS, broad representation of concerned parties to the Council membership is desirable and in the spirit of Executive Order No. 68;

NOW THEREFORE, I, JAMES J. FLORIO, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. Section 4 of Executive Order No. 68 is hereby amended as follows: "The Council shall be composed of the Governor or his designee, representatives of the Department of Higher Education, Department of Education, Department of Human Services, Department of Commerce, Department of Labor, Department of Community Affairs, Department of Corrections, and public members to be appointed by the Governor and who shall be broadly representative of citizens and groups within the State having an interest in adult education and literacy."

2. This Order shall take effect immediately.

(b)

OFFICE OF THE GOVERNOR
Governor Jim Florio
Executive Order No. 78(1993)
Prohibition Against State Agency Leases Involving Members of the Legislature or Members of their Families

Issued: January 12, 1993.
Effective: January 12, 1993.
Expiration: Indefinite.

WHEREAS, the people of this State are entitled to a government in which every effort is made to eliminate both the actuality and the appearance of impropriety; and

WHEREAS, concerns exist about the role of members of the Legislature in the process used for the leasing of real property by State agencies; and

WHEREAS, a prohibition against State agency leases involving members of the Legislature or members of their families will benefit both the members of the Legislature and the State agency officials responsible for leasing by providing a bright-line rule to guide their conduct;

NOW, THEREFORE, I, JAMES J. FLORIO, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. As used in this Order, the following terms have the following meanings:

a. "State agency" means any of the principal departments in the Executive Branch of the State Government and any division, board, bureau, office, commission, or other instrumentality within, created by, or allocated to such department.

b. "Interest" means (1) the ownership or control of more than one percent of the profits or assets of a firm, association, or partnership, or more than one percent of the stock in a corporation for profit other than a professional service corporation organized under the "Professional Service Corporation Act," P.L. 1969, c.232 (C.14A:17-1 et seq.); and (2) the holding of the status of shareholder, associate, partner, or professional employee of a professional service corporation or of any other firm, partnership or association that provides professional services regardless of the extent or amount of shareholder interest in the corporation or of the amount of the assets or profits of the firm, partnership or association owned or controlled.

c. "Member of the immediate family" of any person means the person's spouse, child, parent, or sibling residing in the same household.

2. a. Notwithstanding the provisions of sections 4 and 8 of P.L. 1971, c.182 (C.52:13D-15 et al.) or any other law to the contrary and except as provided in subsection b. of this section, a State agency shall not lease or purchase real property, title to which is held, in whole or in part, by a member of the Legislature or a member of his or her immediate family, by any partnership, firm or corporation in which the member has an interest, or by a trust of any nature into which a member has placed control of real property regardless of whether or not the member has retained control of the trust assets or has knowledge of the management of trust assets.

b. A State agency may acquire real property the acquisition of which is prohibited by subsection a. of this section only pursuant to the "Eminent Domain Act of 1971," P.L. 1971, c.361 (C.20:3-1 et seq.).

3. This Order shall take effect immediately.

(c)

OFFICE OF THE GOVERNOR
Governor Jim Florio
Executive Order No. 79(1993)
Establishment of Procedures for the Use of a Modified Competitive Process for Certain Purchases, Contracts and Agreements

Issued: January 12, 1993.
Effective: January 12, 1993.
Expiration: Indefinite.

WHEREAS, regulation of the process of making or awarding public contracts should serve the purposes of preserving to the State all of the economic benefits of full and free competition and guarding against favoritism, improvidence, extravagance, or corruption; and

WHEREAS, the Legislature has established such regulation in the form of laws which provide that purchases, contracts, or agreements which are to be paid for out of State funds or other public funds should only be made or awarded after public advertisement for bids, unless the purchase, contract, or agreement is authorized by law to be made without such public advertisement; and

WHEREAS, the Legislature has determined that, even in cases where public advertising is not required, the process used to make or award the purchase, contract, or agreement should be one which promotes full and free competition whenever competition is practicable; and

WHEREAS, through the enactment of P.L. 1992, c.130, and the issuance of Executive Order No. 65(1992), provision has been made for the effective regulation of one type of agreement to which the general public advertising requirement does not apply—State agency leases; and

WHEREAS, further action is needed to assure the public that purchases, contracts, or agreements which are not required to be made or awarded after public advertisement for bids are nonetheless made or awarded pursuant to procedures that promote full and free competition whenever competition is practicable and that provide for disclosure and accountability;

NOW, THEREFORE, I, JAMES J. FLORIO, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The State Treasurer shall establish, by regulation, procedures, which may be tailored to particular procurement needs, to require the use of a modified competitive process for purchases, contracts, or agreements for which public advertising for bids is not required pursuant to the provisions of sections 4 and 5 of P.L. 1954, c.48 (C.52:34-6 et seq.). These

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procedures shall apply to all principal departments and any entities allocated thereto by law, notwithstanding whether they are subject to P.L. 1954, c.48 (C.52:34-6 et seq.) or other similar provisions contained in the laws or regulations applicable to such entities.

2. The procedures established pursuant to section 1 of this Executive Order shall include a requirement that the individual or entity making or awarding the purchase, contract, or agreement state in writing the reason why a particular vendor was selected over any other competing vendors.

3. This Order shall not apply to lease agreements that are subject to the provisions of P.L. 1992, c.130, or Executive Order No. 65(1992).

4. This Order shall take effect immediately.

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RULE PROPOSALS

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Fire Code

Proposed Amendments: N.J.A.C. 5:18-1.5, 2.4, 2.5, 2.7, 3.1, 3.2, 3.3, 3.4, 3.5, 3.7, 3.13, 3.17, 3.20, 3.30, Appendix 3-A, 4.7, 4.9, 4.11, 4.12 and 4.19

Authorized By: Stephanie R. Bush, Commissioner, Department of Community Affairs.

Authority: N.J.S.A. 52:27D-198.

Proposal Number: PRN 1993-43.

Submit written comments by March 3, 1993 to:

Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
CN 802
Trenton, New Jersey 08625
FAX No. (609) 633-6729

The agency proposal follows:

Summary

This proposal is a compilation of changes, corrections and clarifications to both the Fire Prevention Code and the Fire Safety Code. These changes are as follows:

N.J.A.C. 5:18-1.5: Definitions of "floor, area, gross," "floor area, net" and "lumber" are added.

N.J.A.C. 5:18-2.4: Reference is made to the listing of life hazard uses in N.J.A.C. 5:18-2.4A through 2.4D.

N.J.A.C. 5:18-2.5(a)3 and 4: Corrections are made that were necessitated by the addition of new uses in October 1991.

N.J.A.C. 5:18-2.7: A permit is required for cooking operations that require fire suppression systems and are not already registered as life hazard uses. The operations require periodic inspections under the Code and this amendment would allow the fire official to be reimbursed for the costs of inspections.

N.J.A.C. 5:18-2.20: The amendment establishes that, where DCA is the enforcing agency, it may delegate responsibility for issuance of certificates of smoke detector compliance to the fire department serving the municipality or portion thereof.

N.J.A.C. 5:18-3.1: An addition of the phrase "used exclusively for dwelling purposes" has been made for purposes of clarification and to conform the language to the enabling legislation, N.J.S.A. 52:27D-192 et seq.

N.J.A.C. 5:18-3.2: The definition of "building code in use at time of first occupancy" has been added.

N.J.A.C. 5:18-3.3(b): As amended, outside burning is prohibited, unless it is done in accordance with Department of Environmental Protection and Energy rules.

N.J.A.C. 5:18-3.3(i): Language previously contained solely in referenced documents, NFPA 54 and 21, has been added, in order to explicitly describe what needs to be done in order "not to create a fire hazard," as the rule now requires.

N.J.A.C. 5:18-3.3(w): Certain requirements formerly imposed by the Bureau of Rooming and Boarding House Standards in its rules at N.J.A.C. 5:27, superseded by N.J.A.C. 5:18, June 16, 1989 (see R.1988 d.572), have been added, since the Department believes it is appropriate to state these requirements explicitly at this time.

N.J.A.C. 5:18-3.4(b): The amendment provides that fire official approval is required whenever any alarm system is to be disconnected in a vacant structure.

N.J.A.C. 5:18-3.4(c) and 4.17: Appropriate reference is made to the elevator subcode of the State Uniform Construction Code and to the certificate of compliance issued under that code, amending the rule to allow acceptance of that certificate, in order to avoid duplication.

N.J.A.C. 5:18-3.5(d): It is made clear that fire officials approve existing conditions and construction officials approve new installations.

N.J.A.C. 5:18-3.7 and 5:18-4.7: The requirements for suppression systems for spraying operations are moved from the fire prevention code to the fire safety code. Additionally, the applicability of the section is amended to exclude outdoor operations and one-time uses of hand-held sprayers, under certain conditions.

N.J.A.C. 5:18-3.13: The scope has been expanded to cover exterior storage of forest products, previously regulated by secondary references in NFPA standards.

N.J.A.C. 5:18-3.17: The amendment provides that tents erected for more than 90 days are under the jurisdiction of the construction code, and that tents smaller than 900 square feet are exempt from the requirements of this code.

N.J.A.C. 5:18-3.20(f): "Any substantial period of time, such as lunch" is changed to "one hour or more."

N.J.A.C. 5:18-3.30(h): The amendment establishes the LP-Gas plant installer, supplier, owner or operator's responsibility for notifying the fire official of accidents at LP-Gas facilities.

N.J.A.C. 5:18—Appendix 3A and 5:18-4.19: Referenced NFPA and ANSI standards regarding smoke detectors, which were previously omitted in error are added.

N.J.A.C. 5:18-4.9: An improper code citation is corrected.

N.J.A.C. 5:18-4.11(a): Requirements previously contained in the Regulations for the Maintenance of Hotels and Multiple Dwellings at N.J.A.C. 5:27, that were superseded by this Code on June 16, 1989, are reestablished.

N.J.A.C. 5:18-4.11(f): The method for calculating occupant loads is made consistent with the requirements of the building subcode, and has been explicitly delineated, for ease of reference by inspection personnel.

N.J.A.C. 5:18-4.11(g): Places of assembly with more than 100 occupants are required to provide additional exit capacity so that the front exit will be sufficient to accommodate half of the occupants and the other doors will together be sufficient to accommodate two-thirds of the occupants.

N.J.A.C. 5:18-4.12: Educational and hotel occupancies must meet interior finish requirements for enclosed rooms. Interior finish requirements are extended to include all use groups.

Social Impact

The proposed amendments will correct omissions and provide clarifications, as described in the Summary. These amendments, and additional requirements for interior finish and exit capacity in assembly uses will further assure the safety of the general population in public places. The more explicit delineation of standards proposed is expected to make use of the rules by inspection personnel, and members of the public, easier.

Economic Impact

Cooking operations will be required to obtain a permit and pay the appropriate fee. However, these fees will pay the cost of increased fire safety afforded by periodic inspections. Prevention of fires has a significant positive economic impact upon property owners, insurers and the general public.

The inclusion of previously existing requirements regarding safety measures in rooming houses and exits from basement apartments should have no significant economic impact, because most affected buildings should already be in compliance.

The interior finish requirements of N.J.A.C. 5:18-4.12 will require treatment or replacement of some wall-covering materials in schools and hotel rooms. The requirements for additional exits in assembly uses will, in most cases necessitate the addition of a single remote exit door. Costs for such changes, and any others required by these amendments, will vary, and will be dependent upon suppliers and choices made by property owners.

Regulatory Flexibility Analysis

The proposed amendments clarify requirements and make certain changes and corrections, as delineated in the Summary, for the purpose of preserving the safety of the general public. The physical and other requirements apply to all property owners, including those which may be considered small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., and are not dependent upon business size. The number of small businesses affected cannot be estimated reliably. The costs also cannot be estimated reliably, since market forces and owner preferences impact upon such costs, and vary with each situation regulated. No differentiation based upon business

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size has been provided in the amendments, since fire safety violations must be corrected regardless of the size or organization of the affected business, as fires and explosions do not discriminate on these grounds.

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

5:18-1.5 Definitions

The following terms shall have the meanings indicated except where the context clearly requires otherwise. All definitions found in the Uniform Fire Safety Act, P.L. 1983, c.383, N.J.S.A. 52:27D-192 et seq., shall be applicable to this chapter. Where a term is not defined in this section or in the Uniform Fire Safety Act, then the definition of that term found in the Uniform Construction Code at N.J.A.C. 5:23-1.4 shall govern.

. . .

"Floor area, gross" means the floor area within the perimeter of the outside walls of the building or use under consideration, without deduction for hallways, stairs, closets, thickness of walls, columns or other features.

"Floor area, net", for purposes of determining occupant load, means the actual occupied floor area and shall not include unoccupied accessory areas or thickness of walls.

. . .

"Lumber" means boards, dimension lumber, timber, plywood, pressure treated wood, fencing and fence posts, and other similar wood products.

. . .

5:18-2.4 Life hazard uses defined

(a) The buildings, uses, and premises [contained in this section] **listed in N.J.A.C. 5:18-2.4A through 2.4D**, other than those that are incidental or auxiliary to the agricultural use of a farm property, constitute life hazard uses which are subject to **the** registration and periodic inspection requirements established by this subchapter.

(b) Where two or more life hazard uses exist at the same building or premises, each one shall be considered as separate and distinct for the purposes of this Code and shall be registered pursuant to N.J.A.C. 5:18-2.8.

5:18-2.5 Required inspections

(a) All life hazard uses shall be inspected for compliance with the provisions of this Code periodically but not less often than specified herein:

1.-2. (No change.)

3. Type Ca through [Cg] **Ci** life hazard uses: once every three months.

4. Type Da **through Dc** life hazard uses: once every three months.

(b)-(f) (No change.)

5:18-2.7 Permits required

(a) (No change.)

(b) Permits shall be required, and shall be obtained from the fire official, for any of the activities specified in this section except where they are an integral part of a process by reason of which a use is required to be registered and regulated as a life hazard use. Permits shall at all times be kept in the premises designated therein and shall at all times be subject to inspection by the fire official.

1.-2. (No change.)

3. Type 1 permit:

i.-xi. (No change.)

xii. Any permanent cooking operation that requires a suppression system in accordance with N.J.A.C. 5:18-4.7(g) and is not defined as a life hazard use in accordance with N.J.A.C. 5:18-2.4.

4.-7. (No change.)

(c)-(k) (No change.)

5:18-2.20 Certificate of smoke detector compliance

(a) Before any Use Group R-3 structure is sold, leased, or otherwise made subject to a change of occupancy for residential purposes, the owner shall obtain a certificate of smoke detector compliance (CSDC), evidencing compliance with N.J.A.C. 5:18-4.19, from the appropriate enforcing agency.

1. (No change.)

2. Where no municipal inspection or approval requirement exists, the agency responsible for enforcement of the Uniform Fire Safety Act shall be responsible for the issuance of the CSDC.

i. The Department, where it serves as the enforcing agency, may, upon application by a local fire department, delegate to that fire department the responsibility and authority for issuance of the CSDC within the municipality, or portion of a municipality, served by that fire department.

(b)-(d) (No change.)

5:18-3.1 Purpose and scope

(a) (No change.)

(b) This subchapter shall be applicable to:

1. All buildings, structures, and premises within this State, with the exception of owner-occupied one and two-family dwellings **used exclusively for dwelling purposes** within this State; and

2. (No change.)

5:18-3.2 Definitions

The following terms shall have the meanings indicated except where the context clearly requires otherwise. Where a term is not defined then the definition of that term found in this code at N.J.A.C. 5:18-1.5 or within the Uniform Construction Code[,] **at** N.J.A.C. 5:23-1.4[,] shall govern:

. . .

"Building code in effect at the time of first occupancy" means the building code regulations in effect at the time the specific occupancy use, or operation, was legally established.

. . .

5:18-3.3 General precautions against fire

(a) (No change.)

(b) The following apply to bonfires and outdoor fires:

1. Burning of rubbish shall be prohibited except in approved incinerators.

2. The burning of herbaceous or infested plant life, the burning of orchard prunings and cuttings, prescribed burnings and the clearing of agricultural land by burning are [not] prohibited by this subchapter, [but are subject to] **unless in accordance with a permit issued under** the provisions of N.J.A.C. 7:27-2, administered by the State Forest Fire Service in the New Jersey Department of Environmental Protection **and Energy** (NJDEPE).

Recodify existing 2.-7. as **3.-8.** (No change in text.)

(c)-(h) (No change.)

(i) The following apply to chimneys and heating appliances:

1. All existing chimneys, smokestacks or similar devices for conveying smoke or hot gases to the outer air and all stoves, ovens, furnaces, incinerators, boilers or any other heat producing devices or appliances shall be constructed in accordance with the building and mechanical codes in effect at the time of first occupancy and maintained in accordance with NFPA 54 and 211 listed in Appendix 3-A, incorporated herein by reference, where the provisions of this section do not specifically cover conditions and operations, and in such a manner as not to create a fire hazard.

i. Every chimney, flue, vent and smokestack shall be inspected, cleaned and maintained as often as necessary to ensure adequate draft, structural integrity and freedom from combustible deposits and obstructions.

ii. All fixed heat producing appliances shall be inspected, cleaned and serviced as often as necessary to maintain the appliance in a safe operating condition.

iii. Connector pipes between appliances and chimneys shall be inspected, cleaned or replaced as often as necessary to ensure safe operation of the appliance. All joints shall be gas tight and mechanically fastened with connections made with the pipe installed inside of the following section to ensure conveyance of products of combustion to the exterior.

iv. Appliances which do not vent their flue gases properly to the exterior of the building shall be immediately removed from service in accordance with (i)2 below.

v. Appliances shall only be fired with the fuel for which the appliance is designed and approved.

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2.-3. (No change.)
(j)-(v) (No change.)
(w) The following apply to rooming and boarding houses:
1. Every rooming and boarding house shall have rules prohibiting the activities listed in (w)1i and ii below which shall be accepted in writing by every resident as a condition of residency.
i. The use of cooking, food warming and portable heat producing device, other than microwave ovens, is prohibited in rooming units.
ii. Smoking is prohibited in rooming units.

5:18-3.4 Fire protection systems
(a) (No change.)
(b) The following apply to protection maintenance:
1.-4. (No change.)
5. Vacant or unoccupied buildings or portions thereof shall maintain all required sprinkler and standpipe systems and all component parts in a workable condition at all times. Fire alarm systems shall be maintained in operating condition at all times, except [when the building is vacated for periods of more than one week] **in accordance with (b)5i below**, and the system shall be tested in the presence of the fire official upon restoration to use.
i. Exception: In vacant or unoccupied buildings, where the fire official determines the type of construction, fire separation and security of the building is such as not to create a fire hazard, the fire official may permit the fire protection **and/or detection** systems to be taken out of service in such a manner and for such a time as the official specifically prescribes.
6.-8. (No change.)
(c) The following apply to periodic inspections and tests:
1.-9. (No change.)
10. Elevators shall be tested annually in accordance with (c)10i and ii below. **The fire official may accept a current Certificate of Compliance issued in accordance with the Uniform Construction Code as evidence of compliance with this section.**
i.-ii. (No change.)
11.-17. (No change.)
(d)-(g) (No change.)

5:18-3.5 Means of egress
(a)-(c) (No change.)
(d) The following apply to emergency escape windows:
1. (No change.)
2. [Bars] **Existing bars**, grills, grates or similar devices may be [installed] **permitted** in required emergency escape windows provided such devices are **approved by the fire official, in accordance with N.J.A.C. 5:18A-2.1 and 3.3, and are** equipped with approved release mechanisms which are openable from the inside without the use of a key or special knowledge or excessive force. **Installation of new devices shall be in accordance with the New Jersey Uniform Construction Code.**
(e)-(f) (No change.)

5:18-3.7 Application of flammable finishes
(a) The following are general provisions applicable to this section:
1. The locations or areas where the following activities are intended to be conducted or are done shall comply with the provisions of this section.
i. The application of flammable or combustible paint, varnish, lacquer, stain or other flammable or combustible liquid applied as a spray by whatever means, in continuous or intermittent process[ing]; and
ii. (No change.)
2. This section does not cover the outdoor spray application of buildings, tanks or other similar structures, nor does it cover small portable spraying apparatus not used repeatedly in the same location; provided, however, that the herein described fundamental safeguards pertaining to cleanliness, care of flammable liquids, dangerous vapor-air mixtures and sources of ignition shall be applicable.
(b) (No change.)
(c) The following apply to spray finishing:
1.-8. (No change.)
9. [An approved automatic fire suppression system shall be installed, and portable fire extinguishers, small hoses or other fire extinguishing equipment shall be installed near all spraying areas as may be required by the fire official.] **All spraying areas shall be provided with portable fire extinguishers suitable for flammable liquid fires as specified for extra hazardous occupancies in NFPA 10 listed in Appendix 3-A and incorporated herein by reference.**
10.-11. (No change.)
(d) The following apply to dip tanks:
1.-7. (No change.)
8. Areas in the vicinity of dip tanks shall be provided with portable fire extinguishers suitable for flammable liquid fires as specified for extra-hazardous occupancies in NFPA 10 listed in Appendix 3-A, incorporated herein by reference.
[i. Dip tanks of over 150 gallons capacity or ten square feet liquid surface area shall be protected with at least one of the following automatic facilities: Approved automatic water spray extinguishing system; or, approved automatic foam extinguishing system; or, approved automatic carbon dioxide system; or, approved automatic dry chemical extinguishing system; or, dip tank covers conforming to 9 below.
ii. Dip tanks containing a liquid with a flash point below 110 degrees F., when used in such manner that the liquid temperature may equal or be greater than its flash point from artificial or natural causes, shall conform to i above when having both a capacity of more than 10 gallons and a liquid surface area of more than 4 square feet.]
9. (No change.)
10. Hardening and tempering tanks shall conform to [(d)4, 7 and 8] **(d)4 and 7** above, as well as (d)10i through [v] **iv** below.
i.-iii. (No change.)
[iv. Hardening and tempering tanks of over 500 gallons capacity or 25 square feet liquid surface area shall be protected as specified in (d)8i above.]
[v.]**iv.** Air under pressure shall not be used to fill or to agitate oil in tanks.
11.-12. (No change.)
(e)-(f) (No change.)

5:18-3.13 Lumber yards, **exterior storage or processing of forest products** and woodworking plants
(a) Lumber yards, **exterior storage or processing of forest products** and woodworking plants shall comply with the applicable requirements of this Code and the provisions of this section.
(b)-(c) (No change.)

5:18-3.17 Tents and air-supported and other temporary structures
(a) General provisions concerning tents and air-supported and other temporary structures are as follows:
1. The provisions of this section shall apply to air-supported, air-inflated, membrane-covered cable and membrane-covered frame structures, collectively known as membrane structures, erected for a period of less than 90 days. [Those erected for a longer period of time]
i. Membrane structures erected for more than 90 days shall comply with the building code in effect at the time of first occupancy.
ii. This section shall not apply to membrane structures that do not require a permit under N.J.A.C. 5:18-2.7(b)3iii.
2. (No change.)
(b)-(c) (No change.)
(d) Fire safety requirements are as follows:
1.-2. (No change.)
3. Spot or effect lighting shall be by electricity only; [and] all combustible construction within six feet of such equipment shall be protected with [asbestos not less than 1/4 inch thick or other] approved noncombustible insulation.
4.-6. (No change.)

5:18-3.20 Welding or cutting, calcium carbide and acetylene generators
(a)-(d) (No change.)
(f) Electric arc welding and cutting requirements are as follows:

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1.-2. (No change.)

3. When electric arc welding or cutting is to be discontinued for any [substantial] period of time[, such as during lunch hour or overnight] **of one hour or more**, all electrodes shall be removed from the holders, the holders shall be carefully located so that accidental contact cannot occur, and the machines shall be disconnected from the power source.

(g)-(i) (No change.)

5:18-3.30 Liquefied petroleum gases

(a)-(g) (No change.)

(h) Container and site requirements are as follows:

1.-4. (No change.)

5. Whenever there is a fire or explosion or accident involving serious injury or loss of life as a result of an incident involving an LP-Gas installation, **the responsible party as required in (h)4 above shall promptly notify** the fire official [shall be notified within 24 hours] of its occurrence.

APPENDIX 3-A

The following is a list of standards referenced in this Code, the effective date of the standard, the promulgating agency of the standard and the section(s) of this Code that refer to the standard.

ANSI American National Standards Institute, Inc.
1430 Broadway
New York, New York 10018

Standard reference number	Title	*Referenced in code Section number
...		
UL 217	**Single and Multiple Station Smoke Detectors**	**4.19(c)**
...		
NFPA	National Fire Protection Association Batterymarch Park Quincy, Massachusetts 02269	
...		
74-84	**Household Fire Warning Equipment—Standard for the Installation, Maintenance, and Use of**	**4.19(b)**
...		

5:18-4.7 Fire suppression systems

(a)-(d) (No change.)

(e) All buildings of Use Group H or portions thereof when separated in accordance with (k) below shall be equipped throughout with an automatic fire suppression system installed in accordance with the New Jersey Uniform Construction Code.

1. All spraying operations as defined by N.J.A.C. 5:18-3.7(a) shall be equipped throughout with an automatic fire suppression system installed in accordance with the New Jersey Uniform Construction Code.

2. Dipping operations as defined by N.J.A.C. 5:18-3.7(d)1 and as outlined in (e)2i through iii below shall be equipped with an automatic fire suppression system installed in accordance with the New Jersey Uniform Construction Code.

i. Dip tanks of over 150 gallons capacity or 10 square feet liquid surface area;

ii. Dip tanks containing a liquid with a flash point below 110 degrees F., when used in such manner that the liquid temperature may equal or be greater than its flash point from artificial or natural causes when having both a capacity of more than 10 gallons and a liquid surface area of more than four square feet; and

iii. Hardening and tempering tanks of over 500 gallons capacity or 25 square feet liquid surface area.

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.-3. (No change.)

4. In all buildings of Use Group E up to and including the 12th grade, the system shall consist of:

i.-iii. (No change.)

iv. Existing fire detection systems, installed and maintained in accordance with the manufacturer's recommendations, and meeting the intent of current standards for automatic fire alarms, shall be acceptable, provided:

(1) The existing system is tested, in accordance with the provisions of [Article 4, Section F-404.6 of subchapter 3 of this Code,] **N.J.A.C. 5:18-3.4(c)6**, by an approved service agency competent in the manufactured system, in the presence of the fire official or his designated representative. The fire official may accept a written report of test results in lieu of witnessing the test.

(2) (No change.)

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

5:18-4.11 Means of egress

(a) Every story utilized for human occupancy having an occupant load of 500 or less shall be provided with a minimum of two exits, except as provided in (b) below. Every story having an occupant load of 501 to 1,000 shall have a minimum of three exits. Every story having an occupant load of more than 1,000 shall have a minimum of four exits.

1.-2. (No change.)

3. In dwelling units in basements or stories below grade in buildings of Use Group R-2, there shall be at least two exits from each dwelling unit.

i. An approved window providing a clear opening of at least 5.7 square feet in area, a minimum dimension of 20 inches, and a sill height of not more than 44 inches above the finished floor, shall be acceptable as one of the required exits.

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

(f) The capacity of means of egress in each story shall be sufficient for the occupant load thereof.

1. The capacity per unit of egress width shall be computed in accordance with [the following table] **Table 5:18-4.11(f)1** for the specified use groups.

Table 5:18-4.11(f)1
(No change.)

2. (No change.)

3. The maximum permitted occupant load of a given space shall be [limited to the smallest number] determined by **dividing the floor area for a given use by the occupant load factor in Table 5:18-4.11(f)3.**

i. [Computing the occupant load at the rate of one occupant per five square feet of available floor area that can be physically occupied by a person; or

ii. The smallest number of occupants for which exit capacity is provided based on the capacity per unit of egress width of the individual components of the means of egress.] **With the exception of Use Group A occupancies, the occupant load may be increased to the total number of occupants for which exit capacity is provided as determined by (f)1 above provided the resulting total occupant load shall not exceed one occupant per five square feet of net floor area over the entire use.**

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Table 5:18-4.11(f)3
Floor Area Per Occupant

Use	Occupant Load Factor in square feet per occupant
Assembly	
Fixed seating	**Note 1**
Tables and chairs	**15 net**
Chairs only	**7 net**
Dance floors	**7 net**
Standing space	**5 net**
Waiting space (Note 2)	**3 net**
Bowling centers	
Lanes	**5 persons**
Other areas	**per assembly above**
Business	**100 gross**
Educational	
Fixed seating	**Note 1**
Classrooms	**20 net**
Shops and vocational areas	**50 net**
Industrial	**100 gross**
Institutional	
Inpatient treatment	**240 gross**
Outpatient	**100 gross**
Sleeping rooms	**120 gross**
Library	
Reading room	**50 net**
Stack area	**100 gross**
Mercantile	
Grade floor or basement	**30 gross**
All other floors	**60 gross**
Storage, stock, shipping	**300 gross**
Parking garages	**200 gross**
Residential	**200 gross**
Storage areas, mechanical equipment room	**300 gross**

Note 1. The occupant load for that portion of an assembly area having fixed seats shall be determined by the number of fixed seats installed. Capacity of seats without dividing arms is one person per 18 inches. For booths, one seat equals 24 inches. One person is allowed for each fixed seat with dividing arms or fixed stand alone stool.

Note 2. Waiting space means that space in an assembly occupancy where persons are admitted to the building at times when seats are not available to them and are allowed to wait in a lobby or similar space until seats are available. Such use of the lobby or similar space shall not encroach upon the required clear width of exits.

(g) [(Reserved)] **All buildings of Use Group A with an occupant load of 100 or more shall be provided with a main entrance capable of serving as the main exit with an egress capacity for at least one-half the total occupant load. The remaining exits shall be capable of providing two-thirds of the total required exit capacity.**

(h)-(o) (No change.)

5:18-4.12 Interior finish

(a) The interior finish of walls and ceilings shall have a flame spread rating not greater than the class prescribed by Table 5:18-4.12(a).

1. (No change.)

Table 5:18-4.12(a)
Interior Finish Requirements

Use Group	Exit Enclosures	Exit Access Enclosures	Rooms or Spaces
A†, **E, I, R-1**	I	II	III
[B, E, M, R-1, R-2] **All Other Use Groups**	I	II	No Minimum

†See N.J.A.C. 5:18-4.16(a)2 for amusement buildings.

(b)-(d) (No change.)

5:18-4.17 High rise buildings

(a)-(d) (No change.)

(e) Elevators in high rise structures shall be equipped with the following emergency control devices:

1. All **automatic (non-designated attendant)** elevators **having a travel of 25 feet or more above or below the designated level** shall be equipped with Phase 1 Emergency Recall Operation as required by ASME A17.1 Rules 211.3a and 211.3b listed in Appendix 3-A to N.J.A.C. 5:18-3; and

2. (No change.)

(f) (No change.)

5:18-4.19 Smoke detectors for one and two-family dwellings

(a) (No change.)

(b) The smoke detectors required in (a) above shall be located in accordance with NFPA 74 **listed in N.J.A.C. 5:18—Appendix 3A, incorporated herein by reference,** and maintained in working order.

1. (No change.)

(c) Smoke detectors may be battery powered and shall be listed in accordance with ANSI/UL 217 **listed in N.J.A.C. 5:18—Appendix 3A, incorporated herein by reference.**

1. (No change.)

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Fire Code

Penalties

Proposed Amendments: N.J.A.C. 5:18-2.9, 2.12, 2.14, and 2.17

Proposed Repeal and New Rule: N.J.A.C. 5:18-2.16

Authorized By: Stephanie R. Bush, Commissioner, Department of Community Affairs.

Authority: N.J.S.A. 52:27D-198.5.

Proposal Number: PRN 1993-45.

Submit comments by March 3, 1993 to:
Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
CN 802
Trenton, NJ 08625
FAX Number (609) 633-6729

The agency proposal follows:

Summary

On January 18, 1992, Governor Florio signed P.L. 1991, c.489, an act amending the Uniform Fire Safety Act.

Previously, the law provided that a penalty could be assessed for each fire code violation that was not corrected by any person who had been given notice of the violation and failed to correct it by the compliance date fixed in the order. The maximum penalty was fixed by law at $5,000 per violation, which could be assessed for each day the violation continued to be unabated. Amounts realized through the collection of penalties could only be used to cover the costs of enforcing the Uniform Fire Code.

P.L. 1991, c.489 provides for the assessment of an additional dedicated penalty which is to be assessed for the same violations. The maximum dedicated penalty which may be assessed is fixed at $50,000 per violation, one time only. Amounts realized through the collection of dedicated penalties must be placed in a special municipal trust fund and may be used for the cost of fire fighter training or new equipment.

The prior law also provided that a compensatory penalty could be assessed where a fire occurs and is related to a cited but uncorrected violation of the Uniform Fire Code. The amount of any such compensatory penalty was fixed by law to be the actual cost of suppressing the fire. The new law provides that a compensatory penalty of up to $150,000 may be assessed without regard to the actual cost. It also provides that compensatory penalties in excess of $150,000 may be assessed provided that expenses in excess of that amount can be documented.

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Amounts realized through the collection of compensatory penalties must also be placed in a special municipal trust fund and may only be used for the cost of fire fighter training or new equipment.

The new law requires the Department of Community Affairs to adopt rules giving the minimum time fire officials must allow for abatement of various violations of the Uniform Fire Code and establishing the range of the dedicated penalties under the new law that may be imposed for each type of violation. The new law also requires the Department to adopt rules identifying those violations that, by their nature, constitute an imminent hazard to the health, safety or welfare of occupants, intended occupants, firefighters or the general public and therefore require the building or premises to be vacated, closed or removed.

These proposed amendments and new rule set the maximum dedicated penalty as an amount equal to the maximum regular penalties already established by rule, except that the dedicated penalty may be in the statutory maximum amount of $50,000 in the event of any serious injury or loss of human life as a result of the violation. If the regular penalty is reduced as an inducement to prompt abatement of the violations, the dedicated penalty must be reduced in like proportion.

Time periods for abatement of violations are established as follows:

For violations of the State Fire Prevention Code, a minimum of 15 days; and

For violations of the State Fire Safety Code, a minimum of 30 days for correction or submission of a plan of correction.

The following conditions are listed as imminent hazards: unsafe structural conditions, inadequacy of any means of egress, the presence of explosives, explosive fumes or vapor, the presence of toxic fumes, gases or materials, and the inadequacy of required fire protection systems.

Social Impact

By establishing time periods and maximum penalty amounts for various types of violations, and by clarifying the application of the imminent hazard provisions, the amendments and new rule further the objective of fair and uniform enforcement of the Uniform Fire Code, for the safety of the general public.

Economic Impact

By establishing maximum dedicated penalty amounts that vary with the nature of the violation, the amendments and new rule help assure that enforcement will be proportionate to the violation. The statute that the amendments and new rule are intended to implement exposes persons committing certain violations of the Uniform Fire Code to substantially higher penalties than were previously authorized by law.

Regulatory Flexibility Analysis

The amendments and new rule apply to all designated properties in the State of New Jersey, including businesses, requiring abatement of violations of specified kinds. Most businesses in New Jersey would be considered small businesses under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The requirements include specific penalty amounts related to the type of violation.

The proportionality established by the amendments and new rule is likely to be of particular benefit to small businesses, since they are less likely to be able to pay large penalties than large businesses would be. However, the requirements established under the new law are intended to further fire code enforcement, thereby protecting the health, safety and welfare of the public, and therefore cannot be modified to reflect the size or form of organization of a property or business owner.

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

5:18-2.9 Enforcement procedures

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

(d) Whenever the fire official**, or the authorized representative of the fire official,** observes an apparent or actual violation of a provision of this Code or other code or ordinance under the fire official's jurisdiction, the fire official shall prepare a written notice of violation describing the condition deemed unsafe, including the appropriate Code section, and specifying time limits for the required repairs or improvements to be made to render the building structure or premises safe and secure.

1. [Unless an imminent hazard to health or safety is posed, the fire official shall permit such time period for correction as is reasonable in the context of the situation.] **Time limits for abatement of violations other than imminent hazards shall be as set forth in N.J.A.C. 5:18-2.16.**

2. Violations constituting an imminent hazard shall be abated immediately or the premises shall be either vacated and closed or used only subject to such conditions as the fire official may establish.

(e)-(h) (No change.)

5:18-2.12 Penalties

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

(f) If an owner has been given notice of the existence of a violation of this chapter, or any other violation of the Act, and fails to abate the violation, he or she shall, in addition to being liable to the penalties set forth in (e) above, be liable to dedicated and compensatory penalties in accordance with N.J.A.C. 5:18-2.17(a).

[(f)]**(g)** The enforcing agency shall have the right to compromise or settle any claim arising out of the assessment of a penalty provided such compromise or settlement shall be likely to bring about compliance.

1. No claim shall be finally compromised or settled so long as the violation which caused its assessment remains in existence.

2. If a penalty assessed pursuant to (e) above is compromised, any dedicated or compensatory penalty assessed pursuant to N.J.A.C. 5:18-2.17(a), other than a penalty in the amount of the actual cost of suppressing the fire and other actual expenses, shall be compromised to the same extent.

5:18-2.14 Imminent hazards

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

(c) The following violations, by their nature, constitute imminent hazards to the health, safety or welfare of the occupants or intended occupants of a building, structure or premises, of firefighters, or of the general public:

1. Unsafe structural conditions;

2. Locking or blocking of any means of egress;

3. Presence of explosives, explosive fumes or vapor in violation of this Code;

4. Presence of toxic fumes, gases or materials, or flammable or combustible liquids in violation of this Code; and

5. Inadequacy of any required fire protection system.

(d) When, in the opinion of the fire official, there is actual and/or potential danger to the occupants or those in proximity to any building, structure or premises because of any condition constituting an imminent hazard in accordance with (c) above, the fire official may order the immediate evacuation of said building, structure or premises.

1. All occupants so notified shall immediately leave the building, structure or premises and no person shall enter or re-enter until authorized to do so by the fire official.

2. Any person who shall refuse to leave, or who shall interfere with the evacuation of other occupants or continue any operation after having been given an evacuation order, except such work as that person is directed to perform to remove a violation or unsafe condition, shall be deemed to have violated this Code, and may be subject to arrest as provided in N.J.A.C. 5:18-2.9(f).

3. Upon determination of the existence of an imminent hazard in accordance with this section, the fire official shall immediately notify the construction code official of his or her findings.

5:18-2.16 [Evacuation of unsafe premises] **Time limits for abatement of violations**

[(a) When, in the opinion of the fire official, there is actual and potential danger to the occupants or those in the proximity of any building, structure or premises because of unsafe structural conditions, or inadequacy of any means of egress, the presence of explosives, explosive fumes or vapor, or the presence of toxic fumes, gases or materials, the fire official may order the immediate evacuation of said building, structure or premises. All of the occupants so notified shall immediately leave the building, structure or premises and persons shall not enter or reenter until authorized to do so by the fire official.

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(b) Any person who shall refuse to leave, interfere with the evacuation of other occupants or continue any operation after having been given an evacuation order except such work as that person is directed to perform to remove a violation or unsafe condition shall be deemed to have violated this Code, and shall be subject to arrest as provided in N.J.A.C. 5:18-2.9(f).]

(a) Time periods allowed for abatement of violations of this Code shall be as follows:

1. For any violation of N.J.A.C. 5:18-3, the fire official shall allow a minimum of 15 days.

i. The fire official may specify a time period of not less than three days where there is a dangerous condition that is liable to cause or contribute to the spread of fire or endanger the occupants.

2. For any violation of N.J.A.C. 5:18-4, the fire official shall allow a minimum of 30 days for abatement or the submission of a request for an extension, in accordance with N.J.A.C. 5:18-2.9(e).

(b) These time limits shall not apply to violations constituting an imminent hazard in accordance with N.J.A.C. 5:18-2.14 or to the revocation of permits in accordance with N.J.A.C. 5:18-2.7(g).

5:18-2.17 [Fire department costs] **Dedicated and compensatory penalties**

(a) When an owner has been given notice of the existence of a violation and has not abated the violation, he **or she** shall, **in addition to being liable to the penalty provided for by N.J.A.C. 5:18-2.12,** be liable to a **dedicated** penalty [in the amount] **assessed pursuant to this subsection.**

1. Whenever any penalty is assessed pursuant to N.J.A.C. 5:18-2.12, then a dedicated penalty in like amount shall be assessed pursuant to this section.

2. The amount of any dedicated penalty assessed pursuant to this subsection shall be in accordance with the standards set forth in N.J.A.C. 5:18-2.12(e), except that a dedicated penalty of up to $50,000 for each violation may be assessed where there is a serious injury or loss of human life directly or indirectly resulting from any unabated violation.

3. Dedicated penalties assessed pursuant to the requirements of this subsection shall be assessed only once and shall not be assessed each day, as may be done in the case of penalties assessed pursuant to N.J.A.C. 5:18-2.12.

(b) A compensatory penalty, in an amount not exceeding $150,000 or the expense of suppression, whichever is greater, may be imposed as compensation [of the acutal cost] to the fire department **or fire district** for suppressing any fire directly or indirectly resulting from the **unabated** violation **and for any other actual expenses, including attorney fees, incurred by the municipality for the collection of the penalty.**

[(b) Such] **1. If a compensatory penalty in excess of $150,000 is sought, the** cost **of suppression** shall be **documented and** certified to the [fire official] **local enforcing agency** by the chief of the department or company involved. The [fire official] **local enforcing agency** shall assess **a compensatory penalty in at least** the amount certified and collect it in the **same** manner [specified herein for] **as other** penalties.

(c) All monies collected pursuant to this section shall be [paid to the municipality and appropriated to the fire department to defray the certified costs] **placed in a special municipal or fire district trust fund to be applied to the cost to the municipality or fire district of firefighter training and new equipment.**

1. In any case in which the enforcing agency is the Department, a county fire marshal, or an intermunicipal agency, all revenue from dedicated and compensatory penalties shall be paid into the trust fund maintained by the municipality or fire district in which the building, structure or premises at which the violation occurred is located.

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Fire Code Enforcement

Revocation of Certifications and Alternative Sanctions

Proposed Amendment: N.J.A.C. 5:18A-4.6

Authorized By: Stephanie R. Bush, Commissioner, Department of Community Affairs.

Authority: N.J.S.A. 52:27D-203.

Proposal Number: PRN 1993-44.

Submit written comments by March 3, 1993 to:

Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
CN 802
Trenton, New Jersey 08625
FAX No. (609) 633-6729

The agency proposal follows:

Summary

By this proposed amendment, a review committee, consisting of three regular members and two alternates, all of whom are certified as fire officials, is established for the purpose of making recommendations to the Bureau of Fire Safety concerning the appropriateness of punitive actions that the Bureau proposes to take against persons holding certification for alleged violations of the Code. Persons holding certification are to be given notice of any action proposed to be taken and of their right to present their side of the story to the review committee. This review is not an administrative hearing, and is not in lieu of an administrative hearing, which may still be had after the final order is issued. The review is non-adversarial in nature and is intended to give the Bureau the benefit of the perspective of practitioners in the field when it evaluates the seriousness of allegations.

The review committee would operate in the same manner as the review committees established by a recent amendment to the Uniform Construction Code rules (see N.J.A.C. 5:23-5.25(d)).

Social Impact

Persons holding certification who believe allegations of violations to be in error, or proposed sanctions to be excessive, are given the opportunity to present their cases to a committee of their peers, who may appreciate, better than Bureau staff and administrators, the circumstances of the act or omission complained of. Their recommendations should help insure fairness in the process.

Economic Impact

Review committee members will not be paid, although they may receive compensation for out-of-pocket expenses. There will therefore be no significant economic impact.

Regulatory Flexibility Statement

This proposed amendment applies to certified individuals employed by public entities to enforce the Uniform Fire Code, and not to business entities. Therefore, a regulatory flexibility analysis is not required.

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

5:18A-4.6 Revocation of certifications and alternative sanctions

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

(c) The Commissioner shall appoint a review committee to advise the Department concerning the appropriateness of sanctions that the Department proposes to take against persons holding certifications who are alleged to have done any act or omission proscribed by (a) above. The Department shall provide necessary staff for the review committee.

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1. The review committee shall consist of three persons certified and currently employed by municipalities as fire officials, at least one of whom shall not be employed by any one enforcing agency for a total of more than 20 hours per week.

2. Members of the review committee shall be appointed by the Commissioner and shall serve for terms of three years; except that, of those members first appointed, one shall serve for one year, one shall serve for two years, and one shall serve for three years. No person may be a member of the review committee for more than two consecutive terms. The Commissioner shall also appoint two alternate members of the committee, who shall be persons certified and currently employed by municipalities as fire officials, at least one of whom shall not be employed by any one enforcing agency for a total of more than 20 hours per week. Alternates shall serve for two years, except that, of the alternates first appointed to each review committee, one shall serve for two years and one shall serve for one year.

i. The Commissioner shall give the Fire Safety Commission an opportunity to comment on persons proposed to serve as members of the review committee prior to their appointment.

3. The review committee shall not hear any case or issue any recommendations without three members, who may be either regular or alternate members, being present.

4. In any case in which the Department makes a preliminary finding that a person holding certification has done any act or omission proscribed under (a) above, it shall have the case reviewed by the review committee prior to the issuance of any order revoking or suspending the certification or assessing a civil penalty.

5. The Department shall present whatever evidence it may have to the review committee. The person holding certification shall be given notice of the meeting of the review committee and may appear before the review committee to present his or her position, but there shall be no cross-examination of either the person holding certification or any representative of the Department. Nothing said by the person holding certification or by any person at the meeting of the review committee shall be used in any way, nor shall any member of the review committee be required to testify concerning proceedings before the review committee, in any subsequent proceeding.

6. The review committee shall submit its recommendations as to the sanctions, if any, that ought to be imposed, to the Assistant Director, Fire Safety within 20 business days following the meeting. No sanctions shall then be imposed without the express approval of the Assistant Director, Fire Safety. Failure of the review committee to submit a timely recommendation shall be deemed to be in concurrent with the action proposed to be taken by the Department. Notice of the review committee's recommendation, or failure to issue a recommendation, shall be given to the person holding certification.

7. A meeting of the review committee shall not be deemed to be a hearing or an adversarial proceeding and the findings of the review committee shall be deemed to be only a recommendation that is not binding on the Department.

Recodify existing (c) and (d) as **(d) and (e)** (No change in text.)

[(e)]**(f)** Any person aggrieved by any action of the [Bureau] **Department** pursuant to this [Chapter] **chapter** shall be entitled to a hearing before the Office of Administrative Law in accordance with the Administrative Procedure Act, as provided in N.J.A.C. **5:**18A-4.2.

1. A person holding certification shall be entitled to contest any order imposing sanctions in an administrative hearing, regardless of whether he or she has exercised the option of appearing before the review committee.

EDUCATION

(a)

STATE BOARD OF EDUCATION

Educational Programs for Pupils in State Facilities

Proposed New Rules: N.J.A.C. 6:9

Proposed Amendments: N.J.A.C. 6:28-8.1, 8.3 and 8.4

Proposed Repeals: N.J.A.C 6:28-8.2, 8.5 and 8.6

Authorized By: State Board of Education, John Ellis, Secretary, State Board of Education and Commissioner, Department of Education.

Authority: N.J.S.A. 18A:7B-1 et seq.

Proposal Number: PRN 1993-16.

Submit written comments by March 3, 1993 to:
Elease E. Greene-Smith, Rules Analyst
NJ State Department of Education
225 West State Street, CN 500
Trenton, New Jersey 08625-0500

The agency proposal follows:

Summary

On March 11, 1991 the Governor established a Cabinet Action Group on Juvenile Justice. The Action Group's primary mission is to coordinate planning and cooperation among all cabinet agencies in providing services to juvenile offenders or those in danger of becoming involved in the juvenile justice system. As part of this initiative, a review was conducted of the educational provisions of the State Facilities Education Act of 1979 (N.J.S.A. 18A:7B-1 et seq.).

The purpose of the State Facilities Education Act of 1979 (SFEA) was to provide a thorough and efficient education for all children placed in State facilities. The law provides a funding mechanism for the educational services delivered to pupils placed in agencies administered by the Departments of Corrections and Human Services. N.J.S.A. 18A:7B-1 et seq., however, is not specific as to the meaning of a thorough and efficient education for pupils served by these agencies, or how an educational program should be structured within their individual frameworks. It does, however, delegate the responsibility to the Commissioner and State Board of Education to promulgate rules and regulations to ensure that a thorough and efficient education is provided to all pupils in these agencies.

The Department's initial development of rules and regulations promulgated to implement N.J.S.A. 18A:7B-1 et seq. are outlined in N.J.A.C. 6:28-8 of the Department's Special Education rules which became effective May 6, 1985. Based on the Department's review of these rules, and administrative problems identified by the Departments of Corrections and Human Services at Cabinet Action Group meetings, it is apparent that the rules contain provisions that apply primarily to children with educational disabilities and do not adequately address the specialized needs of the non-handicapped children in State facilities. Additionally, the primary mission of the implementing agencies, which is different from that of public schools, is not taken into account. Therefore, holding these agencies to the same standards, guidelines and monitoring requirements set forth under N.J.A.C. 6:8 and N.J.A.C. 6:28-8 is inappropriate.

In response to this concern, the Department of Education has proposed new rules. This new chapter defines and provides for a thorough and efficient education to meet the needs of all pupils in State facilities.

A review of each of the subchapters of N.J.A.C. 6:9 follows:

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Subchapter 1. Purpose, Scope and Objectives

N.J.A.C. 6:9-1.1 describes the purpose of the chapter. It is the intent of these rules to define what a thorough and efficient education means when applied to the needs of all pupils in state facilities.

N.J.A.C. 6:9-1.2 describes the scope of the chapter. The requirements of this chapter shall apply to all educational programs provided in accordance with N.J.S.A. 18A:7B-1 and to services provided for all pupils between the ages of five and 20, or three and 21 for pupils with educational disabilities.

N.J.A.C. 6:9-1.3 outlines the program objectives to achieve the goal of a thorough and efficient education for all children in State facilities. The major objectives include:

- Continue the development of skills and competencies and assist pupils in working toward fulfilling the high school graduation requirements;
- Provide relevant job training and enhance occupational competencies through vocational education programs;
- Promote interpersonal and social skill development and enhance appreciation of self; and
- Provide special support and assistance needed to promote the development of responsible patterns of behavior.

Subchapter 2. General Program Requirements

N.J.A.C. 6:9-2.1 establishes the provisions which govern all educational programs provided for under the State Facilities Education Act. Appropriate provisions from the existing subchapter are maintained as well as including new provisions that allow for the further development of educational programs which meet the individual needs of all pupils in State facilities. The provisions include attendance requirements, requirements for pupils with educational disabilities, staffing and class size requirements, facility requirements, and student progress reporting requirements.

Subchapter 3. Funding, Program Approval, and Monitoring

N.J.A.C. 6:9-3 establishes the timelines and reporting mechanism by which the Department of Education provides funds to the Departments of Corrections and Human Services to establish and maintain educational services and programs for children in State facilities. Funding procedures as well as the program approval process and monitoring guidelines are detailed. All funding provisions are in accordance with N.J.S.A. 18A:7B-2.

Subchapter 4. Graduation Requirements and Diplomas

N.J.A.C. 6:9-4 details the credit year curriculum requirements and state high school graduation requirements contained in N.J.A.C. 6:8-7.1(c) for all pupils in State facilities. The subsection also clarifies the process for the issuance of diplomas for children with or without a district of residence.

Subchapter 5. Pupil Records

N.J.A.C. 6:9-5 requires that all pupil records be maintained in accordance with N.J.A.C. 6:3-2 and N.J.S.A. 2A:4-65. In the case of pupils with no identifiable district board of education, records shall be maintained by the Departments of Corrections and Human Services according to N.J.A.C. 6:28-2.9.

The current subchapter N.J.A.C. 6:28-8 is being amended to repeal those provisions which did not apply specifically to pupils with educational disabilities in State facilities. Rules which apply to special education programs have been recodified and maintained in N.J.A.C. 6:28-8 except for those provisions which are included in this chapter. The deleted and replaced and recodified provisions are N.J.A.C. 6:28-8.1(c)-(g), (i), (l)-(o), 8.2, 8.3(d), 8.4(a), (d) and (h), 8.5 and 8.6. A provision in N.J.A.C. 6:28-8.4(b) is being deleted to clarify that when a recommendation is made for the placement of a classified pupil in a local school district by a residential State facility, the placement cannot be dependent upon what the district is able to offer. Federal regulations require appropriate placement.

Social Impact

It is expected that these rules will have a positive effect on all pupils in State facilities, especially non-educationally handicapped children. Since the placement of many of these children is not the result of specific educational deficits or problems, but caused by conditions such as delinquency, neglect, abuse, medical or emotional disturbances, it follows that children in State facilities are not necessarily educationally handicapped. Therefore, transferring the provision of N.J.S.A. 18A:7B-1 et seq. to this newly created chapter entitled, Educational Programs for Pupils in State Facilities, removes the emphasis from Special Education thus allowing the Departments of Human Services and Corrections to better meet the individual needs of all children in State facilities. Provisions to identify and provide services for educationally handicapped children, however, will be maintained as required by Federal and State regulations.

Economic Impact

The proposed new rules will have no economic impact on the State facilities run by the Departments of Human Services and Corrections. There have been new programmatic provisions added to the proposed chapter; however, these changes do not require additional costs.

Additionally, the proposed rules will also have no impact on school districts, as the educational programs and services for approximately 3,700 pupils placed in agencies operated by the Departments of Corrections and Human Services are entirely funded through a separate line item in the State budget (approximately 57 million dollars, as provided for in N.J.S.A. 18A:7B-1 et seq.).

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because these new rules do not impose reporting, recordkeeping, or other compliance requirements on small business as defined by 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]):

CHAPTER 9
EDUCATIONAL PROGRAMS FOR PUPILS IN STATE FACILITIES

SUBCHAPTER 1. PURPOSE, SCOPE AND OBJECTIVES

6:9-1.1 Purpose

The purpose of this chapter is to ensure that pupils in State facilities are provided with a thorough and efficient education pursuant to N.J.S.A. 18A:7B-1 et seq. (The State Facilities Education Act of 1979) and to identify general program requirements and establish procedures for the operation, administration and approval of educational programs in State facilities.

6:9-1.2 Scope

(a) The requirements of this chapter shall apply to all educational programs provided in accordance with N.J.S.A. 18A:7B-1 et seq. by the Departments of Corrections and Human Services.

(b) Educational programs and services shall be provided for all pupils between the ages of five and 20. Programs and services shall be provided for pupils ages three through 21 with educational disabilities who do not hold a high school diploma or who are not enrolled in a Graduate Equivalent Degree, adult education or college degree program.

6:9-1.3 Educational program objectives

(a) The educational programs provided for under N.J.S.A. 18A:7B-1 et seq. shall be developed to complement the primary mission of the implementing agencies and provide educational opportunities that meet the identified needs of pupils in State facilities. These programs shall be delivered through traditional or alternative education strategies. Alternative education programs, which allow

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high school credit to be awarded through alternative learning experiences, shall be provided in accordance with the program completion option authorized in N.J.A.C. 6:8-7.1(d)1ii.

(b) The following program objectives shall serve as guidelines for achieving the legislative goal and as the framework for developing educational experiences which meet the specialized needs of all pupils in State facilities. The educational programs provided for under the State Facilities Education Act shall:

1. Continue the development of the required skills and competencies and assist pupils in working toward fulfilling the high school graduation requirements contained in N.J.A.C. 6:8-7.1(c);

2. Provide relevant job training and enhance occupational competencies through vocational education programs where appropriate;

3. Promote interpersonal and social skill development and enhance appreciation of self; and

4. Provide special support and assistance needed to promote the development of responsible patterns of behavior.

SUBCHAPTER 2. GENERAL PROGRAM REQUIREMENTS

6:9-2.1 Attendance and provision of programs

(a) Attendance is compulsory for all pupils, except for a pupil age 16 or above who may explicitly waive this right. Such a waiver may be revoked at any time by the pupil. For a pupil below the age of 18, a waiver is not effective unless accompanied by consent from a pupil's parent(s) and/or guardian(s).

(b) All education programs, with the exception of home instruction, shall be provided for at least four hours per day, five days a week, 220 days each year.

(c) Home instruction shall be provided according to N.J.A.C. 6:28-4.5.

(d) Activities shall not be scheduled that conflict with educational programs. Pupils shall not be excused from attending educational programs except for reasons of illness, religious observance, court appearance or other compelling personal circumstances.

(e) Pupils in State facilities shall comply with all rules established by the facility pursuant to N.J.S.A. 18A:37-1 and 37-2. Procedures shall be established by the Office of Education in the Departments of Corrections and Human Services for continued education in a different setting in cases where a pupil is guilty of ongoing defiance of the rules, and the pupil's continued participation in the program is disruptive to the ongoing educational process.

6:9-2.2 Pupils with educational disabilities

(a) All pupils with educational disabilities in State facilities shall have available to them a free and appropriate public education as set forth under the Individuals with Disabilities Education Act (P.L. 101-476, as amended by P.L. 102-119) and receive special education and/or related services in accordance with the rules and regulations governing special education at N.J.A.C. 6:28.

(b) The size of special education programs serving children with educational disabilities shall be in accordance with N.J.A.C. 6:28-4.3 and 4.4.

6:9-2.3 Staffing and class size

(a) The Departments of Corrections and Human Services, independently or through contractual agreements, shall employ the educational personnel required to ensure the provision of programs and services pursuant to this chapter.

(b) The Offices of Education in the Departments of Corrections and Human Services shall, with the approval of the Department of Education, assure that all educational personnel possess the appropriate certification endorsement issued by the State Board of Examiners for the positions they hold.

(c) The certification for all educational staff shall be on file in the respective Department's education office and in the appropriate county office of the Department of Education.

(d) Class size for nonhandicapped programs shall not exceed 12 pupils. The Departments of Corrections and Human Services may request exceptions to this requirement as part of the annual approval process required by N.J.A.C. 6:9-3.1(f). The Department's granting of exceptions will be made on a case-by-case basis using the following criteria:

1. The requested exception justifies the need for an alternate program structure;

2. The requested exception demonstrates that the specialized needs of the pupils served will continue to be met; and

3. The requested exception insures the necessary supervision, security, and safety of the pupils served.

6:9-2.4 Facilities

Facilities used for educational programs shall comply with the provisions of N.J.A.C. 6:22 where applicable. All educational programs shall be provided in locations separate from sleeping areas, except where appropriate for instructional or medical reasons.

6:9-2.5 Reports

(a) An educational progress report shall be developed for each pupil leaving a Department of Corrections or Human Services program. Minimally, the report shall include a designated contact person and the following information necessary to formulate an appropriate educational program and assure that credit for work completed is recorded:

1. Assessment information and diagnostic findings;

2. Credit earned towards high school graduation requirements contained in N.J.A.C. 6:8-7.1(c);

3. Required skills and competency level;

4. Grade level equivalent;

5. Vocational training experience;

6. Individualized Program Plan (IPP); and

7. Individualized Education Program (IEP) for educationally handicapped pupils pursuant to N.J.A.C. 6:28-3.6(g), (h) and (i).

(b) Annually the responsible board of education shall be notified of the pupil's progress toward meeting local and State high school graduation requirements according to N.J.A.C. 6:8-7.

SUBCHAPTER 3. FUNDING, PROGRAM APPROVAL AND MONITORING

6:9-3.1 Funding and program approval

(a) The funding of educational programs will be in accordance with N.J.S.A. 18A:7B-2 of the State Facilities Education Act of 1979.

(b) The Departments of Corrections and Human Services shall submit, annually to the Department of Education, the resident enrollment of pupils in their State education programs on the last school day prior to October 16 of the pre-budget year.

(c) The Commissioner of Education shall notify the Commissioners of the Departments of Corrections and Human Services of the entitlement for the following fiscal year prior to March 1 of the pre-budget year.

(d) The entitlement shall be forwarded to the Departments of Corrections and Human Services in two payments, 90 percent on July 1, and 10 percent on April 1. This payment schedule may be modified by written agreement(s) between the Commissioner of Education and the Commissioners of Corrections and Human Services. These payments may be withheld pursuant to N.J.S.A. 18A:7B-5.

(e) The entitlement shall be used by the Departments of Human Services and Corrections to support their educational programs in accordance with the provisions of N.J.S.A. 18A:7B-4 and requirements established in N.J.A.C. 6:9-3.2.

(f) By April 15 of each year, the Departments of Corrections and Human Services shall submit a detailed education program plan and budget to the Department of Education for approval for all programs and services under its jurisdiction on a form prescribed and provided by the Commissioner of Education. The plan must include at a minimum a program description, staffing patterns and facility level budget information.

(g) Any revision to the education program plan and budget shall be submitted to the Commissioner of Education. For revisions greater than 10 percent of any line item, prior approval from the Department of Education is required. Each revision shall be fully

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documented and contain a certification from the Office of Education and the Commissioner of Corrections or Human Services that the revision is essential to the education program.

6:9-3.2 Monitoring

(a) The expenditure of funds shall be available for audit by the Department of Education and fully documented in the following manner:

1. All expenditures incurred will be fully documented.

i. Salary expenditures shall be supported by time and activity reports for each budgeted position, supplemented with a current job description;

ii. All expenditures other than salary shall be supported by a vendor's invoice, a signed receiving document and evidence that the service or supply is utilized at the program level; and

iii. All documentation will be retained for audit for a minimum of five years after the completion of the fiscal year. If an audit has been started or notice received of an audit to be started, all supporting documentation will be retained until the audit process is concluded.

(b) The Department of Education shall review all educational programs provided by the Departments of Corrections and Human Services for compliance with the rules established in this chapter and adherence to the approved education program plan and budget.

SUBCHAPTER 4. GRADUATION REQUIREMENTS AND DIPLOMAS

6:9-4.1 Graduation requirements and credit

All educational programs provided for under N.J.S.A. 18A:7B-1 et seq. must meet the credit year curriculum requirements and satisfy the State high school graduation requirements contained in N.J.A.C. 6:8-7.1(c). These requirements may be met through the traditional course credit process, N.J.A.C. 6:8-7.1(d), or the program completion option authorized in N.J.A.C. 6:8-7.1(d)1ii which allows academic credit to be awarded through alternative learning experiences.

6:9-4.2 Issuance of diplomas

For pupils in State facilities who have an identifiable district of residence as defined by N.J.S.A. 18A:7B-12, the district board of education shall grant State-endorsed diplomas in accordance with N.J.A.C. 6:8-7 and 6:28-4.8(a). For pupils who do not have identifiable districts of residence as defined by N.J.S.A. 18A:7B-12, a diploma shall be issued by the Commissioner of Education upon certification by the Departments of Human Services and Corrections that a pupil has successfully completed all graduation requirements contained in N.J.A.C. 6:8-7.1(c).

SUBCHAPTER 5. PUPIL RECORDS

6:9-5.1 Pupil records

(a) Pupil records shall be maintained in accordance with N.J.A.C. 6:3-2. In addition, all educational records shall be kept in files separate from juvenile justice and other non-educational records required to be safeguarded from public inspection by N.J.S.A. 2A:4-65.

(b) In the case of pupils with no identifiable district board of education, records shall be maintained by the Departments of Corrections or Human Services according to N.J.A.C. 6:28-2.9.

(c) Prior to a pupil exiting a State facility, all educational records shall be transmitted to the responsible district board of education, as indicated in N.J.S.A. 18A:7B-12, in order to assure credit for work completed by the pupil.

6:28-8.1 General requirements

(a) [The requirements of this chapter shall apply to all educational programs provided under N.J.S.A. 18A:7B for educationally disabled pupils by the Departments of Corrections and Human Services. These requirements do not apply to Graduate Equivalent Degree (GED), adult continuing education or college degree programs.] **Special education programs provided in State facilities shall be operated in accordance with N.J.A.C. 6:9 and the requirements of this chapter.**

(b) (No change.)

[(c) Once a pupil has been placed in a State-operated or contracted residential facility, the placing State agency is responsible for the identification, evaluation, determination of eligibility, development and implementation of the individualized education program.

(d) All nondisabled pupils in State facilities shall receive an educational program according to N.J.A.C. 6:8 (Thorough and Efficient System of Free Public Schools).

(e) All other general education rules apply to educational programs in which a department of New Jersey State government serves pupils.

(f) Educational programs and services shall be provided for each pupil between the ages of three and 21 who does not hold a high school diploma or who is not enrolled in a Graduate Equivalent Degree, adult continuing education or a college degree program.

(g) Attendance is compulsory for all pupils except for a pupil age 16 or above who explicitly waives this right. Such a waiver may be revoked at any time by the pupil. For a pupil below the age of 18, a waiver is not effective unless accompanied by parental consent. Educationally disabled pupils may reenroll according to N.J.A.C. 6:28-2.1(b).]

[(h) All] **(c) The length of the school day for all special** education programs **under this subchapter** with the exception of home instruction shall be [provided for at least four hours per day and no fewer than 180 days each year.] **at least as long as that established for general education pupils. Educational programs shall operate at least 220 days each year.**

[(i) Activities shall not be scheduled that conflict with educational programs. Pupils shall not be excused from attending educational programs except for reasons of illness, religious observance, court appearance or other compelling personal circumstances.]

Recodify existing (j) and (k) as **(d) and (e)** (No change in text.)

[(l) Annually the responsible board of education shall be notified of the pupil's progress toward the local and State high school graduation requirements according to N.J.A.C. 6:8-7.

(m) District boards of education shall grant State endorsed diplomas for pupils enrolled in State facilities according to N.J.A.C. 6:8-7 and 6:28-4.8(a).

(n) For pupils in State facilities who do not have identifiable districts of residence as defined by N.J.S.A. 18A:7B-12, the Departments of Human Services and Corrections through their Offices of Education shall adopt policies and procedures for high school graduation requirements in accordance with N.J.A.C. 6:8-7.1. Those policies and procedures shall be submitted to the Commissioner of Education for approval.

(o) Upon certification by the Departments of Human Services or Corrections Office of Education that a pupil has successfully completed the graduation requirements, the Commissioner of Education will issue a State endorsed high school diploma to the pupil through the Department of Human Services or Corrections as appropriate.]

[6:28-8.2 Pupil records

(a) In addition to the records provisions of N.J.A.C. 6:3-2, all educational records shall be maintained in files separate from juvenile justice and other institutional records required to be safeguarded from public inspection by N.J.S.A. 2A:4-65.

(b) Prior to exiting a State facility, all educational records shall be transmitted to the responsible district board of education, as indicated in N.J.S.A. 18A:7B-12, in order to assure credit for work completed by the pupil.

(c) In the case of pupils with no identifiable district board of education, records shall be maintained by the Department of Corrections or Department of Human Services according to N.J.A.C. 6:28-2.9.]

6:28-[8.3]**8.2** Procedural safeguards

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

[(d) The educational rights of nondisabled pupils to procedural safeguards are the same as nondisabled pupils in local district schools in New Jersey.]

Recodify existing (e) and (f) as **(d) and (e)** (No change in text.)

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6:28-[8.4]**8.3** Provision of programs

[(a) Educational programs shall be provided in physical locations separate from sleeping areas, except where appropriate for instructional or medical reasons. School facilities shall comply with the provisions of N.J.A.C. 6:22.]

[(b)]**(a)** A residential State facility may recommend placement of a pupil with an educational disability in a local school district [if the pupil is capable of participating in an educational program offered by a district board of education]. Documentation of attempts to place the pupil in the least restrictive environment according to N.J.A.C. 6:28-2.10 shall be stated in the pupil's individualized educational program. Tuition shall be paid by the State facility to the district board of education where the pupil is placed.

[(c) All professional staff shall be appropriately certified to function in their area of assignment and their certification shall be on file in the respective department's education office and in the appropriate county office of the Department of Education.

1. Classroom teachers of the handicapped shall hold certificates as teacher of the handicapped.

2. All other educational staff shall hold the certification determined appropriate by the Department of Education.] **(b) All personnel providing special education programs according to N.J.A.C. 6:28-4.3 or 4.1, related services according to N.J.A.C. 6:28-3.8 or child study team services according to N.J.A.C. 6:28-3.1(a) shall hold the appropriate educational certificate for the position in which they function.**

[(d) Class size for all pupils enrolled in State-operated programs shall not exceed the following:

1. Residential youth center—10 pupils;
2. Child treatment center or psychiatric hospital—eight pupils;
3. Training school or correctional facility—10 pupils;
4. Day training center—nine pupils per classroom with a pupil to staff ratio of three to one; and
5. Residential facilities for the retarded—according to N.J.A.C. 6:28-4.2.]

Recodify existing (e) through (g) as **(c) through (e)** (No change in text.)

[(h) An educational plan shall be developed by the approved facility for each school age pupil leaving a Department of Corrections or Department of Human Services education program which shall include:

1. Information necessary to formulate an appropriate educational program when the pupil returns to a local district or attends any other educational program beyond the facility placement.

2. An individualized education program for pupils with educational disabilities; or for nondisabled pupils, a description of the pupil's general education program; and

3. Specifics for the implementation of the plan including:

i. Contact personnel;

ii. Program recommendations;

iii. Timelines for implementation; and

iv. Personnel responsible for implementation.]

Recodify existing (i) and (j) as **(f) and (g)** (No change in text.)

[6:28-8.5 Eligibility to receive State Funds

(a) The Departments of Corrections and Human Services shall submit annually to the Department of Education the resident enrollment of pupils in State education programs on the last school day of September.

(b) The Commissioner of Education shall notify the Commissioners of the Departments of Corrections and Human Services of the entitlement for the following fiscal year under the State Facilities Education Act, N.J.S.A. 18A:7B-1 et seq.

(c) The entitlement shall be forwarded to the Departments of Corrections and Human Services in two payments, 90 percent on July 1, and 10 percent on April 1. This payment schedule may be modified by written agreement(s) between the Commissioner of Education and the Commissioners of Corrections and/or Human Services. These payments may be withheld pursuant to N.J.S.A. 18A:7B-5.

6:28-8.6 Program review and approval

(a) Annually the Departments of Corrections and Human Services shall submit for approval detailed education program plans and budgets for all programs and services under their jurisdiction in a format prescribed by the Commissioner of Education.

(b) The Department of Education shall review educational programs provided by the Departments of Corrections and Human Services for compliance with New Jersey Statutes Annotated, New Jersey Administrative Code and adherence to approved education program plans and budget.

(c) All fiscal information shall be available for audit by the Department of Education.]

ENVIRONMENTAL PROTECTION AND ENERGY

(a)

OFFICE OF REGULATORY POLICY

Notice of Extension of Public Comment Periods and of Roundtable Discussion
Surface Water Quality Standards
Ground Water Quality Standards; Definitions
New Jersey Pollutant Discharge Elimination System
Practical Quantification Levels
Regulation of Phosphorus

Take notice that the Department of Environmental Protection and Energy has extended the comment periods on the following:

1. Proposed changes to the Surface Water Quality Standards, Ground Water Quality Standards and New Jersey Pollutant Discharge Elimination System (Docket Number 46-92-09) (see 24 N.J.R. 3983(a));

2. Practical Quantitation Levels—Interested Party Review (see 24 N.J.R. 4008(a)); and

3. Invitation for Informal Input on the Regulation of Phosphorus (see 24 N.J.R. 4008(b)).

The comment periods have been extended until March 18, 1993. Interested parties may submit comments to:

Richard J. McManus
Director, Office of Legal Affairs
NJ Department of Environmental Protection
and Energy
CN 402
Trenton, New Jersey 08625

In addition, the Department will hold a **roundtable discussion** of these matters on Thursday, February 18, 1993 in the Hearing Room of the Department of Environmental Protection and Energy Building at 401 E. State Street, Trenton, New Jersey. The roundtable discussion will begin at 10:00 A.M. Anyone interested in participating should contact:

Steven P. Lubow
Environmental Scientist
Office of Regulatory Policy
NJ Department of Environmental Protection
and Energy
CN 423
Trenton, New Jersey 08625
609-633-7020

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(a)

ENVIRONMENTAL REGULATION

Surface Water Quality Standards

Proposed Amendments: N.J.A.C. 7:9-4.5, 4.14, and 4.15

Authorized By: Scott A. Weiner, Commissioner, Department of Environmental Protection and Energy.

Authority: N.J.S.A. 13:1D-1 et seq., 58:10A-1 et seq., and 58:11A-1 et seq.

DEPE Docket Number: 63-92-12.

Proposal Number: PRN 1993-59.

The New Jersey Department of Environmental Protection and Energy (Department or NJDEPE) will hold **a public hearing** concerning this proposal on March 4, 1993 from 9:30 A.M. until 12:00 noon of testimony, at:

NJ Department of Environmental Protection and Energy
401 East State Street
1st Floor Hearing Room
Trenton, New Jersey

It will also be on the agenda at a February 18, 1993 10:00 A.M. Round Table on the Department's November 2, 1992 Surface Water Quality Standards (SWQS) proposal also to be held at 401 East State Street in the 1st Floor Hearing Room.

Submit written comments by March 12, 1993 to:

Richard J. McManus, Director
Office of Legal Affairs
NJ Department of Environmental Protection and Energy
CN-402
Trenton, New Jersey 08625

A more detailed discussion of the proposed changes to the State's SWQS is contained in the "Basis and Background for the Proposed Revisions to the Surface Water Quality Standards—Trout Water Reclassifications, Prohibition of Mixing Zones for Bacterial Indicators, and Thermal Criteria" (December 1992) which can be obtained by writing to:

Meredith H. Lavery
NJ Department of Environmental Protection and Energy
Office of Regulatory Policy
CN-423
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The New Jersey Surface Water Quality Standards (SWQS), N.J.A.C. 7:9-4, are being proposed to include amendments regarding the following: 1) surface water reclassifications based on trout fisheries data; 2) proposal of Category One (C1) antidegradation designation to portions of the Waterkill and the Rockaway Rivers, 3) specific language prohibiting mixing zones for bacterial indicators; 4) thermal criteria for saline estuarine (SE) bays and trout production (FW2-TP) waters; and 5) in the case of portions of three streams, reclassification to less restrictive uses based on recalculation of the Incidence of Occurrence (I.O.) table confirmed by new fisheries data. The I.O. table was developed by the Department and is used to determine whether or not a stream should be classified as trout maintenance (FW2-TM) (see Basis & Background document for detailed explanation). The waterbodies proposed for partial reclassification to less restrictive uses based on the recalculated I.O. table are Assunpink Creek, Posts Brook, and the Wallkill River.

The Department currently has another SWQS proposal open for public comment which appeared in the November 2, 1992 New Jersey Register at 24 N.J.R. 3983(a). The November proposal contains additional criteria for toxic substances and proposes various other technical and policy changes. This proposal does not supersede the November 2, 1992 proposal and it should be viewed as an additional proposal to revise the SWQS. These proposals contain different changes and additions to the August 21, 1989 version of the SWQS. If possible, the Department intends to adopt the changes in the November 2, 1992 proposal simultaneously with those changes contained in this proposal.

The reasons for this proposal are threefold. First, it is necessary to reclassify certain waterbodies to the proper trout status so that the existing uses of the waterbodies are reflected in the designated uses. This will ensure that permits issued to dischargers to these waters will contain appropriate effluent limits for protection of trout and other aquatic biota. Parameters that may be affected when a waterbody is reclassified to a different trout classification include ammonia, temperature, dissolved oxygen (DO), and total suspended solids (TSS).

Second, as part of a settlement agreement regarding the readoption of N.J.A.C. 7:9, the Department made a commitment to issue a rule proposal regarding mixing zones for bacterial indicators, specifically enterococci, by December 31, 1992. The existing rules regarding mixing zones at N.J.A.C. 7:9-4.5(c)4 allow for the use of mixing zones as determined by the Department on a case-by-case basis. Currently, water quality-based effluent limitations for fecal coliforms and enterococci are developed without the application of mixing zones due to longstanding Departmental concerns regarding bacteria. This means that the water quality criteria for these parameters are applied as effluent standards to be met at the end of the pipe. This proposal affirms this procedure in regulation. USEPA's Technical Support Document for Water Quality-Based Toxics Control (EPA/505/2-90-001, March 1991) states "[m]ixing zones might be denied where such denial is used as a device to compensate for uncertainties in the protectiveness of the water quality criteria or uncertainties in the assimilative capacity of the waterbody." Although the existing language provides for the use of mixing zones for any parameter on a case-by-case basis, the Department is proposing to prohibit mixing zones altogether for indicators of bacterial quality.

Allowing mixing zones may result in a decreased level of disinfection which could have unforeseen undesirable results, especially on commercially and recreationally valuable waterbodies. The Department has limited STORET (Storage and Retrieval of Water-Related Data) data which indicate that instream exceedances of enterococci and fecal coliforms occur statewide. Due to the current exceedances instream of both fecal coliforms and enterococci, the uncertainty of less stringent requirements for bacterial indicators, and of the success of the current policy in prohibiting outbreaks of waterborne diseases, the Department has determined that the appropriate action is to continue prohibiting mixing zones for indicators of bacterial quality.

Third, the Department is proposing thermal criteria for SE bays at N.J.A.C. 7:9-4.14(c)12. Thermal criteria for bays were included in the 1981 SWQS; however, during the 1985 Triennial Review of the SWQS, they were inadventently deleted. The intent of the Department in 1985 was only to clarify the thermal criteria and make them more understandable. There was no intention to drop thermal criteria for bays, as evidenced by the absence of any discussion of deleting the criteria in the Basis and Background document (dated November 1984), the actual SWQS proposal, or the adoption package. The Department is acting to correct this inadvertent omission by proposing thermal criteria applicable for SE bays. These thermal criteria are the same criteria applicable to other SE waters.

In addition to the above changes, language at N.J.A.C. 7:9-4.14(c)12 and 4.15(b)5 is being added to reflect that lakes, ponds, and reservoirs can be potentially classified as FW2-TP and that thermal criteria and heat dissipation areas supply to such FW2-TP lakes, ponds, or reservoirs as well. Prior to this proposal, the Department had not specifically listed any lake, pond, or reservoir as FW2-TP. Several classification descriptions are also proposed for change to add more precise information to clarify waterway segment boundaries and to avoid possible confusion that may arise from inaccurate descriptions.

The Department has received requests to provide additional antidegradation protection for portions of the Rockaway River, Blair Creek, and Loantaka Brook. Each of these submittals request a change from Category Two (C2) to C1. In addition, the submittal for the Rockaway River also contains a request for reclassification for more restrictive uses based on findings of trout in the river. Because of the significant public interest that may be generated by these requests, the Department is inviting comments on the requested changes in antidegradation protection and the reclassification prior to proposal at a later date. Please send comments to the attention of Director McManus, Office of Legal Affairs, at the address listed above. A more detailed description of each request is outlined below.

The Upper Rockaway River Watershed Association (URRWA) has requested that the Department reclassify the Rockaway River, from its headwaters to the Jersey City Reservoir at Boonton, from FW2-NT(C2) to FW2-TM(C1). In this proposal, the Department is proposing that the stretch of the Rockaway River from the Washington Pond outlet in Dover to the Route 46 bridge be reclassified to FW2-TM(C1) (see Basis and Background document for details). Although not proposing to reclassify the remaining waters of the Rockaway River at this time, the

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Department is seeking comments from the public concerning URRWA's request to have the remaining waters reclassified to FW2-TM(C1).

URRWA's request provides many reasons why the Rockaway River downstream to the Jersey City Reservoir should be reclassified. Among the reasons cited are: 1) the Rockaway River provides drinking water for thousands of New Jersey residents and is intimately connected with a sole source aquifer; 2) water quality data collected over several years shows that water quality has been gradually improving; 3) the river provides aesthetic and recreational pleasures; 4) trout and trout-associated species have been found at several locations along the river; 5) the river passes through 24 municipal parks; and 6) potable water well fields in 12 municipalities are located along the river or its tributaries.

A request has been received from the Stillwater Township Planning Board to change the antidegradation status of the stretch of Blair Creek from its headwaters to the Warren County line from C2 to C1. The request identifies the following reasons for the C1 designation of this portion of the creek: 1) scenic setting; 2) exceptional ecological significance; and 3) exceptional recreational significance. Included within the Blair Creek drainage basin and within Stillwater Township boundaries are the Bergen Boys Scout Camp, Orange YMCA Camp, Stillwater Municipal Recreation Area, and portions of the Delaware Water Gap National Recreation Area. Additionally, the NJDEPE Office of Natural Lands Management's Natural Heritage Program has identified the area surrounding Blair Creek as a priority site containing State endangered species. Included among the known endangered animal species in the Blair Creek watershed area are the barred owl, wood turtle, timber rattlesnake, and pied-billed grebe.

The Morris County Park Commission has requested that the portion of Loantaka Brook flowing through Loantaka Reservation that is currently C2 be changed to C1. The Commission's request is based on their desire to protect the high aesthetic value of the waterbody and the surrounding reservation as well as protect the water quality in the brook from degradation by upstream users. It is important to note that Loantaka Brook is upstream of the Great Swamp National Wildlife Refuge whose water quality may be significantly affected by pollutant loadings into Loantaka Brook.

Social Impact

The proposed amendments are generally expected to have a positive social impact. The various surface water reclassifications for more restrictive uses being proposed will act to provide cleaner surface waters, protect existing high quality waters, provide increased recreational opportunities, and provide additional protection of the public's health once limitations based on any more stringent criteria are incorporated into permits.

The segment of the population that will be most directly affected by the proposal will be those responsible for discharges as defined in the New Jersey Water Pollution Control Act (N.J.S.A. 58:10A-3e). The impacts on this segment of the population are not expected to be widely disruptive because treatment for parameters listed in the SWQS at N.J.A.C. 7:9-4.14(c) and (d) is already required.

Permittees discharging into the waterbodies proposed for reclassification for less restrictive uses may potentially receive less stringent permit limitations for ammonia, DO, TSS, and temperature. However, antidegradation and antibacksliding requirements would most likely restrict the loosening of permit limitations for these parameters. Therefore, in situations where permit limitations are not made less stringent, there is expected to be no adverse social impact.

The inclusion of thermal criteria for SE bays is not expected to result in any social impact as the Department has already been implementing these criteria when developing permit limitations. In addition, the proposal of thermal criteria for FW2-TP lakes, ponds, or reservoirs is not expected to cause any social impact at this time because there are no permitted New Jersey Pollutant Discharge Elimination System (NJPDES) discharges into Round Valley Reservoir, the waterbody proposed for reclassification to protect trout production. Mixing zones are currently allowed on a case-by-case basis as determined by the Department. The specific language prohibiting of mixing zones for bacterial indicators would impact those NJPDES dischargers who in the future might seek to apply for a mixing zone.

Economic Impact

There are several aspects of the proposed amendments which could be expected to result in economic impacts. Included among these are the proposed designation of additional trout waters (FW2-TP and FW2-TM) and C1 antidegradation waters. It is also possible that there may be an economic impact for those NJPDES dischargers not able to meet permit limitations for bacterial indicators without the application of mixing zones. There is not expected to be any economic impact as a result of the inclusion of thermal criteria for SE bays and trout production lakes, ponds, or reservoirs.

As a result of these amendments, there would be no additional costs for sampling, analysis, or reporting because these are currently being required by the Department to satisfy existing Federal regulations whenever permits are initially issued, renewed, or modified. Additional costs, if any, would be mainly attributable to additional actions required to consistently comply with effluent limitations based upon any more stringent criteria for ammonia, temperature, DO and TSS as a result of the reclassifications to more restrictive uses. Concentrations of these substances in many effluents are expected to be already low enough that no additional actions will be required. In such cases, there would be no additional costs associated with the adoption of the reclassified waterbodies.

Where additional actions will be required to comply with effluent limitations based upon the proposed waterbody reclassifications, the costs will vary widely. The magnitude of the economic impacts will be determined, in part, by the severity of the problem and the approach chosen to comply with the effluent limitations. Possible approaches available for meeting effluent limitations include:

- modification of existing treatment;
- construction and operation of additional treatment units;
- pretreatment at the source(s) of the pollutant(s); or
- pollution prevention (for example, generation of less pollutants within the process stream).

Actual estimates of costs associated with upgrading treatment systems to meet effluent limitations are dependent on pollutant loadings, technology-based requirements, categorical requirements, antidegradation requirements, removal of multiple pollutants by a single type or combination of treatments, and the fate of the pollutants in a specific waterbody. There are so many uncertainties involved in making assumptions for each variable that it is impossible to estimate actual costs. It is clear that the additional costs associated with adoption of the proposed reclassifications for more restrictive uses could range from zero for some dischargers to millions of dollars for other dischargers.

The designation of additional waters as C1 waters would impose additional costs on some existing dischargers. Existing dischargers would receive more stringent effluent limitations if they proposed to increase the volume or mass loadings of their discharge. Prospective dischargers would receive more stringent effluent limitations than would be imposed if the waters retained the C2 designation. Estimation of what the more stringent limitations would be is dependent on the specific project, pollutant loadings, technology-based requirements, categorical requirements, the fate of the pollutants in a specific waterbody, and the available dilution (the ratio of effluent flow to the design flow of the waterbody). In some instances it is anticipated that there will be no costs associated with designation of waters as C1. In other cases a project may not be allowed, a discharge might have to be relocated, or state-of-the-art wastewater treatment might be required. Costs associated with not allowing a project, relocating, or providing state-of-the-art treatment could run from several hundred thousand dollars to tens of millions of dollars.

The language specifically prohibiting mixing zones for indicators of bacterial quality may impose additional costs on those existing dischargers not able to meet enterococci limitations at the end of the pipe. The Department anticipates that the majority of dischargers will be able to either meet enterococci criteria as effluent standards without any modification to existing treatment facilities or by imposing operational changes. Depending on the level of enterococci discharged, some permittees may be required to make minor facility modifications while others may be required to make major facility modifications. Costs associated with any changes could vary widely, running from tens of thousands of dollars to millions of dollars. However, facility modifications may require capital purchases and result in employment increases, both positive benefits to local and State economies. On the other hand, allowing mixing zones for indicators of bacterial quality could have significant economic impacts as well. Higher ambient concentrations of enterococci and fecal coliforms would lead to more frequent beach closings, contamination and closing of shellfish beds, and additional treatment for potable water sources.

Finally, reclassification of certain waters of the State as trout waters will result in additional restrictions on activities within stream channels

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and adjacent wetlands, and within buffers along these waters. These additional restrictions include those imposed pursuant to the State's Flood Hazard Area Regulations, N.J.A.C. 7:13, and the Freshwater Wetlands Protection Act Rules, N.J.A.C. 7:7A. N.J.A.C. 7:13-5.2 and 5.6 of the Flood Hazard Area Regulations restrict construction operations to minimize impacts on trout production waters. N.J.A.C. 7:7A-2.5(b)1 classifies wetlands which discharge into FW1 and FW2-TP waters or their tributaries as "wetlands of exceptional resource value." A builder proposing to develop such wetlands must demonstrate a compelling public need to overcome the rebuttable presumption that there is an alternative to the proposed wetland development. N.J.A.C. 7:7A-3.4(c). Wetlands of exceptional resource value must be surrounded by transition areas (development buffer zones). N.J.A.C. 7:7A-6.1(c). Transition areas surrounding FW1 and FW2-TP waters must be of a maximum size (N.J.A.C. 7:7A-6.1(d)) and are subject to waiver restrictions. N.J.A.C. 7:7A-7.1. Thus, the impact on development near a trout water could range from project design changes to outright prohibition of construction.

Environmental Impact

The proposed amendments to the SWQS are designed to provide the level of protection required for public health, the aquatic biota (specifically trout), and ecological systems associated with the State's waters. In combination with existing provisions of the rule that are not proposed for change, the amendments will restore, maintain, and enhance the chemical, physical and biological integrity of New Jersey's waters; protect scenic and ecological values; and enhance the domestic, municipal, recreational, and other reasonable uses of the State's waters.

The greatest proportion of changes proposed to the surface water classifications are expected to be environmentally neutral (for example, including inadvertently omitted thermal criteria and clarifying language), or beneficial (for example, proposing the designation of waters as C1 and specifically prohibiting mixing zones for indicators of bacterial quality). The Department has determined that allowing mixing zones for indicators of bacterial quality would have significant environmental impacts. Higher ambient concentrations of enterococci and fecal coliforms would lead to more frequent beach closings, contamination and closing of shellfish beds, and additional treatment for potable water sources. The proposed reclassifications to less restrictive uses should not have a negative environmental impact since the only species potentially affected are trout. The reclassifications are based on reanalysis of data originally resulting in the trout classifications which showed that these waters should not have been classified as they were. And in practice, limitations imposed because of whole effluent toxicity considerations, antidegradation policies, changes to the actual criteria, and antibacksliding provisions may result in no change or a reduction in the quantities of TSS, DO, ammonia, or temperature being discharged.

Regulatory Flexibility Analysis

The proposed amendments, if adopted, may impose additional requirements on existing or future small businesses that treat and discharge their own wastewater under a NJPDES/DSW permit or discharge their wastewater into a POTW. As mentioned above, additional requirements may be imposed on any permittee discharging TSS, DO, temperature, or ammonia to the specified waterbodies, not just small businesses. Small businesses discharging into a POTW required to upgrade treatment as a result of the proposed changes may see a surcharge in their user fee to cover the cost of upgrading POTW treatment. Those discharging any of the four aforementioned parameters to any of the waterbodies proposed for reclassification to more restrictive uses through a NJPDES permit may be required to upgrade their treatment if the existing treatment is not adequate to meet any more stringent permit limitations.

The additional requirements imposed on dischargers to those waters being designated as C1 waters are expected to be in the form of more stringent effluent limitations upon expansion or increase in flow without physical alterations to the treatment facility. Estimation of what the more stringent limitations would be is dependent on pollutant loadings, technology based requirements, categorical requirements, the fate of the pollutants in a specific waterbody, and the available dilution (the ratio of effluent flow to the design flow of the waterbody). The costs associated with designating additional waters as C1 are projected to range from zero to tens of millions of dollars.

Existing small businesses located on waters proposed for change to C1 which do not change their discharges or treatment facilities are not expected to need to hire additional professional services as a result of this proposal. Existing small businesses that modify their wastewater treatment facility, increase their pollutant loading, or increase their wastewater flow would need to hire professional services (for example, engineers, planners, or environmental consultants) to modify their existing treatment facilities even if the waters remained as C2. It is anticipated that no additional professional services, above and beyond those necessary to expand/modify existing treatment facilities, would be required by small businesses.

The proposed inclusion of thermal criteria for SE bays does not differ from the criteria that the Department has been implementing when determining permit requirements. As mentioned above, thermal criteria for SE bays were only inadvertently omitted from being listed in the SWQS. Therefore, any small businesses with NJPDES permit limitations for temperature discharging into SE bays would not be expected to be affected by this part of the proposal. Mixing zones have not been used for bacterial indicators in the past. Those small businesses treating their own wastewater and discharging directly into surface waters of the State who are not able to meet enterococci limitations at the end of the pipe or those discharging their wastes to a POTW unable to meet enterococci limitations at the end of the pipe may be affected by this part of the amendments.

However, the Department has determined that in order to protect water quality and aquatic ecosystems in waters being designated as C1 or reclassified to a higher trout protection status from damage due to degradation, or the negative human health effects associated with permitting mixing zones for bacterial indicators, it would be inappropriate to take the size of the business into consideration. In developing the proposed amendments, the Department has balanced the need to protect the environment against the possible future economic impacts of the proposed rules. Reducing the protection provided by the proposed amendments would endanger the environment, public health, and public safety. Therefore, no specific exemption for small businesses is provided. Small businesses may apply for relief from compliance requirements under the provisions of the NJPDES regulations (N.J.A.C. 7:14A) and the SWQS (N.J.A.C. 7:9-4).

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

7:9-4.5 Statements of policy

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

(c) General technical policies are as follows:

1.-3. (No change.)

4. Mixing zones policies are as follows:

i.-vii. (No change.)

viii. No mixing zones shall be permitted for indicators of bacterial quality including, but not limited to, fecal coliforms and enterococci.

5. (No change.)

(d)-(g) (No change.)

7:9-4.14 Surface water quality criteria

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

(c) Surface Water Quality Criteria for FW2, SE and SC Waters:

Surface Water Quality Criteria for FW2, SE and SC Waters
(Expressed as maximum concentrations unless otherwise noted)

Substance	Criteria	Classifications
1.-11. (No change.)		
12. Temperature and Heat Dissipation Areas	i. Thermal Alterations (Temperatures shall be measured outside of heat dissipation areas)	
	(1) (No change.)	
	(2) Lakes, Ponds or Reservoirs	
	(i) No thermal alterations except where it can be shown to be beneficial to the designated and existing uses.	FW2-TM, FW2-TP
	(ii) (No change.)	
	(3) Saline Bays—No thermal alterations which would cause temperatures to deviate from ambient by more than 2.2°C (4°F), from September through May, nor more than 0.8°C (1.5°F) from June through August nor cause temperatures to exceed 29.4°C (85°F).	**All SE**

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[(3)]**(4)** Coastal Waters—No direct heat additions within 1500 feet of the shoreline. No thermal alterations which would cause temperatures to deviate from ambient temperatures by more than 2.2°C (4°F) from September through May, nor more than 0.8°C (1.5°F) from June through August, nor which would cause temperatures to exceed 26.7°C (80°F). SC

ii. Heat Dissipation Areas

(1) (No change.)

(2) Lakes, Ponds, Reservoirs, Bays or Coastal Waters: Heat dissipation areas will be developed on a case-by-case basis. **FW2-TP,** FW2-TM, FW2-NT, All SE, SC

13.-15. (No change.)

(d) (No change.)

7:9-4.15 Surface water classifications for the waters of the State of New Jersey

(a) (No change.)

(b) The following are instructions for the use of Tables 1 through 5 found in N.J.A.C. 7:9-4.15(c) through (g) respectively:

1.-4. (No change.)

5. To find unnamed waterways or waterbodies or named waterways or waterbodies which do not appear in the listing, use the following instructions:

i. (No change.)

ii. All freshwater lakes, ponds and reservoirs that are five or more acres in surface area, that are not located entirely within the Pinelands Area boundaries (see (b)5vii below) and that are not specifically listed as **FW2-TP or** FW2-TM are classified as FW2-NT. This includes lakes, ponds and reservoirs on segments of streams which are classified as FW2-TM or FW2-TP such as Saxton Lake on the Musconetcong River. If the waterbody could be a C1 water, also check (b)5vi below.

iii.-vii. (No change.)

6.-7. (No change.)

(c) The surface water classifications in Table 1 are for waters of the Atlantic Coastal Basin:

TABLE 1

Waterbody	Classification
...	
CLEAR STREAM (Jackson)—Entire length	**FW2-NT**
...	
LONG BROOK (Jackson)—Entire length	**PL**
...	
MINGAMAHONE BROOK	
MAINSTEM	
(Farmingdale)—Entire length, except segments described below	FW2-TM
(Allaire **State Park**)—Brook and tributaries within the boundaries of Allaire State Park	FW2-TM(C1)
EAST BRANCH	
(Farmingdale)—Source to confluence with mainstem north of Farmingdale	**FW2-NT**
...	
REEVY BRANCH—See SHARK RIVER	
...	
SHARK RIVER	
(Colts Neck)—Source to Rt. 33	FW2-NT
(Neptune)—Rt. 33 to Brighton Ave. bridge, Glendola	FW2-TM/SE1
(Glendola)—Brighton Ave. bridge to Atlantic Ocean	FW2-NT/SE1
TRIBUTARY	
REEVY BRANCH (Reevytown)—Source to confluence with Shark River	**FW2-NT**
...	
TAUGH CREEK	
(Whitesboro)—Entire length, except segment described below	SE1(C1)
(Whitesboro)—Portions outside the boundaries of **Marmora Wildlife Management Area**	SE1
...	
TOMS RIVER	
MAINSTEM	
...	
TRIBUTARIES, TOMS RIVER	
...	
DOVE'S MILL BRANCH	
...	
MAPLE ROOT BRANCH (Jackson)—Source to confluence with Toms River	**PL**
...	

(d) The surface water classifications in Table 2 are for waters of the Delaware River Basin:

TABLE 2

Waterbody	Classification
...	
ASSUNPINK CREEK	
[(Washington)] **(Trenton)**—Source to [boundary of Van Ness Park] **confluence with the Delaware River,** except segments described separately below	FW2-NT
(Roosevelt)—Creek and those tributaries within the boundaries of the Assunpink Wildlife Management Area	FW2-NT(C1)
(Quaker Bridge)—[Boundary] **Portions of the creek within the boundaries** of Van Ness **Refuge** [Park to Quaker Bridge Road]	FW2-NT(C1)
[(Quaker Bridge)—Quaker Bridge Rd. to park boundary]	[FW2-TM(C1)]
[(Lawrence)—Van Ness Park boundary to, but not including, Whitehead Mill Pond]	[FW2-TM]
[(Trenton)—Whitehead Mill Pond to Delaware River]	[FW2-NT]
...	
BARKERS MILL BROOK (Independence)—Entire length	[FW2-TM]**FW2-TP(C1)**
...	
BEAVER BROOK (Jefferson)—Source to, but not including, Lake Shawnee	**FW2-NT**
...	
BIG FLAT BROOK	
(Montague)—Sawmill [Lake] **Pond** to confluence with Parker Brook, except segments [described directly below and those] described under the listing for Flat Brook, below	FW2-NT(C1)
[(Stokes State Forest)—Two tributaries to Big Flat Brook which originate along Struble Road in Stokes State Forest to their confluences with Big Flat Brook on Fish and Game properties boundaries]	[FW1]
(Sandyston)—Confluence with Parker Brook, through the Blewitt Tract, to the confluence with [Little] Flat Brook, except tributaries described under the listing for Flat Brook, below	FW2-TP(C1)
(Tuttles Corner)—Outlet stream from Lake Ashroe to its confluence with Big Flat Brook	**FW2-TP(C1)**
...	
DELAWARE RIVER	
MAIN STEM	
...	
TRIBUTARIES, DELAWARE RIVER	
...	
(Knowlton)—Source, north of Hope-Delaware Road, to confluence with the Delaware River 0.5 mile south of Ramseysburg	FW2-TP(C1)
...	
FIDDLERS CREEK (Titusville)—Entire length	[FW2-NT] **FW2-TM**
...	
FLAT BROOK	
([Blewitt] **Flatbrook-Roy**)—Confluence of Big Flat Brook and Little Flat Brook to the boundary of [the Blewitt Tract] **Flatbrook-Roy Wildlife Management Area,** except segments described below	FW2-TP(C1)
(Flatbrookville)—[Blewitt Tract] **Flatbrook-Roy Wildlife Management Area** boundary to Delaware River, except segments described below	FW2-TM
(Walpack)—Segment of the Brook within Walpack Wildlife Management Area	FW2-TM(C1)
(Stokes State Forest)—Two tributaries to Flat Brook which originate along Struble Road in Stokes State Forest to their confluences with Flat Brook within the boundaries of Flatbrook-Roy Wildlife Management Area	**FW1(tm)**
(High Point)—All surface water of the Flat Brook drainage area within the boundaries of High Point State Park and Stokes State Forest, except the following waters:	FW1

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1. Saw Mill Pond and Big Flat Brook downstream **to the confluence with Flat Brook;**
2.-8. (No change.)
9. Lake Shawanni and its outlet stream to its confluence with [Big] Flat Brook;
10. (No change.)

...

HAKIHOKAKE CREEK (Milford)—Entire length[, except section] **including headwaters** known as Little York Creek [FW2-TM] **FW2-TP(C1)**
TRIBUTARIES
(Wydner)—Source to confluence with Hakihokake Creek west of York Road **FW2-TP(C1)**
HALFWAY HOUSE BROOK (Franklin)—Entire length **FW2-TP(C1)**

...

KNOWLTON BROOK (Knowlton)—Entire length **FW2-TP(C1)**
KURTENBACH'S BROOK (Waterloo)—Entire length **FW2-TP(C1)**

...

LITTLE FLAT BROOK
(High Point State Park)—Source to boundary of High Point State Park **FW1(tp)**
(Layton)—[Source] **State park boundary** to, but not including [Hainesville Pond, except] tributar[ies]**y** described below, [or under the listing for Flat Brook above] **to confluence with Big Flat Brook** [FW2-TM(C1) **]FW2-TP(C1)**
[(Hainesville)—Hainesville Pond to Route 206 bridge, except tributaries described under the listing for Flat Brook, above] [FW2-NT(C1)]
[(Hainesville)—Route 206 Bridge to confluence with Big Flat Brook, except tributaries described under listing for Flat Brook, above] [FW2-TM(C1)]
([Bevans] **Flatbrook-Roy**)—Tributary which originates north of Bevans-Layton Rd. downstream to the first pond adjacent to the Fish and Game headquarters building FW1(**tp**)

...

LOPATCONG CREEK

...

TRIBUTARY
(Uniontown)—Entire length **FW2-TP(C1)**

...

MERRILL CREEK (Harmony)—Entire length**, but not including Merrill Creek Reservior** FW2-TP(1)
MERRILL CREEK RESERVOIR (Harmony) **FW2-TM**

...

MINE BROOK
(Mt. Olive)—Source to, but not including, Upper Mine Brook Reservoir, **downstream to Lower Mine Brook Reservoir outlet** FW2-TM
(Mt. Olive)—[Upper Mine Brook Reservoir to Musconetcong River] **Lower Mine Brook Reservoir outlet downstream to Drakestown Road bridge** [FW2-NT]**FW2-TP(C1)**
(Hackettstown)—Drakestown Road bridge downstream to confluence with Musconetcong River **FW2-TM**
TRIBUTARIES
(Drakestown)—Source downstream to, but not including, Burd Reservoir **FW2-TP(C1)**
(Drakestown)—Burd Reservoir downstream to confluence with Mine Brook **FW2-TM**
(Washington)—Entire length of tributary which joins Mine Brook approximately 280 yards upstream of the confluence with the Musconetcong River **FW2-TP(C1)**

...

MUDDY BROOK (Hope)—Entire length **FW2-NT**

...

MUSCONETCONG RIVER
(Hackettstown)—Lake Hopatcong dam to Delaware River, except tributaries described below FW2-TM
TRIBUTARIES
(Anderson)—Entire length **FW2-TP(C1)**

...

(Waterloo)—Tributary west of Kurtenbach's Brook from source downstream to Waterloo Valley Road bridge **FW2-TP(C1)**

...

PAULINS KILL
EAST BRANCH

...

TRIBUTARY EAST BRANCH

...

WEST BRANCH

...

MAIN STEM

...

TRIBUTARIES, MAIN STEM
(Blairstown)—Entire length of tributary east of Walnut Valley **FW2-TM**

...

PENNSAUKEN CREEK (Cinnaminson)—Entire length FW2-NT
PEQUEST RIVER

...

TRIBUTARIES
(Petersburg)—Headwaters and tributaries downstream to Ryan Road bridge **FW2-TP(C1)**

...

POPHANDUSING BROOK (Belvidere)[—Entire length] [FW2-TM]
(Hazen)—Source downstream to Route 519 bridge **FW2-TP(C1)**
(Belvidere)—Route 519 bridge downstream to confluence with the Delaware River **FW2-TM**

...

STONY BROOK (Knowlton)—Entire length [FW2-NT]**FW2-TP(C1)**

...

(e) The surface water classifications in Table 3 are for waters of the Passaic, Hackensack and New York Harbor Complex Basin:

TABLE 3

[Water Body] **Waterbody**	Classification
APSHAWA BROOK (Macopin)—Entire length	**FW2-TP(C1)**
...	
BEAVER BROOK	
(Meriden)—From Splitrock Reservoir Dam downstream to Meriden Road bridge	[FW2-TM] **FW2-TP(C1)**
(Denville)—Meriden Road Bridge to Rockaway River	FW2-NT
TRIBUTARIES	
(Meriden)—Two tributaries located approximately three quarters of a mile southwest of Meriden	**FW2-TP(C1)**
BEECH BROOK	
(West Milford)—From State line downstream to [Wanaque River] **Monksville Reservoir**	FW2-TM
...	
BURNT MEADOW BROOK (Green Pond)—Source downstream to confluence with Green Pond Brook	**FW2-NT**
...	
CLINTON BROOK [Mossmans Brook)]	
(W. Milford)—Source to[,] **Pequannock River,** [but not including,] **except** Clinton Reservoir **listed separately below**	[FW2-NT(C1)] **FW2-TP(C1)**
[(Newfoundland)—Clinton Reservoir dam to Pequannock River]	[FW2-TP(C1)]
...	
DEN BROOK [(Denville)] **(Randolph)**—Entire length	FW2-NT
TRIBUTARY	
(Randolph)—Tributary west of Shongum Lake	**FW2-TP(C1)**
...	
GREEN POND BROOK	
(Picatinny Arsenal)—Green Pond outlet to, **but not including, Picatinny Lake**	**FW2-TP(C1)**
(Wharton)—Outlet of Picatinny Lake to the confluence with the Rockaway River	FW2-NT
...	
HIBERNIA BROOK	
(Marcella)—Source to first Green Pond Road bridge downstream of Lake Emma	**FW2-TP(C1)**
(Hibernia)—[Entire length, except tributary described separately below] **First Green Pond Road bridge to confluence with Beaver Brook**	FW2-TM
TRIBUTARY	
([Rockaway] **Lake Ames**)—[Entire length of tributary at Rockaway] **Source to, but not including, Lake Ames**	FW2-TP(C1)
...	
INDIAN GROVE BROOK [Somersetin]	[FW2-TM]
(Bernardsville)—Entire length	**FW2-TP(C1)**
...	

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MONKSVILLE RESERVOIR (Long Pond Iron Works State Park)	**FW2-TM(C1)**
MORSES CREEK—Entire length	FW2-NT/SE3
[MOSSMAN'S] **MOSSMANS BROOK**—[see CLINTON BROOK]	
(West Milford)—Source to confluence with Clinton Reservoir	**FW2-TP(C1)**
...	
OHIO BROOK (Morris Township)—Source downstream to Morristown town line	**FW2-TM**
...	
PASSAIC RIVER	
(Mendham)—Source to [Rt. 202] **Interstate 287** bridge [(Van Doren's Mill)], except tributaries described separately below	[FW2-TM]**FW2-TP(C1)**
(Paterson)—[Rt. 202] **Interstate 287** bridge to Dundee Lake dam	FW2-NT
...	
PEQUANNOCK RIVER	
MAINSTEM	
(Vernon)—Source to confluence with Pacack Brook	FW1(tp)
[(Newfoundland)] **(Hardyston)**—Pacack Brook to [Hamburg Turnpike, (Bench Mark 257) in Bloomingdale], **but not including, Macopin Reservoir or the** [except] tributaries described separately below	FW2-TM
(Kinnelon)—Macopin Reservoir outlet to Hamburg Turnpike bridge in Pompton Lakes Borough	**FW2-TP(C1)**
(Riverdale)—Hamburg Turnpike bridge **in Pompton Lakes Borough** to [Pompton River] **confluence with Wanaque River**	**FW2-TM**
(Pompton Plains)—Confluence with Wanaque River downstream to confluence with Pompton River	**FW2-NT**
...	
POSTS BROOK	
(Bloomingdale)—Source to **confluence with Wanaque River, except** Wanaque Reservoir, [except] **and** segment described below	[FW2-TM]**FW2-NT**
(Norvin Green State Forest)—That segment of the stream and all tributaries within the boundaries of Norvin Green State Forest	[FW2-TM(C1)] **FW2-NT(C1)**
[(Haskell)—Wanaque Reservoir dam to Wanaque River]	[FW2-NT]
...	
ROCKAWAY RIVER	
[(Dover)] **(Wharton)**—Source to [Passaic River,] **Washington Pond outlet,** excluding [the Jersey City Reservoir and] the segment [described below] **within the boundaries of the Berkshire Valley Wildlife Management area**	FW2-NT
(Berkshire Valley)—That segment within the boundaries of the Berkshire Valley Wildlife Management Area	FW2-NT(C1)
(Dover)—Washington Pond outlet downstream to Rt. 46 bridge	**FW2-TM(C1)**
(Boonton)—Rt. 46 bridge to Passaic River, excluding Jersey City Reservoir	**FW2-NT**
...	
WANAQUE RIVER	
MAIN STEM	
([Hewitt] **Wanaque**)—Greenwood Lake outlet, through Wanaque Wildlife Management Area **and Long Pond Iron Works State Park, including the Monksville Reservoir,** to the [boundary of the State Park and Forest land at Monks] **Monksville Reservoir Dam at Stonetown Road**, except tributary described separately below	FW2-TM(C1)
(Hewitt)—Entire length of tributary south of Jennings Creek	FW2-TP(C1)
[(Monks)—Parkland boundary to Wanaque Reservoir]	[FW2-TM]
(Pompton Lakes)—Wanaque Reservoir dam to [Pompton] **confluence with the Pequannock** River	FW2-NT
...	

(f) The surface water classifications in Table 4 are for waters of the Raritan River and Raritan Bay Basin:

TABLE 4

[Water body] **Waterbody**	Classification
...	
DRAKES BROOK **(Ledgewood)—Source downstream to Hillside Avenue bridge**	**FW2-TM(C1)**
(Flanders)—[Entire length] **Hillside Avenue bridge to confluence with the South Branch Raritan River**	FW2-NT(C1)
...	
KRUEGER'S BROOK (Flanders)—Entire length	**FW2-TP(C1)**
...	
ROCKY RUN (Lebanon)—Entire length	**FW2-TP(C1)**
ROUND VALLEY RESERVOIR (Clinton)	[FW2-TM] **FW2-TP**
...	
TURTLEBACK BROOK (Middle Valley)—Entire length	**FW2-NT**
...	

(g) The surface water classifications in Table 5 are for waters of the Wallkill River Basin:

TABLE 5

[Water body] **Waterbody**	Classification
...	
FRANKLIN POND CREEK	
(Hardyston)—Source to, but not including, Franklin Pond	**FW2-TP(C1)**
[(Franklin)—Entire length, except those tributaries described separately, below]	[FW2-TM]
[(Hamburg Mtn.)—The first tributary, just south of Hamburg Mtn. flowing to the Wallkill River and located entirely within the Hamburg Mtn. Tract]	[FW1(tm)]
(Hamburg Mtn.)—Tributaries within the Hamburg Mtn. [Tract] **Wildlife Management Area** [not classified as FW1 as described above]	FW2-TM(C1)
...	
LIVINGSTON PONDS BROOK (Wawayanda State Park)—Source downstream to State line	**FW2-TP(C1)**
...	
SPARTA GLEN BROOK (Sparta)—Entire length	[FW2-TM] **FW2-TP(C1)**
...	
WALLKILL RIVER	
(Sparta)—Source to confluence with Sparta Glen Brook	FW2-NT
(Franklin)—Sparta Glen Brook to, [Route 23 bridge] **but not including, Franklin Pond**	FW2-TM
(Wantage)—[Rt. 23 bridge to State line] **Outlet of Franklin Pond to boundary of Wallkill River National Wildlife Refuge**	FW2-NT
(Wallkill River National Wildlife Refuge)—River and tributaries within boundaries of Wallkill River National Widlife Refuge, including all future acquisitions	**FW2-NT(C1)**
TRIBUTARIES	
(Hamburg Mtn.)—The first tributary, just south of Hamburg Mtn., flowing toward the Wallkill River and located entirely within the Hamburg Mtn. Wildlife Management Area	**FW1(tm)**
(Ogdensburg)—Tributary from the outlet of Heaters Pond to the confluence with the Wallkill River	**FW2-TP(C1)**
WANTAGE BROOK (Wantage)—Entire length	FW2-NT
WAWAYANDA CREEK	
(Vernon)—State line to Pochuck Creek, except unnamed tributary described below	FW2-TM
TRIBUTAR[Y]IES	
(Wawayanda)—Source to State Line	FW2-NT
(Wawayanda **State Park**)—Segments within State Park boundaries, **except Livingston Ponds Brook as noted above**	FW2-TM(C1)
WAWAYANDA LAKE (Wawayanda)	FW2-TM(C1)
WHITE LAKE (Sparta)	**FW2-TM**
...	

(h) FW1 waters are listed in Table 6 by tract within basins:

TABLE 6

...	
DELAWARE RIVER BASIN	
...	
FLATBROOK-ROY WILDLIFE MANAGEMENT AREA	FLAT BROOK WATERSHED The tributary to Little Flat Brook which orginates north of the Bevans-Layton Rd., downstream to the the first pond adjacent to the Fish and Game headquarters building Two tributaries to [Big] Flat Brook which originate along Struble Rd. in Stokes State Forest, downstream to the confluence with [Big] Flat Brook [on Fish and Game property] **within Flatbrook-Roy Wildlife Management Area**
...	

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HIGH POINT STATE PARK
STOKES STATE FOREST

CLOVE BROOK WATERSHED
(No change.)

FLAT BROOK WATERSHED
All surface waters of the Flat Brook drainage within the boundaries of High Point State Park and Stokes State Forest except the following:

(1) Saw Mill Pond and Big Flat Brook downstream **to the confluence with Flat Brook;**

(2)-(8) (No change.)

(9) Lake Shawanni and its outlet stream to the confluence with [Big] Flat Brook;

(10) (No change.)

SHIMERS BROOK WATERSHED
(No change.)

...

(i) (No change.)

(a)

ENVIRONMENTAL REGULATION

New Jersey Pollutant Discharge Elimination System Notice of Opportunity for Interested Party Review for Rule Amendments to N.J.A.C. 7:14A, 7:9, 7:14, and 7:15

Authorized By: Scott A. Weiner, Commissioner, Department of Environmental Protection and Energy.

Authority: N.J.S.A. 58:10A-1 et seq., 58:11A-1 et seq., 58:11-49 et seq., 58:11-23.11 et seq., 58:11-64 et seq., 58:11-18.10 et seq., 13:1D-1 et seq., 13:1E-1 et seq., 58:4A-4.1 et seq., 58:4A-5, 58:12A-1 et seq., 13:1B-3 and 13:1D-1 et seq.

DEPE Docket Number: 01-93-01.

Take notice that the Department of Environmental Protection and Energy (Department) is preparing to propose substantial revisions and amendments to the regulations under which discharges to surface waters are regulated (N.J.A.C. 7:14A, 7:9, 7:14, and 7:15). The Department is considering an extensive restructuring of the New Jersey Pollutant Discharge Elimination System (NJPDES) permitting system. The purpose of this opportunity for interested party review is to set forth the potential new directions for the NJPDES permitting system and to solicit public input and comments on the policies, technical issues, and administrative reforms related to implementation of changes in the permitting process.

Executive Summary

The current NJPDES regulations were adopted and became effective on March 6, 1981, and have remained largely unchanged since that time, except for the changes necessary to implement the Clean Water Enforcement Act. The current rules have not kept pace with the changes in statutes, rules, policies, and procedures (both Federal and State) that have an impact on the issuance and enforcement of discharge permits. As a result, the permitting process has become inefficient, the program's effectiveness in improving water quality has not been adequately monitored and measured, and many legal disputes have arisen. In addition, the current NJPDES rules are not well coordinated with the Department's Surface Water Quality Standards (SWQS), N.J.A.C. 7:9, or the Water Quality Management Planning Rules, N.J.A.C. 7:15, to comprehensively address water quality issues, particularly aspects affecting water quality over an entire watershed or basin. To resolve these problems, the Department has undertaken a comprehensive review of the existing rules, policies, and procedures, and has prepared this document to stimulate a focused public discussion on the desirability and design of changes to the NJPDES program.

The Department is considering a watershed approach to permitting in order to alleviate this lack of coordination, provide a sound scientific basis to assess and evaluate pollution problems from all sources (agricultural inputs, municipal discharges, industrial discharges, ground water inputs, storm water, etc.), and make decisions regarding the most effective ways to control the pollution from all contributing sources. Such a coordinated approach would assist the Department in identifying the pollution problems affecting both human health and aquatic biota that currently exist, establishing priorities for addressing those problems, and issuing discharge permits that are tailored to adequately protect and conserve New Jersey's environmental resources. A watershed approach to water quality studies and permitting would allow the Department to more efficiently develop a sound scientifically-based watershed management program encompassing both point source and nonpoint source loadings and to more efficiently and effectively issue water discharge permits.

A watershed approach, as opposed to the current site-specific approach, would enable the Department to focus attention on specific pollutants in each waterbody and to better evaluate the impact of various control measures. The first step in such a process is to establish watershed boundaries for the State, to determine which watersheds or portions of watersheds need further attention, and to determine the assimilative capacity of each through the development of comprehensive water quality models. Thereafter, the available capacity would be allocated among the pollutant sources within the watershed. This approach would also better enable the Department to work with local governments toward environmentally sensitive land use planning. When the allocation process is complete, the Department will be in a position to include water quality-based effluent limitations in discharge permits. The goal of water quality-based effluent limitations is to protect the instream water quality and instream uses, such as drinking water and aquatic life propagation. In addition, the allocation process will allow the Department to develop applicable Best Management Practices (BMPs) for stormwater and nonpoint sources of pollution.

While this opportunity for interested party review focuses on the need for and benefits of a watershed-based approach to NJPDES permitting as well as other possible improvements to the permitting program, watershed permitting could be one part of a broader effort to incorporate a watershed-based approach into the Department's overall water quality and quantity protection efforts, and to integrate those efforts into one comprehensive, watershed planning and management program. The Department will further articulate this broader concept in a separate interested party review document proposing reform of the Water Quality Management Planning Program into such a comprehensive, watershed planning program. The separate document on this subject will be published by April 1993.

The changes necessary to move to a watershed permitting process will take substantial time and resources to implement, particularly in identifying the existing water quality problems, assessing the extent of those problems, and evaluating the options available for their control. In the interim, the Department plans to continue issuing permits and, in fact, to significantly increase the number of permits that it issues. The Department does not, however, intend to issue permits with new water quality-based toxics limitations for existing dischargers. Rather, toxics limits for most dischargers will be determined using a technology-based approach for each parameter based on activated sludge/precipitation technology. As the expired permits are reissued utilizing the technology-based effluent standards, the permittees will also be assigned water quality goals and will be required to conduct pollutant reduction studies directed towards reducing pollutants in the effluent.

This one change will cause a significant increase in the Department's issuance of discharge permits. In FY91 and FY92, for example, the Department issued 73 and 135 new or reissued NJPDES permits, respectively. Using the effluent standards and permitting process described in this document, the Department expects to issue approximately 218 new or reissued discharge permits in the current year and 310 in FY94. This increase in the number of permits issued will have environmental, administrative, and economic benefits. The current permit backlog in the NJPDES Program means that many facilities are operating with permits issued more than five years ago.When the Department issues a new permit, it is able to incorporate standards that have been adopted in the interim period. This generally has the effect of making the permits more stringent and more protective of water quality. The pollutant reduction studies that the Department will now incorporate into discharge permits will have the further benefit of directing permittees to find additional ways to improve effluent quality that can be incorporated into their subsequent permits. The permittees will be able to examine factors and opportunities that may be unique to their location or facility. At the same time, issuing more permits provides greater certainty concerning regulatory requirements and enables the regulated facilities to better anticipate expenditures that they will need to undertake to improve water quality.

The Department will propose changes to the SWQS to clarify the antidegradation, surface water quality standards variances, and mixing zone policies and procedures. In addition, procedures for the development of site specific criteria and definitions of critical conditions for

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various pollutants are being developed and the Department is considering the proposal of updated ammonia-N criteria specific to New Jersey. These forthcoming proposals are in addition to the changes to the SWQS which were published in the New Jersey Register on November 2, 1992 (24 N.J.R. 3983(a)). A Round Table regarding those proposed changes is scheduled for Thursday, February 18, 1993, in the Public Hearing Room on the first floor of the Department's offices at 401 East State Street, Trenton, New Jersey.

The Department is also working towards administrative reforms which will make the permit application and issuance procedures more efficient. As a part of this effort, regulations will be reorganized and consolidated to the maximum extent possible and rewritten to reduce ambiguities and eliminate inconsistencies. The proposal currently being prepared will substantially rewrite, reorganize, and restructure the existing regulations to reduce unnecessary internal cross-referencing, to more readily facilitate cross-referencing with the required sections of the federal rules and requirements governing the NJPDES program, and to incorporate new subchapters related to water quality-based permitting. In this "zero-based" approach to rewriting the rules in which the Department is basically starting from scratch, permit requirements will be simplified and those currently codified in other chapters will be moved to N.J.A.C. 7:14A. In addition, the Department is considering several administrative changes to the program that will make it more flexible and efficient. These include:

Allowing permittees the option of submitting their applications in the form of draft permits which the Department can then review and, if acceptable, offer for public comments. Also permittees may perform some other permit related actions such as issuance of public notices and making arrangements for public hearings;

Expanding the scope of changes to existing permits that can be accomplished through minor modifications;

Providing for automatic renewal of permits where a new review would not provide any environmental benefit, for example, where standards have not changed since the permit was issued;

Allowing for concurrent review and processing of water quality management plan amendments and NJPDES permit applications; and

Increasing the use of general permits by rule.

Lastly, the Department is also considering renaming the New Jersey Pollutant Discharge Elimination System, or NJPDES, Permit to the Clean Water Discharge Permit. This shorter name is not only more easily pronounced, but it is intended to symbolize the more straight-forward and publicly accessible program the Department is seeking to create through the changes under consideration.

Process for interested party review

This opportunity for interested party review is the first formal step in the Department's plan to involve the public in the design, review, and eventual adoption of new and revised NJPDES regulations. During 1991 and 1992, the Department met informally with representatives of the regulated community, local governments, environmental groups, and the USEPA to facilitate input into the development of the new regulations. This interested party review is also in partial fulfillment of an Agreement of Settlement entered on January 17, 1991, in the Appellate Division of the Superior Court of the State of New Jersey and a Petition for Rulemaking submitted to the Department on December 5, 1990, by the Association of Environmental Authorities (AEA) concerning various provisions of N.J.A.C. 7:14A, 7:14, and 7:9. The concerns of the AEA's petition and the settlement are addressed for comment in this interested party review document and will be addressed in full when the Department issues a formal rule proposal in April of 1993.

The Department will hold a **Round Table** to provide opportunity for discussion of this interested party review as follows:

Friday, February 19, 1993
10 A.M. to 12 P.M.; 1 P.M. to 4 P.M.
New Jersey Department of Environmental Protection and Energy
Public Hearing Room, First Floor, 401 E. State Street
Trenton, New Jersey

The Department is requesting that individuals interested in participating in the Round Table or in attending as an observer **preregister** before February 11, 1993 by calling Barbara Padgett at (609) 292-4543. **Interested Persons** are also encouraged to submit, in writing, views, proposed regulatory language, or comments relevant to this interested party review by March 3, 1993 to the address below:

Dennis Hart, Administrator
New Jersey Department of Environmental Protection and Energy
Wastewater Facilities Regulation Program
CN 029
Trenton, NJ 08625

This notice of the interested party review is being published in order to obtain comments of interested persons on the subjects to be included in the Department's rulemaking. Following the close of the public comment period, the Department will consider all comments received (both in writing and during the public meetings) and use them to develop a formal rule change preproposal or proposal during the spring of 1993. The Department has prepared two additional documents that are available to interested parties:

A basis and background document that explains the full development of the New Jersey specific ambient ammonia criteria; and

A preliminary draft of the anticipated NJPDES rule proposal.

These documents may be obtained by contacting:

Victor Staniec
New Jersey Department of Environmental Protection and Energy
Wastewater Facilities Regulation Program
CN 029
Trenton, NJ 08625
Telephone Number: 609-292-4543

This interested party review has been divided into four main sections. Section I provides a description of the approach that the Department is considering for water quality-based permitting decisions. Section II describes the permitting approach that the Department plans to use in the interim until permitting by watershed can begin. This will be the approach for currently pending and backlogged permits. Section III describes changes that the Department is considering for the Surface Water Quality Standards related to water quality-based permit development. Section IV describes the administrative and procedural changes under consideration to increase program efficiency. Generally, within each section several issues have been summarized, the options currently under consideration for each issue are presented, and in many cases a recommendation is offered. Public input and suggestions are sought on each of the issues described, as well as on any other aspects of the NJPDES program.

The outline for the specific issues presented in this interested party review is as follows:

I. Water Quality Based Permits: Watershed Approach
   A. Development of TMDLs
   B. Assignment of a Margin of Safety
   C. Procedure for Assigning Wasteload Allocations
   D. Development of Effluent Limitations
   E. Inclusion of Thermal Limitations
   F. Discharges to Intermittent Streams and Impoundments
   G. Wet Weather Limitations
II. Interim Permitting Approach and Implementation Schedule
   A. Existing Dischargers—Chemical Specific Toxics
   B. Existing Dischargers—Conventional/non-conventional pollutants
   C. Existing Dischargers—Whole Effluent Toxicity Limitations
   D. New Sources
   E. Pollutant Reduction Study
III. Surface Water Quality Standards
   A. Antidegradation Analysis and Requirements
   B. Variance Procedures
   C. Development of Site Specific Criteria
   D. New Jersey Specific Ambient Ammonia Criteria
   E. Mixing Zone Analysis
   F. Definition of Critical Conditions
IV. Administrative Issues and Reform
   A. Organization
   B. Ease of Understanding
   C. Flexibility
   D. Consolidation
   E. Updating
   F. Streamlining the Permitting Process
   G. Additional Items
   H. Incorporation of Federal Requirements
V. Conclusion

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I. Water Quality Based Permits: Watershed Approach

A comprehensive approach to resource management is dependent on addressing the important water quality issues in each watershed. Water quality issues in any given watershed may include contributions from permitted and nonpermitted point sources, withdrawals for drinking water or irrigation, and contributions from nonpoint sources. The contributions and withdrawals affect both the quantity of water in the stream and the concentration of chemical constituents. The major tool available for assessing and quantifying the cumulative impact of all the inputs and withdrawals is a water quality study. When a comprehensive water quality study is completed for a stream, it results in the determination of a TMDL or Total Maximum Daily Load. The TMDL defines the total amount of a pollutant which can be safely discharged into a waterbody or waterbody segment from all sources without impairing the designated uses of the waterbody. The Department determines a separate TMDL for each parameter and for each stream segment. The TMDL for each parameter is allocated, or divided, among the sources of that pollutant to the stream segment. Allocations to point sources are termed Wasteload Allocations (WLAs), while allocations to nonpoint sources are termed Load Allocations (LAs). As shown in Figure 1, determining the TMDLs and allocating the loads is similar to determining how big a pie might be and how big each piece of the pie can be to insure that each individual can have some of the pie. Each parameter is represented by a separate "pie."

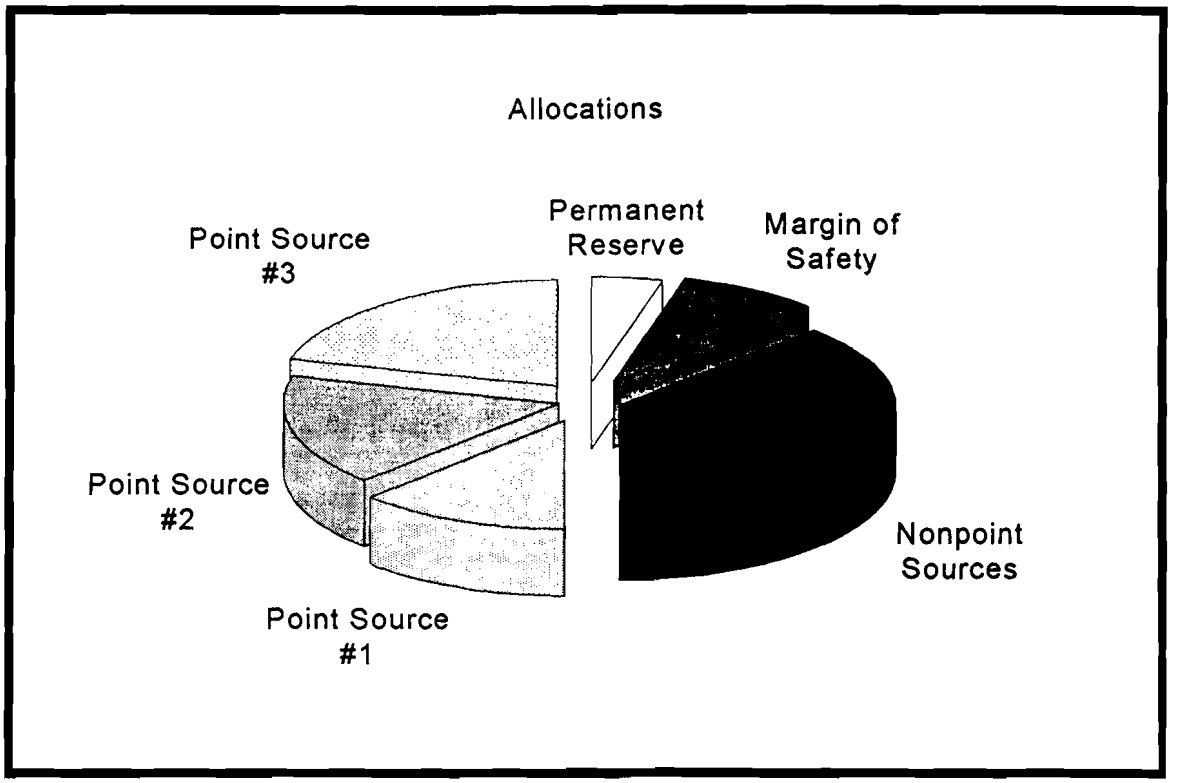

Figure 1: Hypothetical allocations to a stream or stream segment

Part of a comprehensive approach to water quality/quantity management requires examining the impacts of existing and future development and other land uses. Examples of these types of decisions include the planning and location of residential or commercial developments or the maintenance of agricultural lands. As land use planning decisions are made, the implications for water quality are incorporated into the water quality model. For example, when Best Management Practices (BMPs) for a land use such as agriculture are implemented, those practices will affect the instream loading that results from agricultural activities within the watershed. A detailed water quality model can help to predict the potential effects of various BMP options and thus assist in making the decisions regarding which options might be most effective in a given watershed. In general, the Department anticipates that control of either point sources or nonpoint sources alone will not be sufficient in many watersheds to insure that the water quality criteria will be achieved. Furthermore, addressing point sources and nonpoint sources at the same time will enable the Department to determine the most cost effective mechanisms for improving water quality. Controls on both the point sources and the nonpoint sources, as well as an integrated approach to land use management, may be necessary to achieve the water quality criteria.

A. Development of TMDLs:

In the past the Department has issued permit renewals as the permits expire, with minimal consideration for attempting to manage an entire waterbody or an entire watershed. The Department is considering changing this piecemeal permit management strategy so that permits for discharges to an entire watershed would be renewed simultaneously within the same permit year. In addition, comprehensive water quality studies would be completed over a period of time to enable the Department to effectively manage the sources within each watershed through consistent permitting decisions.

In order to implement a comprehensive process of watershed based permitting, the Department is considering the following action plan:

1. Divide the State into five areas and establish a schedule for preliminary evaluation, intensive sampling, model development, public input, permit limit development, and permit issuance, for each area. The Department proposes to divide the State into the following five groups, as shown in Figure 2:

Passaic River Basin, including the Hackensack River;
Raritan River Basin;
Wallkill River and Upper Delaware River (above Trenton) and tributaries thereof;
Tributaries to the Lower Delaware River and Delaware Bay; and
Tributaries to the Atlantic Ocean south of Sandy Hook.

Since modeling of the Delaware River and New York Harbor Network is more complex, they will be considered separately. For example, extensive water quality modeling projects are currently underway for both the lower Delaware River and in the New York Harbor complex. These two studies are anticipated to be completed in 1993.

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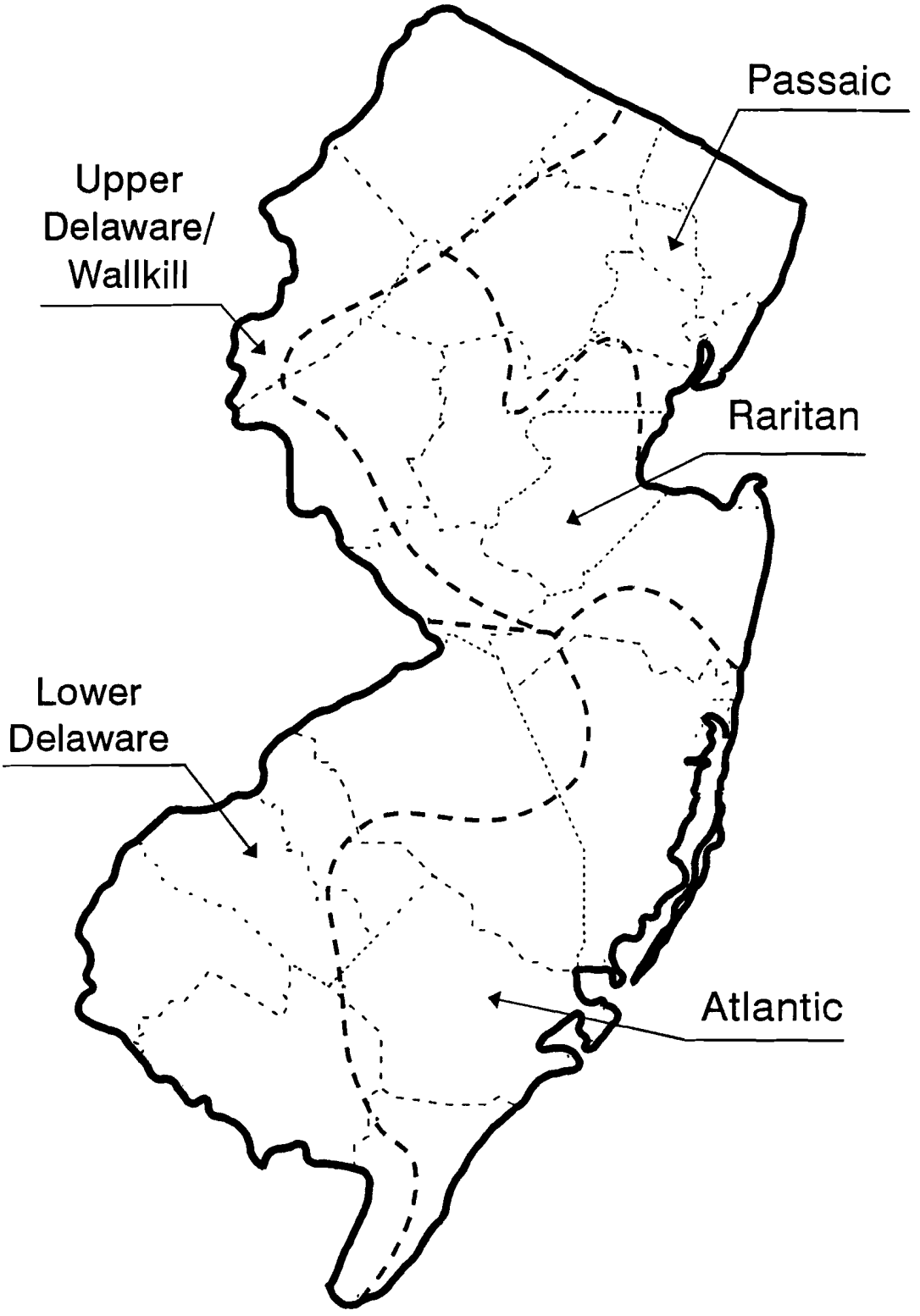

Figure 2: Watershed Groups

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The Department proposes to consider all waterbodies within each of these five areas on the schedule shown in Table 1, below.

	Preliminary Evaluation	Intensive Sampling	Model Development	Public Input	Permit Issuance
Passaic	FY93	FY94	FY95	FY96	FY97
Raritan	FY94	FY95	FY96	FY97	FY98
Upper Delaware	FY95	FY96	FY97	FY98	FY99
Lower Delaware	FY96	FY97	FY98	FY99	FY2000
Atlantic	FY97	FY98	FY99	FY2000	FY01

Table 1: Schedule for Watershed Monitoring and Permit Development

2. Select the parameters needing a water quality model for a TMDL for each watershed in a given permit cycle. The Federal Clean Water Act requires that TMDLs be established for each receiving stream where a minimum treatment standard will not result in attaining the water quality criteria. Minimum treatment standards consist of secondary treatment standards and/or limitations based on categorical treatment requirements. The TMDL process will determine the assimilative capacity for each parameter which is available to be allocated to point and nonpoint sources within the watershed. All available knowledge concerning both stream dynamics, instream concentrations, point source inputs and nonpoint source inputs will be used in this selection process. The Department is evaluating the alternative methodologies that may be available to select the parameters and is soliciting comment on this issue.

3. Determine the appropriate model complexity for the TMDL for each parameter that needs to be addressed. It is possible that some parameters will require a more complex analysis than other parameters within a given watershed.

4. Determine the priority for completing the TMDL analysis for each parameter for each watershed. Since staff and fiscal resources are limited, it may be necessary to focus attention on the parameters of greatest concern in each waterbody and to delay completion of some TMDLs for some parameters until a subsequent round of analysis. The priorities assigned by the Department will be published periodically in order to obtain information from the public to assist in revisions to the priorities as necessary. This report would include lists of waterbodies where the following activities are planned to occur during the next year:

Preliminary evaluation
Intensive sampling
Model development
Permit limit development

5. Complete the TMDL model for each parameter of interest. Allocate the available load taking into consideration the minimum treatment requirements, antibacksliding and antidegradation requirements, and mixing zone restrictions. Public input would be also sought at this stage. The effluent limitations to be included in the permit would then be derived from the wasteload allocations.

The Department anticipates that these tasks must be completed, as indicated in Table 1 above, in the following manner:

Year 1: Preliminary instream data for all toxics are gathered at a few selected sampling points within the first watershed group. This data will be used to assist in determining which parameters might be targeted during the first permit cycle. All other available instream data are collated. Effluent data collected as a result of the monitoring requirements in the discharge permits are collated. A list of the potential parameters to be targeted is selected from this limited database.

Year 2: Instream and effluent data are collected for the targeted parameters. If conventional and non-conventional parameters have not yet been addressed in the watershed, or in portions of the watershed, those parameters will be addressed in the sampling and subsequent model development. At the same time, the Department would begin Year 1 with the second watershed group.

Year 3: The hydrodynamic water quality model is developed. The model for the parameters selected is also developed. Preliminary wasteload allocations for point sources and load allocations for nonpoint sources are developed for the selected parameters in watershed 1. The monitoring would be complete in watershed 2 and the preliminary data collection would be complete for watershed 3.

Year 4: The public input process for the selected parameters in watershed 1 is completed. Discharge permits are drafted at the end of the TMDL/WLA/LA public input process.

Year 5: By the end of Year 5, the affected permits in watershed 1 are issued as final permits.

In each successive cycle, additional parameters would be addressed. For example, in the first cycle, the conventional and non-conventional pollutants and several heavy metals might have the highest priority for watershed 1. In the next cycle, those parameters would be complete and the highest priority might be several volatile organic compounds. In watershed 2, the conventional pollutants might have already been modeled, so that the highest priority parameters might be heavy metals and/or a few organic compounds.

Since the spectrum of available data and the need for permit limitations is broad, the Department's general intent is to use a wide selection of TMDL model complexity that could be used in varying circumstances. The Department may tie the level of complexity of the model and TMDL development process to the needs of the permitting program and the amount and types of instream and effluent data available. The level of complexity for instream data collection, hydrodynamic model development, and parameter model development would be clearly defined for each stream segment. The hydrodynamic model used as a platform for the parameter modeling would be of an appropriate complexity to support the most complex parameter model anticipated to be needed within the stream segment. Three general approaches to TMDL/WLA development are described below.

1. Complex model for TMDL development

Complex modeling for TMDL development includes all modeling which considers the fate of pollutants (including physical, chemical, or biological changes or partitioning) and all modeling where complex hydrodynamics are required (tidal areas, waterbodies with withdrawals for drinking water and/or agricultural uses, and areas where nonpoint sources must be quantified). A complex model would be appropriate to use when trying to evaluate the possible effects of several options regarding land use patterns. BMPs for a specific nonpoint source, and/or BMPs for storm water discharges. Complex models for TMDLs could also include wet weather considerations or collection of the necessary information to evaluate site-specific criteria. At this time, the Department anticipates that those parameters discharged by many permittees (such as the heavy metals), those parameters discharged by both nonpoint sources and point sources (such as nutrients), and those parameters which are clearly degraded or change form in the receiving stream (such as BOD) will need a complex model for TMDL development for most waterbodies.

The AEA petition for rulemaking suggested the use of statistical modeling by the Department in the development of TMDLs. The Department is considering utilizing a statistical treatment of input data for steady state model development, which should provide some of the benefits of statistical model development. The Department is interested in other options that might be applicable for consideration in this process. In addition, the Department is developing procedures for seasonal wasteload allocation development and is considering inclusion of wet weather considerations for some classes of dischargers.

2. Basic model for TMDL development

A basic model for TMDL development could be established under two sets of circumstances: when a complex TMDL model is not needed or when a complex TMDL model is needed but the data to develop a complex TMDL are not available. A basic TMDL model is a simplified way of generating a TMDL and would usually tend to be conservative, since some conservative assumptions are made. It assumes that the only assimilative capacity available is due to inflow within the stream segment

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and it uses a mass balance concept to generate the TMDL. The data necessary (stream flows and instream concentrations) may be based on data collected for the TMDL or it may be derived from existing data. A basic TMDL model would be unable to readily assess either nonpoint source contributions or the fate of pollutants (since they require more elaborate modeling techniques). A basic TMDL model is not appropriate for tidal waters (due to hydrodynamics) or for dissolved oxygen modeling (which determines fate of pollutants). Site-specific or watershed-specific water quality criteria could be developed concurrently with the basic TMDL model.

The Department anticipates that a basic TMDL model might be appropriate for use where fate processes, such as biological or chemical changes to the pollutant after it reaches the receiving stream, are not important. In those circumstances there is little to be gained by completing a more complex model. Likewise, it might be appropriate when a permit must be issued quickly with water quality-based limitations or where there are few dischargers of a specific pollutant so that the wasteload allocations for each discharger are relatively high. In most cases it would probably be used to assist an applicant/permittee to meet time constraints not conducive to development of a complex TMDL model. A basic TMDL model would be replaced with a complex TMDL if and when one were developed for the parameter of concern.

3. Site-Specific Wasteload Allocations

Site-specific wasteload allocations would be developed for all dischargers using the mixing zone concept. These limitations would set the treatment level necessary to ensure that designated and existing uses would be achieved outside the regulatory mixing zone. Site-specific wasteload allocations are derived from a mass balance that assumes that the discharger is the sole discharger to the waterbody or to the regulatory mixing zone. Since site-specific wasteload allocations are developed to ensure that the criteria are achieved at the boundary of the regulatory mixing zone, they would be replaced by a TMDL/WLA only if the TMDL/WLA were more stringent.

In most cases, the Department anticipates that the site-specific WLA will be less stringent than those based on a TMDL for most unidirectional stream segments with more than a single discharger and more stringent than a TMDL/WLA for discharges into large tidal streams and/or embayments or for a single discharger into a unidirectional stream.

Since the "unit" of a TMDL could be considered to be a relatively short stream segment, it is possible to combine TMDLs to provide a comprehensive TMDL for many parameters for an entire basin, much like hooking together beads on a string. For example, if a complex hydrodynamics were required for parameter 1, where the Department needed to also address nonpoint sources, that hydrodynamic model could provide the hydrodynamics for a basic TMDL model for parameter 2, where no nonpoint source considerations were required and where fate processes are not important and a complex TMDL model for parameter 3, where fate processes were critical in understanding the action of the parameter in the stream.

Likewise, TMDLs for adjacent segments could be joined to develop a comprehensive TMDL for an entire basin or portion of a basin.

Public input into the development of the TMDL/WLA/LAs is important to insure that the concerns of all interested parties are addressed during the development process. Accordingly, the Department anticipates that it will publish a summary and invite public comment on the calculation of all TMDLs and the WLAs/LAs developed from them, including the allocation assigned to each pollutant source. The Department anticipates scheduling an informal public hearing for each TMDL or group of related TMDLs to exchange information and receive public comment and input.

For some parameters (ammonia-N and some heavy metals) the applicable instream criteria are the result of a calculated chemical equilibrium which is strongly dependent on other parameters for which there may not be water quality criteria. These parameters include pH, hardness or alkalinity, and temperature. For those parameters the Department is developing regulations which clearly state the range of conditions under which the chemical equilibrium will be calculated and will require that the permit include conditions requiring monitoring of the parameters affecting the chemical equilibrium. If the parameter(s) fall outside the assumed or assigned range, additional monitoring may be required. Frequent excursions may result in recalculation of the chemical equilibrium.

Specific Issues for Public Comment (in addition to the general discussion above):

1. **Methods of scheduling watersheds and setting priorities for parameters**—The Department expects to develop the TMDL watershed priorities based on a combination of permitting needs, enforcement needs, planning, and water supply issues. The watersheds are likely to be divided into five groups, to allow coordination with the five year permit cycle. Are there other issues or factors that should be considered in developing a watershed priority system?

Parameters will be given priority based on the frequency or likelihood of exceedances of the water quality criteria, the number of sources of the parameter within the watershed, the relative feasibility and/or possibility that the parameter can be controlled, and the resources to develop the appropriate model. Are there other items which should be considered in developing the parameter priorities?

2. **Use of a variable complexity approach**—The Department intends to incorporate sufficient flexibility to adequately address the numerous types of situations, including:

—Incorporation of a mixing zone concept for most parameters and attainment of the instream criteria at the edge of the regulatory mixing zone;

—Developing TMDLs when the fate of pollutants may be critical in determining the assimilative capacity of the stream segment; and

—Developing TMDLs when the fate of pollutants is not an important consideration.

In addition, the Department would like to be able to maximize the amount of information that can be processed with a limited resource base. To meet these objectives, the Department is considering procedures which would allow a number of specific approaches to TMDL/WLA/LA development, including complex TMDL models, basic TMDL models, and site-specific wasteload allocations. Are there other general approaches or modifications of this general approach which will meet these goals?

3. **How to implement and pay for TMDLs**—How should the cost of developing TMDLs be distributed? Should the dischargers to a given watershed be required to complete the modeling, perhaps through a consultant, and submit it to the Department? Should some sort of "watershed planning group" be devised which would have responsibility for TMDL/WLA/LA development, including implementation of controls on all sources? Should the Department do the monitoring and modeling "in house," even if that meant hiring more staff? Should the monitoring and/or the modeling be contracted out? It might be feasible to combine two or more of these options to afford the most efficient implementation. If the Department does the monitoring/modeling either in house or through a consultant, should it be paid through NJPDES fees or through some other funding mechanism?

4. **Public Input**—How can the Department best solicit public input and interaction with both the regulated community and the general public on the development of TMDL/WLA/LAs? Are there other ways to obtain public input in addition to public notices and public meetings that will afford the public adequate opportunity to provide significant input?

5. **Point sources vs. nonpoint sources**—How should the Department achieve a balance between the control of nonpoint source contributions to a waterbody and the control of point source contributions to the waterbody? How can the available loading and/or the necessary treatment cost be equitably distributed between the types of pollutant sources?

B. Assignment of a Margin of Safety

When a TMDL/WLA/LA is developed, it includes a margin of safety and/or a reserve capacity. This amounts to a specific allocation to account for such items as:

The lack of knowledge or level of uncertainty in the available data and analysis relating to a specific stream or to stream dynamics in general;

A consideration that there may be additional dischargers in the future;

The potential overlapping effects of discharges;

The reliability of the existing or proposed treatment system, including the control of nonpoint sources and unpermitted point sources; and/or

The presence of high quality waters, such as environmentally sensitive areas, Category One or Outstanding National Resource Waters.

The USEPA guidance manuals recommend that the margin of safety for conventional pollutants such as BOD_5 fall between 10 percent and 30 percent, depending on the details of the model development. The

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margin of safety for toxic parameters should be higher, depending on the relative level of uncertainty in the monitoring and model development.

The Department has identified two basic options that are applicable for allocation of a margin of safety and/or reserve capacity:

1. Set an across the board reserve or margin of safety to apply to all waters and all situations. This has the advantage of being straight forward and simple to administer. It has the disadvantage of being relatively inflexible and is likely to result in cases where the reserve is too high and other cases where it may be too low.

2. Develop a matrix addressing the items listed above where the margin of safety assigned to each element of the matrix would be additive. This has the advantage of allowing the needed flexibility, but may be more cumbersome.

The Department is recommending a combination of the two approaches. When water quality-based limits are developed from site-specific information prior to development of a TMDL model, option 1 could be used. This would provide a simple approach for those isolated cases where water quality-based limitations must be issued prior to TMDL model development. This situation might arise for a new discharger. When a TMDL model is developed, part of the development process should include assigning a margin of safety based on detailed knowledge of the receiving water and a consideration of specific information concerning the parameter of concern. The Department is soliciting comments on other options that may be available.

In order to assign a margin of safety, a one possible matrix has been developed that considers the following items:

1. A permanent reserve (never to be used);
2. A growth reserve, set so that the need for reallocation due to new dischargers will be infrequent;
3. An additional reserve for Category One or Outstanding National Resource Waters (ONRW);
4. A margin of safety related to the amount and reliability of the data and model development; and
5. An additional margin of safety for persistent or bioaccumulative parameters.

If a matrix is developed it might appear something like the matrix below, which has been included for illustrative purposes only. The applicable percentages can be summed as you move down any level of complexity for the TMDL analysis.

POTENTIAL RESERVE/MARGIN OF SAFETY MATRIX

	Site Specific WLA	Basic TMDL	Complex TMDL
Permanent Reserve	10%	10%	10%
Growth Reserve	0 to 20%	0 to 20%	0 to 20%
Category 1 or ONRW	10%	10%	10%
Margin of Safety, Persistent	30%	20%	10%
Margin of Safety, non-persistent	15%	10%	5%

Specific Issues for Public Comment (regarding a Margin of Safety):

1. General Method of Assigning. A matrix concept for assigning a margin of safety has appeal for increasing flexibility. How applicable is a matrix concept? Does it adequately address the concerns related to a margin of safety? Is the trade-off of difficulty in administration worth the increase in flexibility?

2. Magnitude of Permanent Reserve. Is it necessary and if so how large should a permanent reserve be?

3. How should the Department deal with a reserve when a waterbody is already exceeding criteria? Does the type of parameter affect the decision (that is, conventional parameter such as BOD compared to a persistent or bioaccumulative toxic parameter)? If a waterbody is exceeding criteria, should the reserve be changed? Should the Department consider prohibiting new discharges of the pollutant(s) of concern until the total needed reserve and margin of safety is achieved?

4. Is protection for Category One and Outstanding National Resource Waters (ONRW) under antidegradation sufficient? Should waters that are of relatively high quality but have not been designated as Category One or ONRW have extra protection?

5. If the Department decides to use a matrix approach, what numbers are reasonable?

6. How could the "growth" component be handled through the planning process? If it seems feasible to incorporate a growth component through the planning process, how could it be implemented? If there is a way to accomplish this through the planning process, should an across the board "growth" reserve be included until a growth component is included in the planning process? If so, how large should the growth reserve be?

C. Procedure for Assigning Wasteload Allocations

There are two general issues regarding allocation of the loading among the point sources and nonpoint sources. The first issue concerns the amount of loading to be assigned to nonpoint sources. When a complex TMDL model has been developed, the tools are available to make planning decisions regarding land use management as well as decisions regarding effective BMPs. The loading resulting after the implementation of the BMP can then be assigned to the nonpoint sources. Where a complex TMDL model has not yet been developed, but where decisions still need to be made regarding allocations, a default allocation of some percentage could be assigned to nonpoint sources.

The second issue concerns the allocation of loading to point sources. There are numerous methods for allocating the available assimilative capacity among point source dischargers. The USEPA has identified approximately 20 different methods in various technical support documents related to wasteload allocation procedures, ranging from assigning equal concentration for all dischargers to treatment level proportional to community effective income. Of those, the Department has initially identified three methods that are appropriate and simple to administer: equal concentration, equal loading, and equal reduction in load or concentration. Additionally, the Department believes that the concept of minimizing the total treatment cost (when all dischargers are considered) may be a component of an implementation strategy.

The following iterative procedure for determining the appropriate wasteload allocations for all dischargers to a segment is offered for discussion and comment:

1. Assign an initial allocation based on equal concentration;
2. Adjust the concentration in the downward direction for each discharger to account for minimum treatment standards, antibacksliding requirements, antidegradation requirements, or site-specific mixing zone restrictions. If no adjustment is necessary, then the equal concentrations apply. If one or more dischargers must be adjusted downward, then the load based on equal concentration which that discharger can not utilize may be reallocated to another discharger.
3. Allow/encourage (and if necessary coordinate) dischargers to "trade" loading within the segment to minimize total treatment costs so long as the minimum treatment standards, antibacksliding requirements, antidegradation requirements, and mixing zone restrictions are met. This could mean that one or more dischargers use a significantly higher level of treatment than other dischargers; and
4. When all trading is complete, finalize the wasteload allocations and issue the permits.

The Department will publish for public comment the preliminary wasteload allocations at the end of step 2. The final wasteload allocations derived at the end of step 4, and after any trading, would be published for public comment as a part of the public input process related to the watershed program and TMDL/WLA/LA development.

The Department expects to clarify the conditions under which seasonal wasteload allocations (and therefore effluent limitations) could be developed for a parameter. Seasonal wasteload allocations may be developed for water quality-based allocations where the efficiency of the effluent treatment process (for example, biological treatment) is temperature dependent. It would not apply to effluent standards or to dischargers with treatment processes which are not temperature dependent. Wasteload allocations could be developed for both a summer season and a winter season, with some flexibility for the beginning and ending dates of the summer, so long as the same period would be applicable for the entire stream segment. As requested by the AEA, the Department is considering two other options for seasonal limitations: allowances for monthly wasteload allocations and for quarterly wasteload allocations. The Department is soliciting additional input on this issue.

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Specific Issues for Public Comment

1. Should a different initial allocation process than equal concentration for point sources be used? If so, what should it be based on? What are the advantages and disadvantages of that process? How can the Department insure that all sources (point and nonpoint, whether permitted or not) of any specific pollutant are treated in an equitable fashion?

2. How workable is the "allocation trading" concept in a state such as New Jersey where there are many dischargers and the effluent quantity frequently makes up most of the stream flow? This concept is similar to the "bubble" concept that has been used in some places in the United States for air permitting.

3. Are seasonal wasteload allocations for point sources appropriate and, if so, how should they be defined?

4. How should nonpoint sources and site remediation activities be treated in the allocation process? Should they have any "special status," such as receiving an allocation based on best management (for nonpoint sources) or the technology installed at the initiation of the project (for remediation projects) before allocations for any other sources are considered? Is it possible that this might result in allocation of the entire capacity to nonpoint sources and/or site remediation activities?

5. Storm water discharges will also need allocations. Should they be given any special status, such as allocations based on an increased hydrological flow? If so, what flow frequency should be used? Is there an appropriate stream design flow to utilize in the model development a storm of a particular size, such as a five year or ten year storm? In considering this item, it should be noted that many storm water discharges use retention basins and therefore continue to discharge under low flow hydrological stream conditions.

D. Development of Water Quality-Based Effluent Limitations for Point Sources

After the modeling and allocation processes are complete, the Department will proceed to develop water quality-based effluent limitations. The 1987 amendments to the federal Clean Water Act and the adoption of the implementing regulations in 1989 require the State to develop a strategy to implement water quality-based limitations for all water bodies where technology-based limitations are not sufficient to ensure compliance with the instream water quality criteria. The State, as the regulating authority, must impose water quality-based limitations whenever the discharge causes, has the reasonable potential to cause, or contributes to an exceedance of the water quality criteria. In most cases, it is only after the water quality modeling and allocation procedures have been completed that the Department anticipates making a determination that reasonable potential exists and proposing water quality-based effluent limitations in NJPDES permits.

The Department is considering using the statistical procedures in the USEPA Technical Support Document (TSD) for water quality based effluent limitations for the calculation of water quality-based effluent limitations from a wasteload allocation based on a TMDL or site-specific considerations and as one factor in the determination of reasonable potential. The USEPA procedure for determining reasonable potential allows the maximum expected effluent concentration to be projected statistically from existing data. The procedure for calculating effluent limitations allows criteria of any duration to be transformed into effluent limitations of any averaging period. The Department is considering expressing the permit averaging periods for water quality-based limitations as a monthly average and a daily maximum for both concentration and mass loading.

The use of the statistical methods in accordance with the TSD requires that decisions regarding percentiles be made. The TSD makes the following recommendations regarding appropriate percentiles to use for each calculation.

For reasonable potential:	99th percentile and 99 percent confidence
For calculation of long term average:	99th percentile
For calculation of average monthly limit:	95th percentile
For calculation of daily maximum limit:	99th percentile

For the reasonable potential calculation, this would result in being relatively sure that limits would be included when they are needed. If the results of the reasonable potential calculation indicate that there is no reasonable potential, the Department would be relatively certain that the discharge would not cause an exceedance of the wasteload allocation.

The long term average is calculated to determine the statistical "true mean" of the population of existing and projected data points. The appropriate percentile is selected as a function of the frequency of exceedance associated with the criteria. The ambient criteria are expressed as a "never to be exceeded." The 99th percentile is appropriate to use since it is a reasonable statistical estimate of "never."

The 99th percentile and the 95th percentile for the maximum daily and average monthly are being recommended in order to be consistent with the percentiles used in the development of technology-based treatment limitations. The effluent guidelines were developed using the 99th percentile for the daily maximum and the 95th percentile for the monthly average.

Specific Issues for Comment (regarding calculation of limitations)

The Department is soliciting input on this issue, particularly in relationship to the percentiles to be used in the following calculations:

Conversion of wasteload allocation to long term average,
Long term average to monthly average limit,
Long term average to maximum daily limit, and
Estimation of the maximum anticipated effluent concentration (reasonable potential)

E. Inclusion of Thermal Limitations

The current surface water quality criteria prohibit increasing the ambient instream temperature more than 0.6 to 2.2°C, depending on the classification of the receiving stream. The Department is currently assessing the implications of implementing the thermal water quality criteria without allowing for variances from the criteria related to the concept of a "balanced indigenous population." The current 316(a) variance procedure, which includes the "balanced indigenous population" concept, is cumbersome and expensive for both the Department and the permittee, and, as a result, serves to delay imposition of controls that could lessen thermal impacts. As a result, thermal limitations have not yet been developed for discharges to surface waters. If the Department were to implement the thermal criteria without utilizing the 316(a) variance procedure, it could have a significant impact on dischargers where elevated temperatures are a significant aspect of the waste stream. However, as with any other parameter, variances may be granted on any factor specified in the Federal Clean Water Act and codified at 40 CFR 131.10(g) for removal of a use from a waterbody, in accordance with the SWQSs. In essence, the removal of the 316(a) variance procedure would have the effect of treating temperature the same as any other parameter and would require the water quality criteria to be met at the edge of any applicable regulatory mixing zone.

The Department is seeking input on this issue in general, and specifically on the following questions, before proceeding further:

1. How could the 316(a) variance procedure be modified to provide a less cumbersome and more efficient and responsive mechanism to address thermal issues?

2. What are the specific implications to affected dischargers of addressing thermal issues as any other pollutant?

3. How could the normal variance procedure be modified to provide a mechanism to address thermal issues?

F. Discharges to Intermittent Streams and Impoundments

Since it is frequently difficult to establish and then for the permittee to achieve limitations that are protective of water quality in impoundments and intermittent streams, the Department is considering prohibiting new discharges to impoundments and to intermittent streams. The Department is also considering requiring that the applicable water quality criteria be imposed at the end of the pipe for existing discharges to intermittent streams and requiring that the edge of the regulatory mixing zone extend no further than the point at which the effluent plume enters the impoundment for discharges to or upstream of impoundments. At the present time, there are several existing discharges to intermittent streams and few discharges to impoundments.

G. Wet Weather Limitations

The Department is considering various options in assigning effluent limitations during periods of wet weather. There are at least two separate issues related to wet weather considerations. The first issue is the consideration of less stringent limitations solely or primarily because

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there is more flow in the receiving stream and therefore, at least in theory, more assimilative capacity for some parameters under some conditions. Such infinitely variable limitations would be difficult if not impossible to administer and enforce. Therefore, the Department is not considering wet weather limitations at this time for those circumstances.

The second issue relates to some consideration of wet weather limitations to assist the permittee in preventing insufficient treatment due to "wash-out" of the treatment system by storm water that enters the collection system in excess of treatment capacity at the facility. It is to alleviate this situation that the Department is considering wet weather limitations. In most cases the additional flow to a facility during precipitation events is due to inflow and infiltration or due to combined sewers or a combination of the two. Any wet weather limitations that might be included in a permit could be no less stringent than minimum treatment standards, as defined in the Federal Clean Water Act, including the definition of secondary treatment, since those standards are mandatory minimum requirements.

Regardless of the reasons for allowing any wet weather considerations, extensive data collection will be required to complete the necessary water quality modeling and to develop appropriate effluent limitations.

The options identified by the Department include:

1. Allow no consideration for water quality-based effluent limitations for wet weather events and require that permittees achieve water quality-based limitations at all times.

2. Allow consideration during storm events of a minimum size for any facility, but require that the source(s) of the storm water in the treatment system be identified and eliminated on a schedule agreed between the Department and the permittee. A minimum storm event, for example, might be defined as a five year storm. The permittee would be required to comply with the minimum treatment standards at all times.

3. Allow consideration during storm events of a minimum size, but limit it to facilities that meet some restrictions. Restrictions might include existing facilities that were designed solely to treat storm water. The permittee would be required to comply with the minimum treatment standards at all times. This option would have the effect of "grandparenting" any existing facilities.

4. Allow consideration during storm events of a minimum size for any facility, but with no restrictions or requirements to reduce the amount of storm water entering the treatment system. The permittee would be required to comply with the minimum treatment standards at all times.

5. Allow, as proposed by the AEA, variable limitations determined primarily on the basis of variable stream flows and the associated stream modeling.

Specific Issues for Comment:

Input is requested on the general issue of allowing wet weather considerations. Specifically, if such considerations were to be allowed, how large a storm should be set as the minimum storm event to trigger wet weather limitations? Should wet weather considerations be linked to a requirement for a compliance schedule to remove excessive inflow and/or infiltration? If some classes of facilities are to be allowed to have wet weather limitations, for example, existing facilities which were specifically constructed to accommodate such flows, what facility characteristics should be used to trigger these allowances? Facility characteristics might include type of treatment at the "wet weather facility," extent of conveyance capacity to a centralized facility, or similar types of characteristics. Who should be responsible for collecting and evaluating the extensive data that will be necessary to develop appropriate and meaningful limitations?

II. Interim Permitting Approach and Implementation Schedule

The Department believes that a shift to watershed-based permitting will be of great benefit to the State's water quality, but that it cannot be accomplished overnight. While the concept is being publicly discussed and refined and then fully established, the Department must at the same time implement an accelerated program to continue to issue up-to-date permits to individual facilities, both to lead to continued water quality improvements and to greater predictability for regulated facilities. The interim permitting approach that the Department plans to use will employ a combination of effluent standards for most chemical specific toxicants, water quality-based limitations for conventional and non-conventional pollutants, water quality-based limitations for whole effluent toxicity, and re-issuance of certain permits with existing limitations and new pollutant reduction study goals. During this interim period, BMPs for nonpoint sources and/or for storm water will be developed to facilitate their implementation concurrently with the implementation of water quality-based controls on point sources.

The Federal Clean Water Act requires that effluent limits be developed according to three methods:

Effluent limitations guidelines or effluent standards;

Best professional judgment; or

Water quality considerations.

Using these three methods, a permit could have limitations for different parameters developed by different means. For example, an effluent may have total suspended solids limited by effluent limitations guidelines, benzene limited by water quality considerations, and xylene limited by best professional judgment. Limits could be established for each parameter by both technology-based considerations and by water quality considerations. The most stringent value would be applied as the permit limit, as required by the Federal Clean Water Act. Effluent guidelines or effluent standards are generally technology-based (that is, a given technology is capable of meeting a set of limitations). Best professional judgment limitations consider a set of variables ranging from the process to age of the equipment to economic impacts. Water quality-based limitations are based on a water quality model developed for the specific receiving stream. In many cases the water quality-based limitation is the most stringent. One serious consequence of water quality-based effluent limitations is that there may be no existing or cost-effective treatment technology available to achieve the limit. Also, some water quality-based limitations are below the level that can be reliably achieved within specified limits of precision and accuracy during routine laboratory operating conditions. This situation occurs primarily with the heavy metals. The interim approach will simplify the development of effluent limitations.

The essential features of the interim implementation strategy are as follows:

1. Existing water quality-based limitations for conventional and non-conventional parameters will remain in discharge permits. Existing water quality-based limitations for toxics will remain in discharge permits if the permittee is in compliance with the limitation.

2. Applicable minimum treatment standards such as categorical standards will be included in permits.

3. Where a water quality-based limitation for a toxic parameter may eventually be required in a permit, the permit will include a technology-based effluent standard and requirements to conduct a pollutant reduction study.

4. New point source dischargers may have the option of using alternate limitations as described below in lieu of completing the rigorous water quality studies required to develop water quality-based limitations.

5. Water quality-based whole effluent limitations will be included in discharge permits.

6. Many more regulated facilities will receive updated permits. These permits will include effluent limitations as well as pollution reduction study goals to require the regulated facilities to develop the data needed by the Department to assess appropriate limits when the permit is next renewed and to enable the facility to consider the ways in which they can best improve effluent quality.

The Department is including this implementation strategy in technical manuals currently being developed. The manuals will include the effluent standards for chemical specific toxics noted in (A) below, a procedure for calculating limitations required under the Clean Water Enforcement Act for designated pretreatment facilities if limits are needed for a parameter where a technology-based standard has not been developed, and the alternate limitations noted in (D) below. Please refer to Figures 3 to 6 when considering the following sections.

A. Existing Dischargers—Chemical Specific Toxics (Figures 3 to 4)

The Department is instituting an interim permitting approach and implementation process which includes a technology-based effluent standard during the first permit cycle instead of a water quality-based limitation for any chemical specific toxic parameter where one or more effluent sample concentrations was reported at or above the pollutant reduction study goal, which will be established in the technical manuals. This goal would be considered a preliminary treatment goal. In most cases, water quality-based effluent limitations will not be imposed in a discharge permit until the relevant watershed study has been completed, model developed and pollutant loadings allocated. For any parameter where an effluent standard is included in lieu of a water quality-based limitation, the permit will include a pollutant reduction study goal and

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a requirement that the permittee complete a pollutant reduction study.

During the first permit cycle, the Department will develop TMDLs and perhaps waterbody specific criteria for the toxics of highest priority while the affected permittees complete the pollutant reduction study. Water quality-based limitations for a pollutant will not be included in the discharge permits until the TMDL for that pollutant is calculated. Although significant environmental improvement during the first permit cycle will be limited, subsequent permit cycles, as TMDLs are completed for more parameters, would result in significant environmental improvement. If, after calculation of a TMDL, development of waterbody specific criteria, any trading of allocations, and institution of BMP for nonpoint sources, the water quality-based limitation for any parameter can still not be achieved, the applicant/permittee would be able to apply for a permit variance.

The Department is developing a set of technology-based effluent standards which will be used in the short term prior to the development of TMDLs for the parameters of concern. The effluent standards for non-POTWs are based on activated sludge treatment for organic priority pollutants and on precipitation for the heavy metals. The effluent standards for POTWs are based on activated sludge. The effluent standards applicable to site remediation projects are based on treatment with activated carbon for organics removal and precipitation/filtration for metals removal. The applicable treatment standards are available as a part of the preliminary draft regulations package, and will also be included in the Department's Technical Manual.

B. Existing Dischargers—Conventional/Non-conventional Pollutants (Figure 3)

As the permits are renewed during the first permit cycle, the limitations for conventional parameters will be evaluated to determine if they are water quality-based. If the limits are not water quality-based, but water quality-based limitations are needed under the Clean Water Act and the Department has the information necessary to determine water quality-based limitations, the water quality-based limits will be included at the time of permit issuance. If the information is not available to determine water quality-based limits for the conventional and non-conventional pollutants and it appears that water quality-based limitations are needed, those parameters will receive a high priority for TMDL development during the first watershed evaluation cycle. TMDL/WLA/LA development for phosphorus may be postponed until the Department has completed its evaluation of the existing phosphorus instream criteria and/or has considered the development of waterbody-specific or site-specific phosphorus criteria. In addition, the November 2, 1992 New Jersey Register includes an interested party review requesting suggestions on the appropriateness of the phosphorus criteria and options for phosphorus control.

For any existing discharger, if no water quality-based limitations can be determined at the time of permit issuance, existing effluent standards will apply to the discharge during the period prior to completion of a TMDL and allocation of loading for the conventional and nonconventional pollutants. Effluent standards applicable to conventional and some non-conventional pollutants have been developed and adopted by the state. These standards reflect secondary treatment or minimum treatment standards currently codified at N.J.A.C. 7:9-5.8 and will be applicable upon issuance of the permit during the first permit cycle when water quality-based limitations can not be determined or are otherwise not applicable.

C. Existing Dischargers—Whole Effluent Toxicity Limitations (Figures 3 to 4)

Water quality-based limitations for whole effluent toxicity, including chronic whole effluent toxicity as appropriate, will be calculated at the time of permit issuance and included in the discharge permit. Inclusion of water quality-based whole effluent limitations during the first permit cycle will insure that there is some protection against toxic effects for the instream biota. This is the procedure that the Department is currently using.

D. New Sources (Figures 5 to 6)

The Department is developing a set of "alternate limitations" to be available to new dischargers in those cases where there is little instream data, no TMDL, and a permit is needed within a short time frame. Alternate limitations are a way of easing the burden on a permittee/applicant while allowing the Department to quickly issue effective and environmentally sound permits. Basically, simplifying assumptions are applied to the three permitting methodologies to come up with a single set of permit limitations applicable to every DSW discharger with only a few restrictions. The permittee can request an alternate limitation on a parameter-specific basis and will be required to provide a minimum of information. If a less stringent limit is desired, the permittee will be required to provide the information needed to do a rigorous analysis. The alternate limitation methodology uses the concept of the Practical Quantification Level (PQL) to assure that every alternate limitation can be reliably measured. It is anticipated that the PQLs used will be those for surface water in the interested party review published in the New Jersey Register on November 2, 1992, or subsequently adopted by the Department. Many of the alternate limits are based on PQLs that would be significantly higher than water quality-based effluent limitations.

New discharges that are also remediation activities (Figure 6) would be subject to a technology standard based on activated carbon/precipitation/filtration treatment, rather than activated sludge/precipitation. In most cases the treatment utilized in these activities consists of some form of activated carbon and/or filtration.

E. Pollutant Reduction Study (Figures 1 to 2)

When an effluent standard for a toxic parameter that has been quantified in excess of the pollutant reduction study goal is included in the discharge permit, the permit will also include a treatment goal and the requirement to complete a pollutant reduction study. The pollutant reduction or treatment goal will provide the permittee with the appropriate order of magnitude for examining pollutant reduction, but still not unduly burden the Department with calculating water quality-based limitations. The pollutant reduction study will require that the permittee conduct a study to explore the means of achieving the goal, including determining the technologies available that will reduce the level of the pollutant in the effluent, the relative costs of the available technologies, the potential effects of such techniques as pollution prevention, waste minimization and/or best management practices, and any reductions at POTWs that might be achieved through the pretreatment program. How can this be combined with the pollution prevention requirements in the antidegradation analysis and pollution prevention plans that are or will be developed by permittees?

One of the goals of the Pollutant Reduction Study is to better target the studies currently required of permit holders so that the information can be more directly applied to the review of subsequent permit modifications and renewals. An additional goal is to apply part of the pollution prevention philosophy to water permitting by giving permit holders both more freedom and more responsibility to assess their facility and discharge location and to develop their own recommendations for further water quality improvements.

As noted in Section I, the Department seeks comments on how these Pollutant Reduction Studies can be conducted to generate the most valuable information with the least cost to the regulated facilities. In addition, while the Department plans to implement this interim approach immediately, comments on the entire concept are welcome and will be considered as the approach is refined.

III. Surface Water Quality Standards

As part of the NJPDES Regulations Revisions effort, the Department is contemplating rewriting portions of the Surface Water Quality Standards (SWQS), N.J.A.C. 7:9-4, that have previously been difficult to implement or interpret in the development and writing of discharge permits. The Department is also contemplating adding language and policies not currently contained in the SWQS to facilitate the implementation of discharge permits. To date, the Department has identified six issues which need to be addressed in order to facilitate the issuance of NJPDES permits. The Department would like to specifically solicit comments on the following topics:

A. Antidegradation Policy, Analysis and Requirements

Inclusion of an antidegradation policy in the SWQS is required by the Federal Clean Water Act (section 303(d)(4)) and its implementing regulations (40 CFR 131.12). The objective of the Clean Water Act is to restore and maintain the chemical, physical, and biological integrity of the nation's waters. In order to achieve this objective, it is a national goal that the discharge of pollutants into waters be eliminated, and that wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish and wildlife and provides for recreation in and on the water be achieved. The Federal antidegradation policy (40 CFR 131.12) and New Jersey's rule developed

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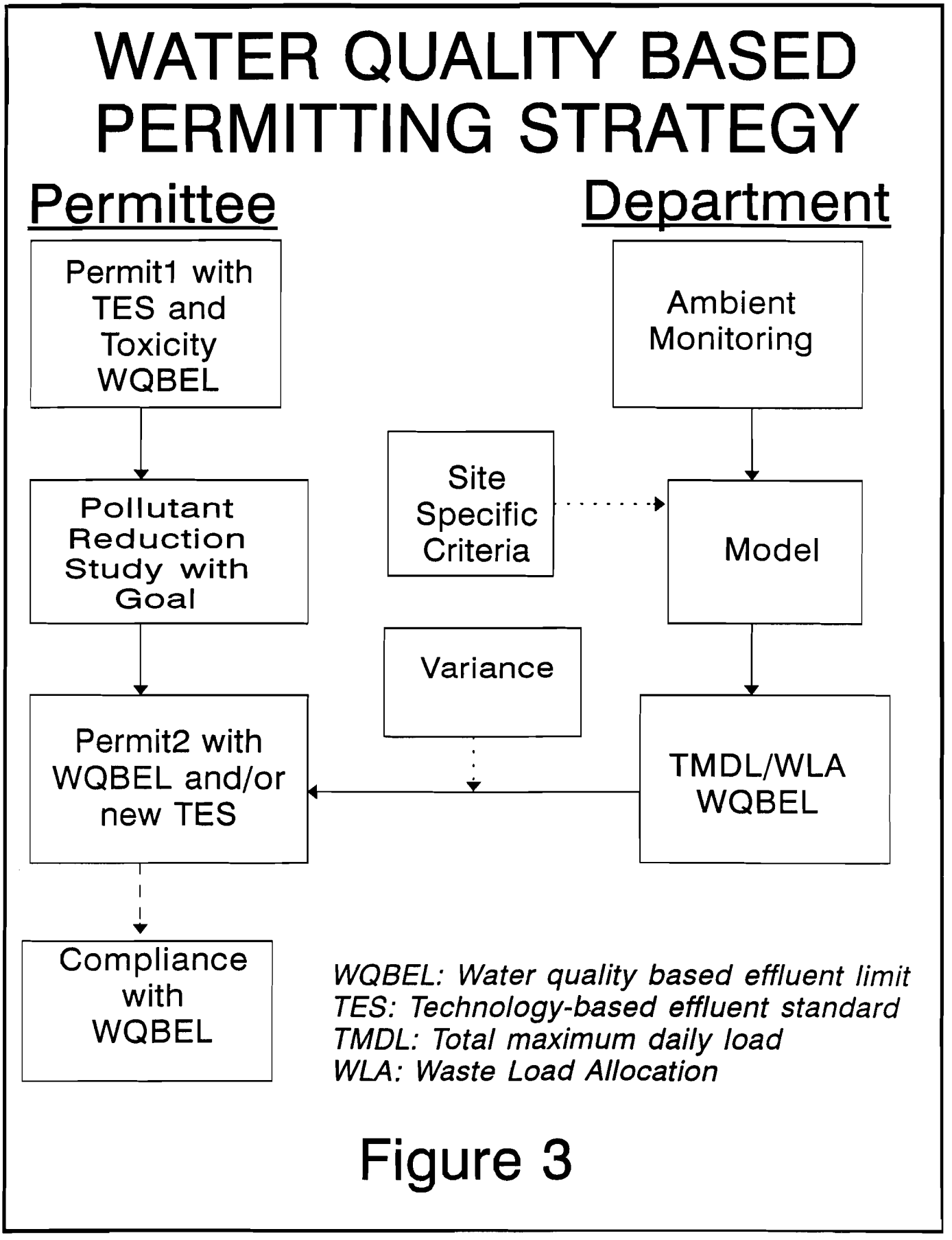

Figure 3

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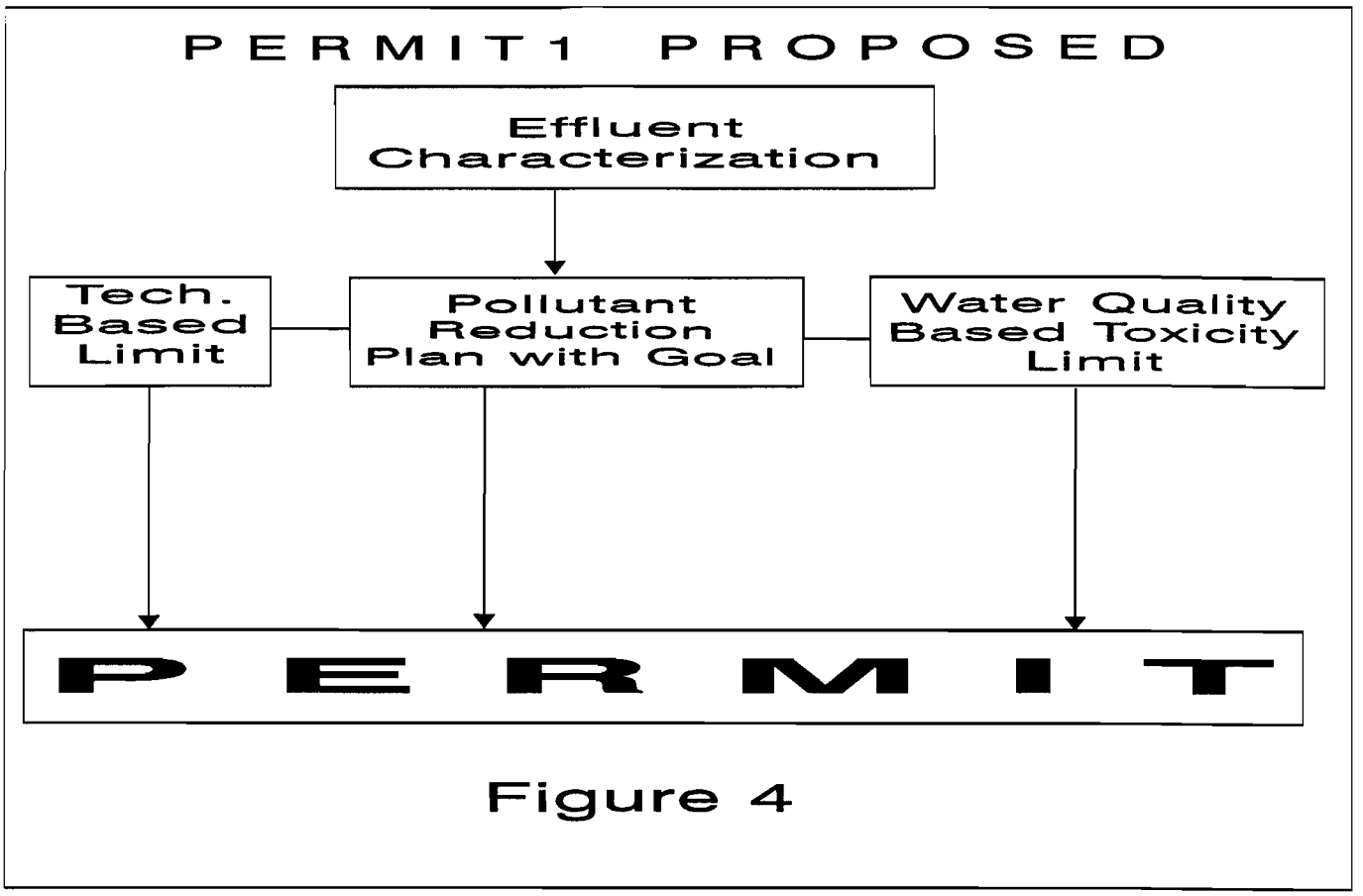

Figure 4

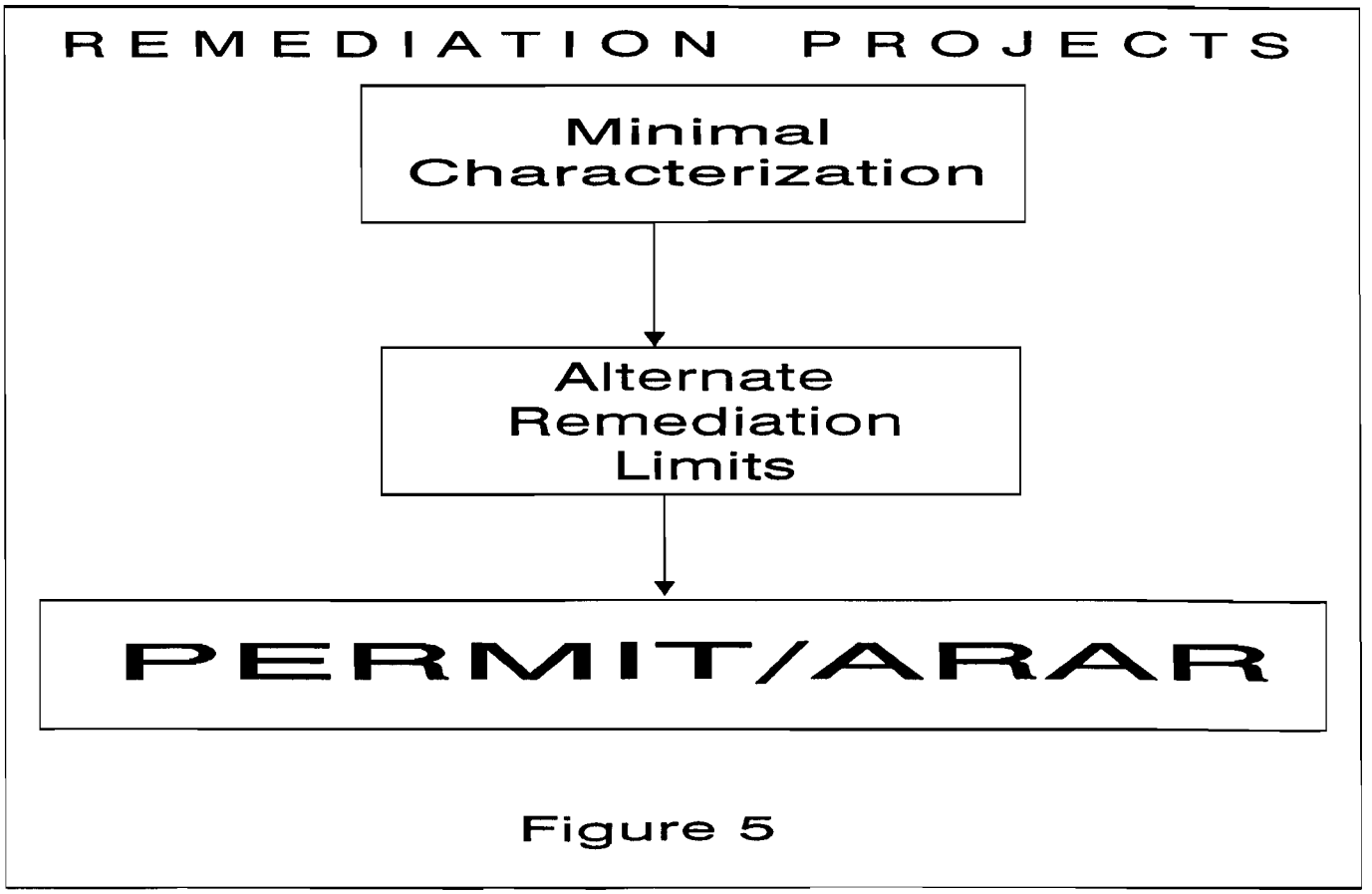

Figure 5

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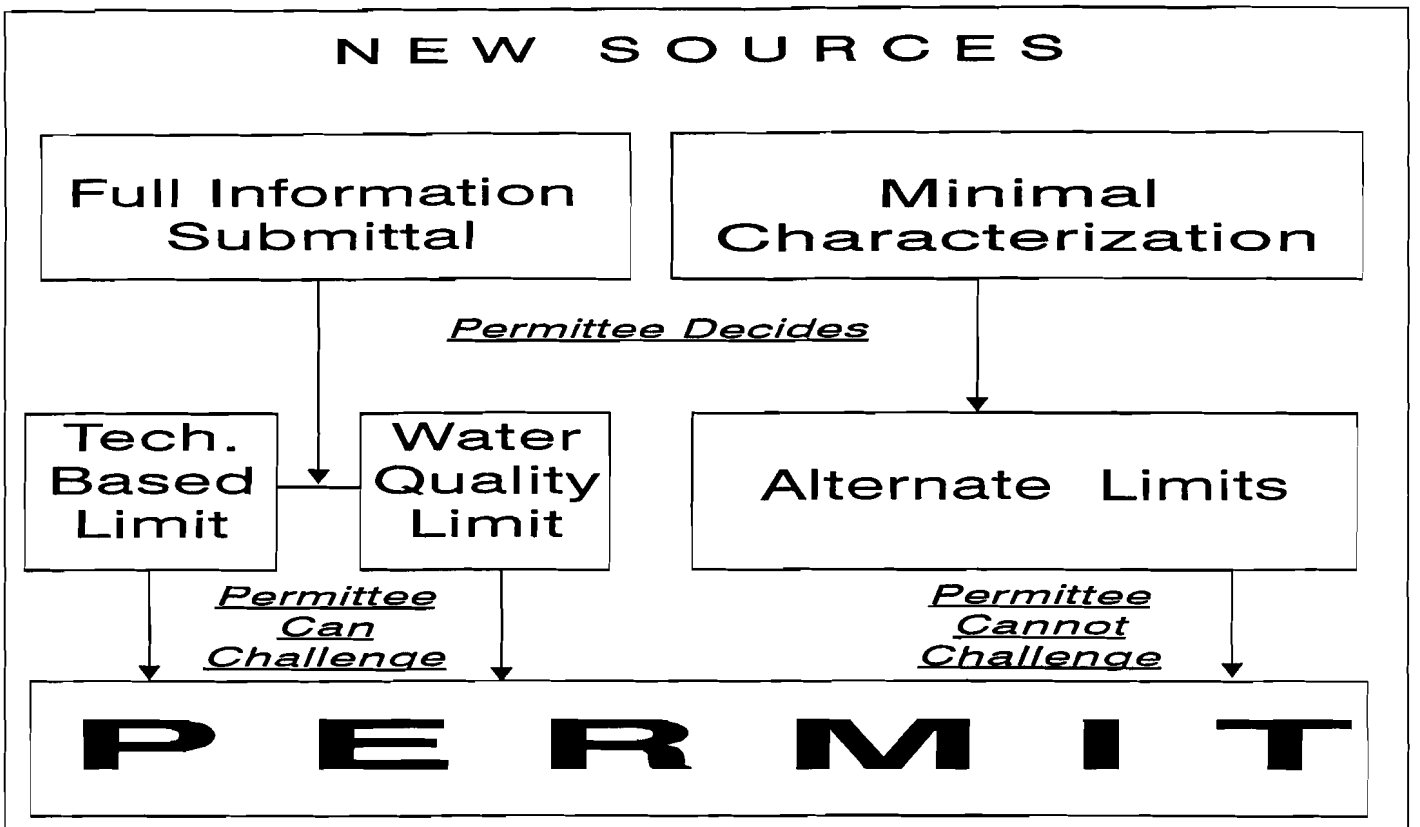

Figure 6

to implement it, are critical to ensure that current water quality and any improvements are not lost, except in narrowly defined cases.

The Department is considering an antidegradation policy which is anticipated to be more rational and more easily understood and implemented than New Jersey's adopted antidegradation policy found at N.J.A.C. 7:9-4.5(d). The draft policy states the general conditions to be followed with regard to maintenance and protection of water quality in New Jersey. It is modeled after an antidegradation policy developed for the Great Lakes Water Quality Initiative (GLWQI) which is only part of a more comprehensive management plan for the Great Lakes developed as part of the Great Lakes Water Quality Agreement between the U.S. and Canada. USEPA is treating the GLWQI guidance as equivalent to Federal regulation and is making it mandatory for states in the Great Lakes Basin to adopt consistent requirements into state water quality regulations. USEPA is also advising other states outside of the Great Lakes Basin to view this antidegradation policy as a model for developing or revising their antidegradation policies. The Department feels that a modified version of the GLWQI antidegradation policy, specifically tailored for use in New Jersey, may be appropriate for incorporation into the SWQS.

The draft New Jersey antidegradation policy is restrictive regarding lowering water quality in waters where the ambient water quality for a pollutant or pollutant parameter is not better than a water quality criterion found in the SWQS at N.J.A.C. 7:9-4.14(c) or (d), the tables listing the chemical specific criteria, and prohibits the lowering of water quality for that pollutant or pollutant parameter in such impaired waters. The draft policy also takes into consideration the unique water chemistry present in Pinelands waters, designated as Outstanding National Resource Waters, and the need to protect and maintain those characteristics. Since it is based on the TMDL/WLA process, it is intended to be implemented along with the watershed approach as TMDLs are calculated for individual pollutants on a waterbody. Surface water classifications (for example, FW2-TP, PL, SE2, and SC) and antidegradation categories (that is, FW1, PL, C1, and C2) currently found in the SWQS are retained in the draft policy. A flow chart shown in Figure 7 has also been drafted. The Department intends to use this flow chart, or a modified version, as an aid in deciding how the antidegradation policy applies to individual action requests submitted to the Department. The Department requests comments on whether this flow chart is easy to follow and suggestions for possible improvements. The Department is also soliciting input on whether the antidegradation policy, as drafted, could be made more simple or flexible for the implementation of NJPDES permits.

As currently drafted, the antidegradation policy is divided into four sections. Please refer to Figure 7 for better understanding the possible clarifications and changes in the antidegradation policy. The first section simply contains a statement of New Jersey's general antidegradation policy. Section 2, the implementation section, defines the procedures to be used by the Department to implement the general policy. Section 3 lists the information that an applicant must submit as a part of an application to significantly lower water quality. Finally, the decision section outlines procedures and criteria to be used by the Department to evaluate an application to significantly lower water quality and to arrive at an appropriate decision. Sections 2-4, mentioned above, are discussed in more detail below.

In section 2 of the draft policy, certain actions are anticipated to be specifically exempted from needing a justification to lower water quality for a high quality waterbody. These exemptions are usually temporary in nature and include such actions as those listed below.

In Category One or Category Two waterbodies:

- Remedial actions which have the effect of improving surface water quality (reducing net loading of pollutants);
- Response actions undertaken to alleviate a release into the environment of hazardous substances posing danger to public health and welfare;
- Unavoidable bypasses; and
- Bank stabilization projects, establishment of buffer zones, scientific study or research, emergency repair to existing roads, bridges and dams.

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In Outstanding National Resource Waters:

—Response actions undertaken to alleviate a release into the environment of hazardous substances posing danger to public health and welfare;
—Water control activities for the operation of cranberry bogs or blueberry production;
—Unavoidable bypasses; and
—Bank stabilization projects, establishment of buffer zones, scientific study or research, emergency repair to existing roads, bridges and dams.

The Department seeks input as to whether these activities should be exempted and whether any additional activities should be included for exemption.

The Department is also anticipating allowing minor changes in water quality in Category One and Two waterbodies without submission to the Department of a justification to lower water quality. As drafted, minor changes in water quality use less than 10 percent of the unused assimilative **(allocable)** capacity for a pollutant, do not involve a Chemical of Concern, and no more than 90 percent of the total assimilative capacity for the pollutant is used for all actions, both point source and nonpoint source, on the waterbody. Chemicals of Concern should be those chemicals that are highly persistent or bioaccumulative in the aquatic environment.

Currently, New Jersey's antidegradation policy allows no measurable change (including calculable or predicted changes) in water quality for Category One waterbodies. Category Two water quality characteristics that are better than or equal to the water quality standards are to be maintained within a range of quality that shall protect the existing/designated uses. These have proved difficult and confusing to implement. It was felt that more easily quantifiable measures of change in water quality should be incorporated into New Jersey's antidegradation policy. In order to have a quantifiable measurement of change, the Department is considering proposing that a format such as "actions in Category One waterbodies causing or contributing to cumulative changes greater than XX percent of the total assimilative capacity for a pollutant shall be prohibited. The Department would like to solicit input on what percentage of the unused assimilative capacity the public thinks is appropriate to allow for a minor change in water quality on a Category One waterbody. Similarly, what percentage is a reasonable and sufficiently protective figure to use to protect Category Two waterbodies? These percentages should reflect the levels of protection that the public desires for Category One and Category Two waterbodies. The definitions for Category One and Category Two waterbodies may be found at N.J.A.C. 7:9-4.4.

Total assimilative capacity is defined as the product of the applicable water quality criterion times the critical low flow, or designated mixing volume in the case of lakes, expressed as a mass loading rate. Total allocable capacity is defined as the total assimilative capacity minus any reserves. It is the amount that may be allocated to point and nonpoint sources.

The Department would like to incorporate lists of waterbody-specific Chemicals of Concern that would be regulated more stringently than other pollutants through the antidegradation policy because of existing or reasonable potential for water quality problems on a particular waterbody. The preliminary draft policy restricts the discharge of Chemicals of Concern to existing effluent quality. The Department intends to gather data concerning such Chemicals of Concern during monitoring of each watershed once the watershed approach to pollution control is implemented. However, the Department would also like to solicit any data currently available which indicate that certain pollutants are currently exceeding criteria or have the reasonable potential to do so for particular waterbodies that the Department should list as a Chemical of Concern for that waterbody.

Section 3 contains guidelines to be followed by any applicant seeking to significantly lower water quality and information that must be submitted to the Department in order to support such a justification to lower water quality. As drafted, the Department anticipates that the justification shall contain:

1. A pollution prevention alternatives analysis which identifies any prudent and feasible pollution prevention alternatives and techniques that are available to the applicant that would eliminate or significantly reduce the extent of the lowering of water quality. Alternatives to be evaluated include:

(1) Substitution of Chemicals of Concern with nonbioaccumulative and/or nontoxic substances;
(2) Application of water conservation methods;
(3) Waste reductions within the process stream;
(4) Recycle/reuse of waste products, either liquid, solid, or gaseous;
(5) Manufacturing process operational changes;
(6) Reductions at POTWs that can be achieved through the pretreatment program.

2. Alternative or enhanced treatment techniques that are available to the applicant that would cause the anticipated significant lowering of water quality to become a minor change in water quality. The evaluation shall define the total capital and operation costs associated with such alternative or enhanced treatment techniques as well as the total capital and operational costs associated with pollution control facilities necessary to achieve Federal effluent guidelines-based or water quality-based limitations. The applicant shall calculate the ratio of the costs of alternative/enhancement treatment techniques to the cost of pollution control facilities necessary to achieve Federal or water quality-based effluent limitations. If the ratio is less than or equal to 1.1, the applicant shall not be required to provide the information specified in 3 below.

The Department seeks input on whether the selected ratio of 1.1 is appropriate. Would another ratio or measure be better suited to determine whether or not alternate or enhanced treatment techniques should be employed?

3. An important social or economic development analysis which identifies the social or economic developments to the area in which the waters are located that will be foregone if the significant lowering of water quality is not allowed. At least two of the following factors must apply before the social and/or economic development can be considered:

(1) Increase in the number of jobs;
(2) Increase in personal income or wages (for citizens in the area, how much increase and/or how many citizens?);
(3) Reduction in the unemployment rate or other social service expenses;
(4) Increase in tax revenues; or
(5) Provision of necessary social services.

Should the Department consider factors other than the five listed above? Are the above five factors appropriate? Is it appropriate that at least two factors apply? Should more than two factors apply?

4. Special Provision for Remedial Actions. Entities proposing remedial actions may submit information to the Department that demonstrates that the cleanup utilizes the Best Demonstrated Commercially Available Technology, pollution prevention and treatment techniques, and minimizes the necessary lowering of water quality, in lieu of the information above.

Is it appropriate to treat remedial actions in this manner? It is possible that remedial actions will use the entire allocable capacity for a particular pollutant on a waterbody, or portion thereof. This could be interpreted to mean that existing dischargers, currently permitted to discharge that pollutant, would no longer be able to discharge that pollutant. No new dischargers, anticipating to discharge that pollutant, would be permitted to do so on that waterbody or segment. How should the Department handle such situations? How could this issue be equitably addressed?

5. The Department also anticipates requiring applicants to submit an analysis of potential environmental damages that could result from allowing the significant lowering of water quality as well as any mitigating measures proposed by applicants that would have a positive effect on the water quality. What level of detail should be required for this analysis and how should the mitigation approaches be evaluated and considered?

Once the Department determines that the information provided by the applicant is administratively complete, the applicant would public notice the submitted request to justify the lowering of water quality. This public notice would include a statement of New Jersey's antidegradation policy, discussion of the applicability to the proposed action, statement concerning the significance of expected water quality impacts and effects on existing and designated uses, statement concerning the necessity of allowing lower water quality to accommodate important economic or social development, and identify all parties involved. A public hearing would be held where sufficient public interest exists. The Department would use the information submitted by the applicant and any additional information submitted by the public to determine whether or not the proposed significant lowering of water quality is justified. At this time, the Department is considering the following process to reach a decision:

1. Remedial actions would be required to implement the Best Demonstrated Commercially Available Technology.

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FIGURE 7: DRAFT NEW JERSEY ANTIDEGRADATION FLOW CHART (Part A)

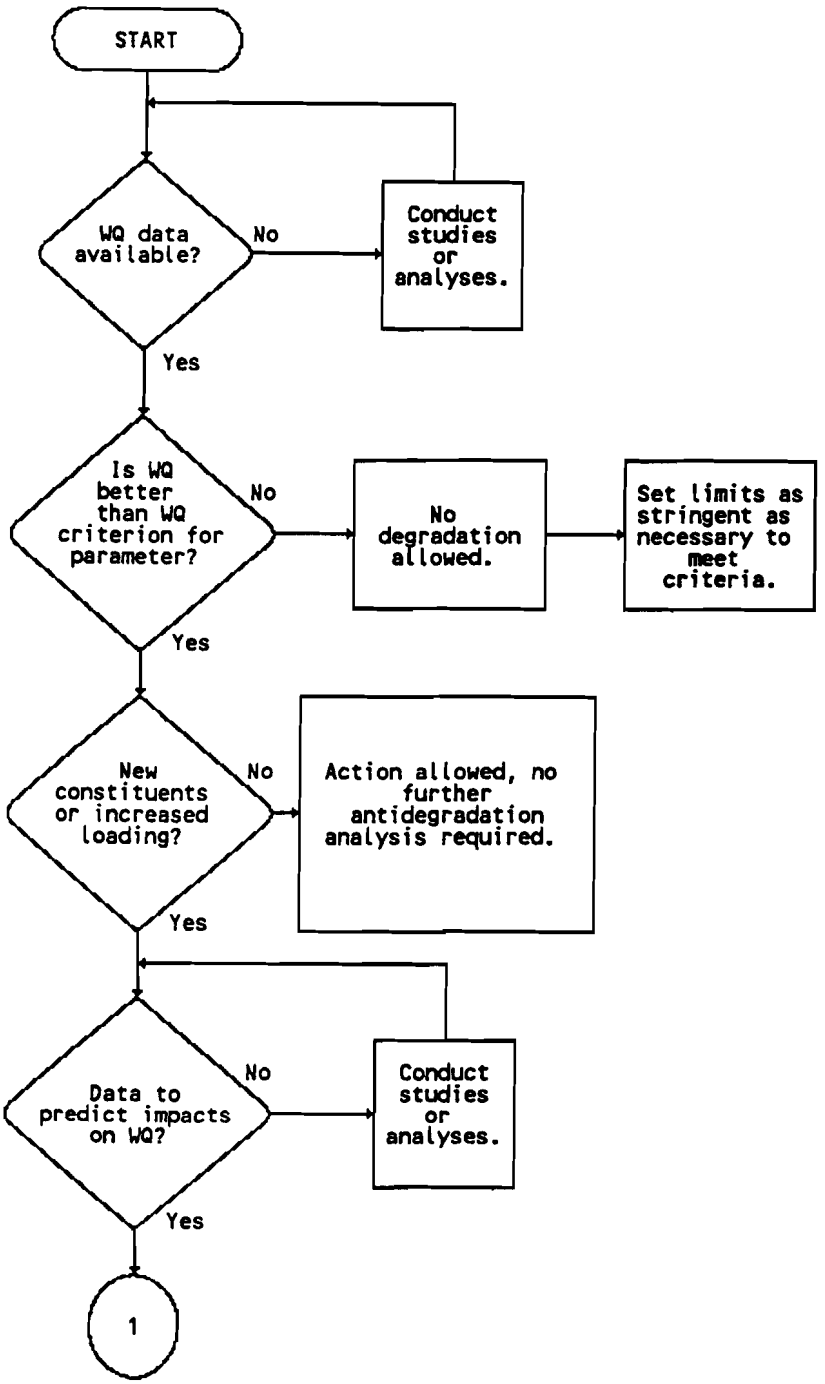

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FIGURE 7: DRAFT NEW JERSEY ANTIDEGRADATION FLOW CHART (Part B)

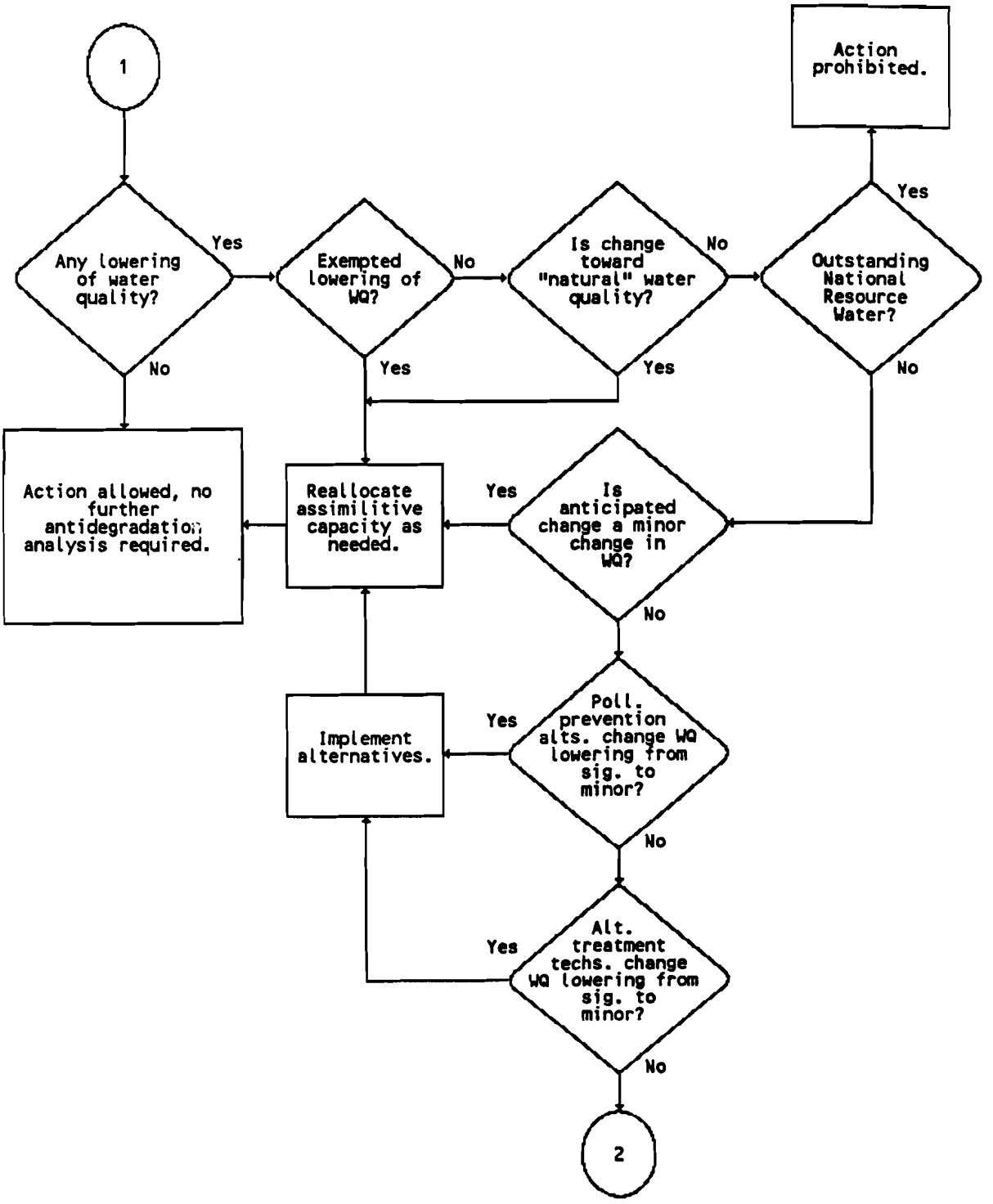

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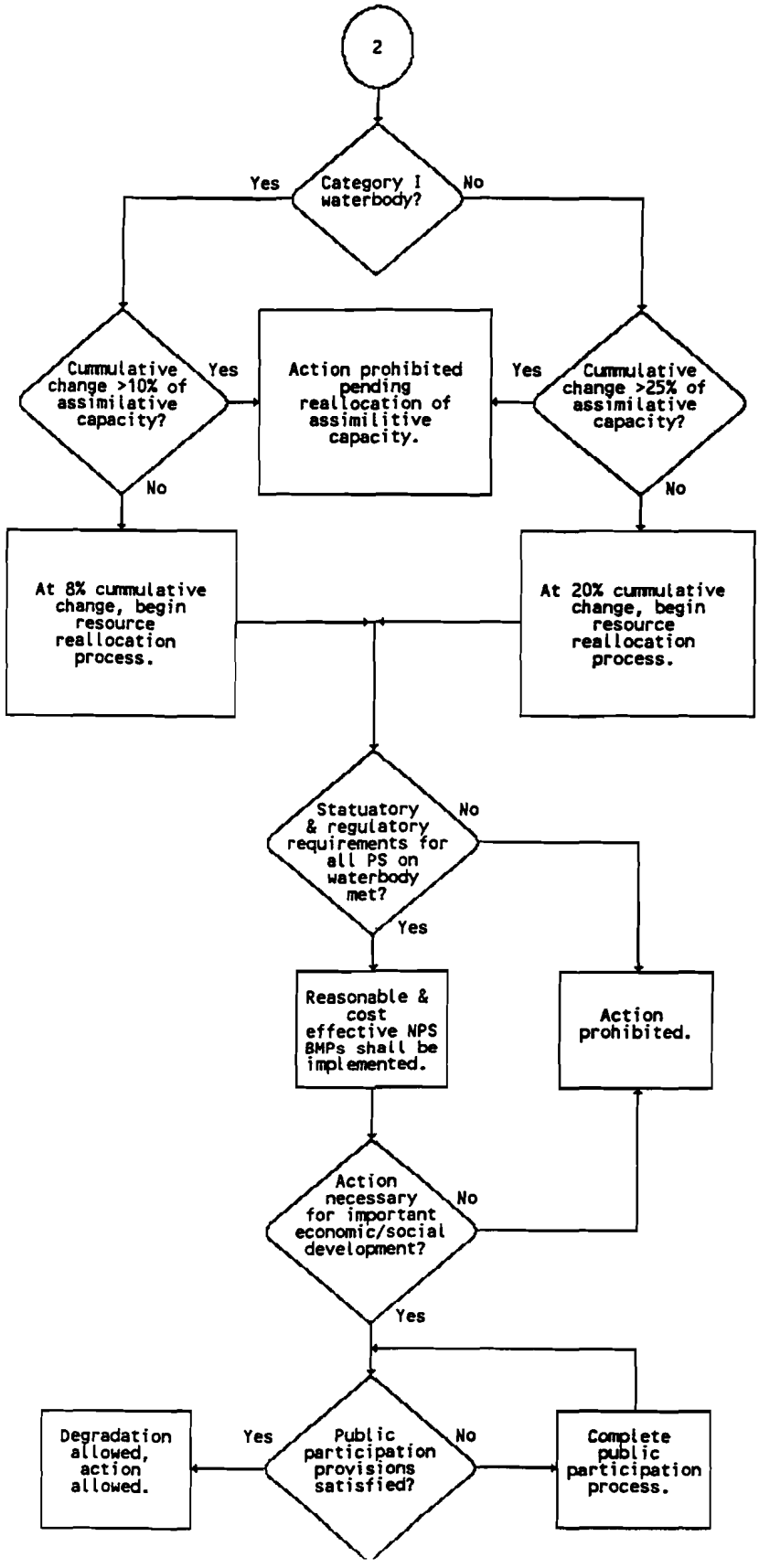
FIGURE 7: DRAFT NEW JERSEY ANTIDEGRADATION FLOW CHART (Part C)



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2. If prudent and feasible pollution prevention alternatives exist which would significantly reduce or eliminate the lowering of water quality, the Department would either:

—Require implementation of those measures as part of the authorization to lower water quality; or

—The Department would deny the request to significantly lower water quality.

3. In addition, if the cost ratio as outlined in Section 3 above is less than or equal to 1.1, the applicant would have the option to either:

—Implement the alternate or enhanced treatment techniques that would cause the anticipated significant lowering of water quality to become a minor change in water quality; or

—The Department would deny the request to significantly lower water quality.

4. Should the evaluation indicate that some significant lowering of water quality is still necessary to accommodate the proposed action, the Department would consider the social and economic factors associated with the action and the environmental effects of the significant lowering of water quality, including any mitigation proposed by the permittee.

5. Based on this analysis, the Department would determine if the significant lowering of water quality should be allowed. The Department would provide public notice of its decision and the factors considered in reaching that decision.

B. Variance Procedures

Currently, N.J.A.C. 7:9-4.8 and 4.9 establish procedures for modifying water quality-based effluent limitations for discharges to Category One and Category Two waters. However, in its November 1990 report entitled "National Assessment of State Variance Procedures," USEPA indicated that New Jersey's variance procedures should focus on variances to the SWQS criteria and not on permit limitations. USEPA's general guidance to states on variances goes further to state that each individual variance must be promulgated as part of the SWQS, subject to public review, based on a demonstration that meeting the criterion would cause widespread economic and social impact, limited to three years, and reviewed specifically for approval (not part of an overall statewide variance.) In 1985 the USEPA's Office of General Counsel provided additional guidance that a variance could also be granted on any factor specified in 40 CFR 131.10(g) for removal of a use from a waterbody, these being:

1) Naturally occurring pollutant concentrations prevent the attainment of the use; or

2) Natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating state water conservation requirements to enable uses to be met; or

3) Human caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place; or

4) Dams, diversions or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the waterbody to its original condition or to operate such modification in a way that would result in the attainment of the use; or

5) Physical conditions related to the natural features of the waterbody, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and the like, unrelated to water quality, preclude attainment of aquatic life protection uses; or

6) Controls more stringent than those required by sections 301(b) and 306 of the Act would result in substantial and widespread economic and social impact.

Review of various state SWQS revealed that five states currently have the specific ability to grant variances from SWQS based on technological infeasibility of the criteria. Michigan and Minnesota are able to grant variances based on treatment infeasibility while Delaware, Pennsylvania, and Florida are able to grant variances based on detection infeasibility. In its November 1990 review of these variances procedures, USEPA did not cite the ability to grant variances based on these technological infeasibilities as inconsistent with their view of variance procedures.

Problem

New Jersey's variance procedures need to be made consistent with USEPA's guidance. Problems exist for many dischargers of metals (that is, Pb, Cu, Zn and possibly Cd). Specifically, water quality-based permit limits may be lower than levels that current technology is able to achieve.

Options

One option is to revise the variance section to reflect variances to the surface water quality criteria, limit the variances to five years instead of three years (to coincide with duration of a permit), allow for group submittals of variance requests using a combined public hearing and public notice process incorporating many variances at once, specifically include technological infeasibility due to lack of treatment technology as a reason for requesting/granting a variance in addition to the six reasons cited above for removing a use. A permittee should be required to develop site-specific criteria before requesting a variance whenever possible.

Another option is to limit variances to three years (as per USEPA), but not allow for variances based on technological infeasibility. Relief for technological infeasibility could be granted based on an inclusion in the NJPDES regulations specifically referring to and listing permit reporting levels (PRLs) when water quality-based effluent limitations are so low as to not be reliably detectable or treatable. It is unclear whether or not the Department has the authority to use PRLs based on treatability like the authority that exists for detectability. This option would be significantly more efficient for the Department. Since PRLs would not be considered technological variances, there would be no need to include each PRL for each discharger as a part of the SWQS.

Which option is more practical for use in New Jersey? Would a combination of these two options be more appropriate for granting variances? Has the Department overlooked any other alternatives for granting variances?

C. Development of Site Specific Criteria

The Department generally uses adopted State water quality criteria or the USEPA 304(a) criteria when developing NJPDES permit limitations. The national aquatic life protection criteria may be underprotective or overprotective of resident New Jersey species at a particular site because 1) the species at the site are more or less sensitive than those used to develop the national criteria; or 2) the physical and/or chemical characteristics of the water at the site alter the biological availability and/or toxicity of the pollutant. It is therefore appropriate that guidelines for developing site-specific criteria be made available and referred to in the SWQS. An applicant wishing site-specific criteria would be required to submit the results of the study along with the permit application to the Department. These site-specific criteria may be more protective, less protective or as equally protective as the USEPA 304(a) aquatic life protection criteria.

The Department is aware of potential complicating factors involved in implementing the USEPA 304(a) metals criteria. Since the toxicity of some metals is related to the concentration of metal-binding particulates, it is possible that the national criteria **may** be overprotective in some waters. It is also possible that the criteria as currently expressed are adequately protective or underprotective. Toxicity tests that are the basis for the national criteria are usually conducted in untreated or slightly treated water from an uncontaminated source. Since such water is usually lower in particulate matter than most ambient waters, the toxicity tests are more likely to overstate than understate the ambient toxicity of metals that interact with particulate matter or dissolved organic matter. By conducting appropriate toxicity tests and calculating site-specific criteria, criteria that more accurately reflect the sensitivity of resident species and local water conditions may be developed for use in calculating final water quality-based effluent limitations.

The Department is considering a proposal that the development of site-specific criteria for New Jersey shall conform with the methods outlined in Water Quality Standards Handbook, USEPA Office of Water, December 1983; Guidelines for Deriving Numerical Aquatic Site-Specific Water Quality Criteria by Modifying National Criteria (EPA-600/3-84-099), Carlson et al. October 1984; and Interim Guidance on Interpretation of Aquatic Life Criteria for Metals, USEPA Office of Science and Technology, May 1992. These documents recommend using a water-effect ratio when calculating site-specific criteria for metals. The water-effect ratio reflects differences in water chemistry and is affected not only by speciation among the various dissolved and particulate forms of metals, but also by additive, synergistic, and antagonistic effects of other materials in the affected site waters. It involves running toxicity tests with at least two sensitive indigenous species, measuring acute (and possibly chronic) toxicity values for the pollutant using both the local receiving water and laboratory toxicity testing water as the sources of toxicity test dilution water. A water-effect ratio is then calculated dividing the acute (or chronic) value in site water by the acute (or chronic) value in laboratory waters.

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Does this method seem appropriate for calculating site-specific criteria for New Jersey's waters? Are there any better methods for calculating site-specific criteria? Should the Department conduct the site-specific criteria testing and bill permittees requesting such criteria? Or, should any permittee requesting that permit limitations be calculated using site-specific criteria be required to conduct all necessary testing?

D. Ambient Ammonia Criteria Specific for New Jersey

The Department has adopted ambient criteria for ammonia at N.J.A.C. 7:9-4.14(c)14ii. These criteria are as follows:

Ammonia, un-ionized (24 hr. avg. as ug/L)	(1) 20(a)	FW2-TP, FW2-TM
	(2) 50(a)	FW2-NT
	(3) 0.1 of acute definitive LC50 or EC50 (a)	All SE, SC

((a) aquatic life protection-based criteria)

During the last two Triennial Reviews of the SWQS, the Department received comments from the public concerning these ammonia criteria used to calculate NJPDES permit limitations. The commenters indicated that they believed that the ammonia criteria were outdated. Furthermore, the commenters indicated that the USEPA 304(a) ammonia criteria were also inappropriate for use in New Jersey because they were not developed using resident New Jersey species. The Department then hired a contractor to determine whether or not adequate aquatic toxicity data were available to calculate New Jersey-specific ambient ammonia criteria and to do so if appropriate data were available. The contractor determined that a sufficient data base existed to calculate New Jersey-specific criteria. Criteria were then calculated for the different surface water classifications in the State. In addition, waterbodies anticipated to be out of compliance with the New Jersey-specific ammonia criteria were identified and costs needed to bring these waterbodies into compliance were estimated. The criteria developed by the contractor take into consideration protection of New Jersey aquatic biota.

The New Jersey-specific ambient ammonia criteria developed as described above are as follows:

Recommended criterion maximum concentrations (CMC) in mg NH3-N/L.

FW2-TP and FW2-TM	$CMC = 0.182 * 10^{0.026(Temp-20) + 0.46(pH-7.80)}$ pH <8.30
	$CMC = 0.182 * 10^{0.026(Temp-20) + 0.46(8.30-7.80)}$ pH ≥8.30
FW2-NT	$CMC = 0.184 * 10^{0.026(Temp-20) + 0.46(pH-7.80)}$ pH <8.30
	$CMC = 0.184 * 10^{0.026(Temp-20) + 0.46(8.30-7.80)}$ pH ≥8.30
PL	$CMC = 0.239 * 10^{0.026(Temp-20) + 0.46(pH-7.80)}$ pH <8.30
	$CMC = 0.239 * 10^{0.026(Temp-20) + 0.46(8.30-7.80)}$ pH ≥8.30
All SE	CMC = 0.106
SC	CMC = 0.092

Recommended criterion continuous concentrations (CCC) in mg NH3 – N/L.

FW2-TP and FW2-TM	$CCC = 0.073 * 10^{0.026(Temp-20) + 0.46(pH-7.80)}$ pH < 8.30
	$CCC = 0.073 * 10^{0.026(Temp-20) + 0.46(8.30-7.80)}$ pH ≥8.30
FW2-NT	$CCC = 0.065 * 10^{0.026(Temp-20) + 0.46(pH-7.80)}$ pH <8.30
	$CCC = 0.065 * 10^{0.026(Temp-20) + 0.46(8.30-7.80)}$ pH ≥8.30
PL	$CCC = 0.085 * 10^{0.026(Temp-20) + 0.46(pH-7.80)}$ pH <8.30
	$CCC = 0.085 * 10^{0.026(Temp-20) + 0.46(8.30-7.80)}$ pH ≥8.30
All SE	CCC = 0.030
SC	CCC = 0.027

Comments on the ammonia criteria presented above are requested.

The Department is aware that increased ambient ammonia levels may interfere with disinfection at potable water treatment plants. Therefore, comments and data are specifically solicited at this time on ambient ammonia concentrations that cause such interference. Depending on the comments and type and quality of data submitted, the Department may be able to develop ambient ammonia criteria based on protection of drinking water supplies and necessary treatment.

E. Mixing Zone Analysis

The mixing zone concept applies in cases where an effluent discharge does not achieve rapid and complete mixing with the receiving waterbody. The physical mixing zone is the area where the effluent discharge undergoes initial dilution due to momentum and buoyancy and extends to cover secondary mixing caused by ambient conditions. The regulatory mixing zone is the area where water quality criteria may be exceeded under certain conditions. Mixing zones are used in the wasteload allocation procedures for developing site-specific water quality-based effluent limits in NJPDES/DSW permits.

Most early mixing zone recommendations focused on zones of passage to assure no adverse effects on migration or passive drifting of aquatic species. Later recommendations included consideration of instream community effects and the interaction of adjacent mixing zones. In the broadest sense, the zone surrounding, or downstream from a discharge location is an "allocated impact zone" where numeric water quality can be exceeded as long as acutely toxic conditions are prevented.

The promulgated SWQS allow the Department to assign mixing zones on a case-by-case basis (N.J.A.C. 7:9-4.5(c)4). The SWQS provide a few brief narrative requirements regarding the size of acceptable mixing zones. However, there are no numeric constraints given, nor are there any procedures for determining numeric mixing zone dimensions. The Department has been using a mixing zone procedure for tidal waters and approximately follows the 1985 EPA TSD. For nontidal waters, complete mix has usually been assumed, even when complete mix is unlikely and with the knowledge that this assumption fails to provide any zone of passage. As a result, the entire stream assimilative capacity could be given to each discharger.

The Department expects to define the exact dimensions of the mixing zone in regulation resulting in a consistent procedure that dischargers would know in advance. The regulations will also state under what conditions and for which parameters a mixing zone would be denied. Dischargers could be given the option of using a simplified analysis, which would be likely to result in slightly more conservative WLAs in many situations, or completing a more detailed plume model and dye verification study. In addition, many dischargers may elect to alter the physical construction of the outfall to facilitate more complete mixing. The physical changes in the outfall could include submerging or moving an outfall as well as installation of diffusers.

The mixing zone concept is related to the development of site-specific wasteload allocations, which are based primarily on the effective mixing at the edge of the regulatory mixing zone. The Department anticipates codifying the mixing zones policy in both the SWQS and the NJPDES regulations.

Specific Issues for Comment:

1. How large should the maximum regulatory mixing zone be? How much of the receiving water should be used for a zone of passage?
2. Comments are invited on the appropriateness of codifying the mixing zone policy in separate regulations.

F. Definition of Critical Conditions

The definition of critical conditions is related to the development of wasteload allocations, which are based on the water quality studies completed for any specific waterbody. However, since the definition of critical conditions is also related to the classification of the waterbody, the attainment of the designated uses, and the attainment of instream criteria, it is more properly addressed through the SWQS.

The Department is considering establishing a set of default critical conditions that would be applicable for steady state water quality studies when predictions must be made regarding water quality impacts. The critical conditions being considered are listed below for stream flow, effluent flow, temperature, pH, alkalinity, hardness, and upstream concentrations. Possible requirements for selection of reaction coefficients and design conditions applicable to dilution studies are also included.

ALL PARAMETERS:

STREAM FLOW:	As defined in SWQS for stream design flows 7Q10, 1Q10, 30Q5, harmonic mean flow
EFFLUENT FLOW:	Design flow (municipal) except for acute criteria, where adjusted 95 percentile flow used Maximum anticipated dry weather flow (industrial)

DISSOLVED OXYGEN, NUTRIENTS, AMMONIA:

SUMMER	
TEMPERATURE:	25°C, or upper 95 percent confidence interval around mean for acceptable data, whichever is higher
WINTER	
TEMPERATURE:	15°C, or upper 95 percent confidence interval around mean for acceptable data, whichever is higher

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ALKALINITY:	50 mg/L, except PL waters, or lower 95 percent confidence interval around mean for acceptable data, whichever is lower 0 mg/L (PL waters), or lower 95 percent confidence interval around mean for acceptable data, whichever is lower
SUMMER pH:	Upper 95 percent confidence interval around the mean for acceptable data collected during July, August, September
WINTER pH:	Upper 95 percent confidence interval around the mean for acceptable data collected during November

METALS DEPENDENT ON HARDNESS:

HARDNESS:	50 mg/L, except PL waters, or lower 95 percent confidence interval around mean for acceptable data, whichever is lower 0 mg/L (PL waters), or lower 95 percent confidence interval around mean for acceptable data, whichever is lower

UPSTREAM PARAMETER CONCENTRATION:

DISSOLVED OXYGEN:	Lower 95 percent confidence interval around mean for acceptable data collected during critical flow period
OTHER PARAMETERS:	Upper 95 percent confidence interval around mean for acceptable data collected during critical flow period

REACTION COEFFICIENTS:

Must be comparable in magnitude to other studies of streams with similar flow, slope, depth, temperature, degree of shading, and similar physical/chemical characteristics.

DILUTION STUDIES:

- For tidal waterbodies, lowest 10th percentile ambient current conditions;
- For unidirectional waterbodies, stream design flow(s), or portion thereof in accordance with mixing zone analysis, applicable to the respective criteria;
- For stratified waters, highest 10th percentile ambient density stratification;
- For acute criteria, highest 10th percentile effluent flow. For municipal facilities this flow would be calculated using historical data and then extrapolated to apply to design flows. For industrial facilities, this flow would be calculated using historical data.
- For all other criteria, effluent design flow for municipal facilities and average long term flow for industrial facilities.
- Any other unusual or site-specific conditions that could decrease the effective dilution, including obstructions.
- Any more restrictive off design conditions.

The Department is seeking specific public input on the establishment of default critical conditions for water quality studies. Input is sought on the specific conditions to be included as well as the methods and procedures to be used in determining applicable critical conditions.

IV. Administrative Issues and Reform

The Department is proposing major administrative reforms of the NJPDES rules, including renaming the permit. In proposing the new rules, the Department is working on a "zero-based" approach with the following objectives.

—Construct the rules so that they flow in a more logical sequence;
—Make the rules easier to understand;
—Identify regulatory requirements;
—Streamline the permitting process; and
—Provide more flexibility to the Department in administering the rules.

The revisions can be broken down into the following major areas:

A. Organization

a) The regulations are being drafted with the organizational intent to:

1) Initially provide the information needed to determine whether a permit is needed or not;

2) List the requirements and procedures applicable to all types of permits; and

3) List the requirements for specific types of discharges in subsequent subchapters.

B. Ease of Understanding

a) Related to organization, the Department also proposes to follow the EPA regulatory sequence and nomenclature, where possible, for ease in comparing both sets of regulations. This will also have the benefit of allowing the Department and the public to more easily identify differences in the regulations as compared to minimum federal requirements and to identify areas where regulatory changes may be needed due to federal revisions.

b) The regulations will list the sequential procedures in obtaining permission to actually discharge. Essentially this will advise a person of the steps needed to be performed before an application is submitted (that is, consistency with an areawide plan or plan amendment) and after a NJPDES permit is issued (that is, treatment works approval). As an additional aid, the regulations will also have flow charts to help guide an applicant through the permitting process.

c) Requirements concerning the information that the Department needs to initiate certain actions will be listed by specific permit action category, followed by the criteria the Department would use in its decision making process. For example, in a stay request, it is proposed that a requester submit the following information:

1. The composition of the effluent and its effect, if any, on any irreplaceable environmental resources in the impacted ecosystem(s); and

2. Any technological impediments to either immediate or phased in compliance; and

3. Any irreparable economic harm or any increased cost for compliance. Examples include: the amount of increased user fees for POTW's, increased cost for products or services including the potential effect on a permittee's competitiveness, or the percentage increase of the overall operating budget.

Following this will be the criteria the Department will use in deciding to grant the stay request which will be a demonstration that:

1. Immediate or phased in compliance is not required to preserve irreplaceable environmental resources; and

2. There are technological impediments to immediate or phased in compliance; or

3. There will be irreparable economic harm to meet immediate or phased in compliance.

This approach of listing information requirements and the criteria (where the listing of criteria is applicable) for evaluation is intended to reduce the number of requests rejected for wrong or insufficient information. The Department solicits comments on the proposal for stays and other areas, such as permit modification requests, which would be similarly drafted.

d) Application requirements and proper forms needed for the various types of discharges will be listed.

e) The first chapter will include a separate listing of commonly used abbreviations, such as BOD, POTW, or SIU, including the appropriate complete wording.

The Department solicits other comments/suggestions in this area.

C. Flexibility

The regulations will be designed to give the Department more flexibility in their administration. It is proposed that:

a) Permittees/applicants perform some routine and nonroutine actions now done by the Department. It is proposed that where an applicant initiates a permit action or requests to do so, the applicant can serve the permit public notice and set up the public hearing, if needed. Additionally, the Department has already informally offered applicants the option of drafting and submitting the majority of the actual permit content (for example, fact sheet/statement of basis, permit summary table, or proposed effluent limitations) at the time of permit application for Department review, concurrence, and/or modification as appropriate. These concepts are intended to serve the purpose of relieving some of the Department's administrative burden and providing applicants/permittees with the ability to speed up the permitting process.

The Department solicits suggestions/comments on other actions that might be more expeditiously performed by the regulated community.

b) In order to reduce the number of major modifications, the Department is considering expanding the definition of "minor modification"

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to include situations where there will be "no substantial" changes to the permit. The Department solicits comments on how broad the definition of "no substantial" changes should be. Should "no substantial change" be limited to those situations where there is no change of a permit limit or condition? If statutory or regulatory changes enacted after the permit is issued could result in less stringent permit requirements, should those modifications be processed under a short and simple procedure, such as a permit by rule? Should the Department have the ability to grant an automatic stay of a permit condition at the Department's initiative? These options could have the effect of reducing the urgency for drafting what is currently considered to be major permit modifications and could reduce the potential for non-compliance with permit conditions based on a regulation that was modified or eliminated after permit issuance.

D. Consolidation

Where redundant or appropriate, requirements will be combined. Some items that are to be consolidated are:

a) Definitions from other subchapters, regulations, and/or documents will be consolidated and placed in the first subchapter. The Department is consolidating definitions from the current NJPDES regulations, Minimum Discharge Requirements (N.J.A.C. 7:9-5), SWQS, Discharge Monitoring Report manual and applicable Federal regulations. The Department solicits comments on other regulations or documents that the Department should review for incorporation of definitions.

b) Similar requirements will be consolidated and made to apply to all types of discharges where they are common to all. An example of such consolidation is that procedures for new source and existing DSW dischargers currently found in N.J.A.C. 7:14A-7.2, procedures for Discharge Allocation Certificates currently found in N.J.A.C. 7:14A-3.3, and application requirements for a NJPDES permit found both in N.J.A.C. 7:14A-2.1 and 3.2 can be rewritten to appear in only one section. The Department solicits comments on other similar requirements that can be consolidated.

c) Cross referencing, such as in "application for a permit" found in N.J.A.C. 7:14A-7.2, will be reduced to a minimum.

d) Requirements which are placed partially in different subchapters or sections of the regulations, but are applicable to a single discharger (that is, modifications, fact sheets, reporting requirements) will be combined and placed into one section if appropriate to do so. What other requirements can be combined?

e) It is proposed that effluent standards (that is, phosphorus, toxic standards, oil and grease) used as permit effluent limitations and currently found in other subchapters and sets of regulations be placed into one subchapter. This, similar to the definitions, will reduce the need to search other sets of regulations.

f) The Wastewater Discharge Requirements (N.J.A.C. 7:9-5) will be placed in the appropriate sections of the NJPDES regulations and cease to exist as a separate document.

The Department solicits suggestions on other possible areas for consolidation.

E. Updating

The NJPDES regulations have not been revised for several years. Outdated regulations will be eliminated or revised as appropriate to make the regulations current. Some areas to be updated are:

a) Language will be rewritten as appropriate for compliance dates which have passed or which have changed due to federal statutes or regulations or in state statute.

b) The Department proposes to specifically incorporate the federal concept of "secondary treatment" found in 40 CFR 133.100 et seq. in order to provide waivers of percentage removal requirements for those facilities receiving weak influent that is not related to excessive infiltration/inflow or excessive infiltration/inflow and which is not cost effective to remove. The Department solicits on what a cost effective analysis (40 CFR 35.2005(b)(16) should encompass, as well as other conditions that might be applicable to such waivers.

c) The Department proposes to revise the percent removal requirements currently contained in the Minimum Treatment Requirements (N.J.A.C. 7:9-5.8) and is considering other revisions to this regulation. The Department solicits comments on whether the BOD percentage removal requirements should be made 85 percent for all dischargers. The AEA petition also requested that CBOD5 test procedures replace BOD5 test procedures and that CBOD limitations should be eliminated where there are CBOD5 limitations. Are these appropriate actions for the Department to consider?

d) Definitions will be made consistent with the definitions found in other regulations and Department documents (that is, DMR manual).

e) Recently enacted requirements of N.J.S.A. 13:1D-101 et seq. (P.L. 1991, c.421) regarding permit application requirements will be incorporated into the regulations where appropriate.

f) In December 1990, the AEA petitioned the Department and requested various changes to the NJPDES permitting program. Many of AEA's concerns have been addressed in one form or another in this interested party review or through the SWQS proposal process. When the Department readopted N.J.A.C. 7:9 in February of 1991, many additional comments were received. A more detailed discussion of these comments can be found at 23 N.J.R. 406(c). The Department will take final action on all of these concerns when it proposes a final rule. A copy of the AEA petition is available upon request. The following issues are set forth below for public comment:

1. That NJPDES permits no longer contain flow as an effluent limitation. The concern expressed was that permittees could be penalized for permit flow exceedances;

2. That suspended solids limitations should not be established more stringent than Federal technology-based requirements unless it is demonstrated that water quality-based limitations are necessary;

3. That water quality-based effluent limitations for chronic water quality criteria should only be based on a 30-day average rather than on a daily maximum;

4. That permits should include provisions that when a facility is considered a "well operated facility" it should be given a one to five percent range deviation from their effluent limitation before penalties are imposed;

5. That whole effluent toxicity limitations should only be used as an investigatory tool in conjunction with a pretreatment program rather than requiring it as an effluent limitation, and that the Department should reevaluate the relationship between the effluent toxicity standard (LC50-50 percent) and whole effluent toxicity limits;

6. That the Department reevaluate the setting of water quality-based whole effluent chronic toxicity limitations; and

7. That the Department adopt whole effluent chronic methodologies.

The Department solicits suggestions/comments on other areas where updating may be necessary.

F. Streamlining the Permitting Process

The Department wishes to increase the program's environmental effectiveness and to devise other means of increasing the program's efficiency. As a part of this process, the Department proposes to eliminate requirements that are redundant, are more appropriate to be in other regulations or are unnecessarily burdensome to the permitting process. This is anticipated to save otherwise wasted time and effort for both the Department and the applicant/permittee. Some areas under consideration are:

a) The Department proposes to expand on its issuance of general permits and has drafted new general permit language for noncontact cooling water, noncontaminated stormwater, and petroleum cleanups. The Department is also exploring the possibility for issuing general permits for auto dealerships, combined sewer overflow outfalls, and swimming pool discharges. The Department solicits comments and suggestions concerning other areas where the use of general permits may be appropriate.

b) Should "Written Statements of Consent" (formerly known as Endorsements), as a requirement for a NJPDES permit application, be eliminated considering that a Written Statement of Consent is also needed for a Water Quality Management Plan or Amendment and, for a Treatment Works Approval? Is this requirement redundant and therefore unnecessary at the NJPDES application stage? As an alternative the "Endorsements" could be consolidated into one requirement. Municipalities and Sewerage Authorities will continue to receive copies of the Treatment Works Approval(s), the NJPDES permit application and the public notice of the draft permit in order to be kept informed of the proposed project.

c) Move the environmental assessment requirements, except for any stream study requirements, contained in N.J.A.C. 7:14A-10.4 to the planning regulations at N.J.A.C. 7:15. The Department believes that the majority of these requirements are planning issues and would be more appropriately dealt with at the planning stage. In addition, the watershed approach to permitting will help to integrate the planning and permitting activities to the maximum extent possible. The Department is also considering completely eliminating the Discharge Allocation Certificate.

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d) Automatic renewal of certain permits. This procedure is used in New York State where, with the agreement of the permittee, the expiring permit is "rolled over," continuing the current limitations, conditions, monitoring, and reporting requirements. Automatic renewal of the permits would be applicable only where there are no substantial changes at the permitted facility and where the permitted facility will not be affected by any new regulatory requirements. The Department's priority will be to work on those permits where the environmental return for the effort expended is maximized.

e) The Department proposes to allow concurrent review and processing of a Wastewater Quality Management Plan amendment and NJPDES permit application, where requested by the applicant. However, the final NJPDES permit would not be issued until the plan amendment is adopted.

f) The Department is considering whether to allow "short term" discharges, not expected to pose a significant threat to the public or the environment to be regulated under permit-by-rule or general permit. The following activities are being considered for eligibility:

1. Discharges from water distribution systems such as routine and emergency hydrant flushing, overflow of storage tanks and disinfection of storage tanks and water mains.
2. Discharges from well construction and testing such as pump testing, well development/drilling, well testing for quality and quantity.
3. Aquifer storage and recovery such as drinking water injection and withdrawal.
4. Discharges from dewatering for construction/investigation related activities, provided this work is not related to remediation activities.
5. Discharges from water reuse for water conservation efforts.

G. Additional Items

The Clean Harbors and Rivers Task Force has requested that outfalls be clearly marked to facilitate identification of discharge locations on site. The Department is therefore considering requiring all new source dischargers to mark each outfall location with an identifying flag. The Department is also considering requiring all permittees with an existing DSW/NJPDES permit, general permit, or permit by rule, to mark each outfall with an identifying flag as a condition of the permit renewal process.

The Department is considering using the following requirements for outfall markers:

1. The outfall marker must be clearly visible.
2. The outfall flag must be, at a minimum, a visible marker of at least 36 inches in height and 18 inches in length, orange in color (as used by the Division of Fish, Game and Wildlife), and must be weatherproof and permanent.
3. The flag shall display the following information:
1. The name of the facility where the discharge originates;
2. The NJPDES permit number;
3. The NJDEPE hotline telephone number; and
4. The discharge serial number for the outfall.

The Department solicits comments on these suggested requirements.

H. Incorporation of Federal Requirements

As required by 40 CFR 123.25, Requirements for Permitting, the following sections of the Federal regulations will be incorporated into the revisions of the NJPDES regulations: 122.4; 122.5(a) and (b); 122.7(b) and (c); 122.21(a)-(b), (e)-(j), and (l)-(o); 122.22; 122.23; 122.24; 122.25; 122.26; 122.27; 122.28; 122.41; 122.42; 122.43; 122.44; 122.45; 122.46; 122.47(a); 122.48; 122.50; 122.61; 122.62; 122.64; 124.3(a); 124.5(a), (c), (d) and (f); 124.6(a), (c)-(e); 124.8; 124.10(a)1(ii), (a)1(iii), (a)(1)(v), (b)-(e); 124.11; 124.12(a); 124.17(a) and (c); 124.56; 124.57(a); 124.59; 124.62; 40 CFR Part 125, Subparts A, B, C, D, H, I, J, K, and L; 40 CFR Parts 129, 133, subchapter N, and 40 CFR Part 503.

The following sections of the Federal regulations will be incorporated into the revisions of the NJPDES regulations: 125, subpart M; 133.102(d)-(e).

V. Conclusion

The Department formed a separate rule-writing group in June 1992, for the purpose of restructuring and rewriting the NJPDES regulations. That group has prepared this interested party review document as well as a partial and preliminary draft of the regulatory language for changes being considered to the existing rules. The Department would like to acknowledge the efforts of the following rule writing group members: Meredith Lavery; Peter Patterson; Victor Staniec; Flavian Stellerine; and Bonnie Zimmer, and the oversight and advice provided by Narinder Ahuja and Dennis Hart. The Department welcomes all comments and suggestions concerning the issues raised in this document and encourages attendance at the public meeting on February 19, 1993. In addition, Department staff would be willing to meet separately with groups interested in discussing these issues in detail.

HUMAN SERVICES

(a)

DIVISION OF DEVELOPMENTAL DISABILITIES

Access to Client Records and Record Confidentiality Proposed Amendments: N.J.A.C. 10:41-2.3, 2.8 and 2.9

Authorized By: William Waldman, Acting Commissioner, Department of Human Services.

Authority: N.J.S.A. 9:6-8.10a; 30:1-12; 30:4-24.3; and 30:6D-4(f).

Proposal Number: PRN 1993-53.

Submit comments by March 3, 1993 to:
James M. Evanochko
Administrative Practice Officer
Division of Developmental Disabilities
CN 726
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendments to N.J.A.C. 10:41-2, Access to Client Records and Record Confidentiality, will direct the agency to make full disclosure, to appellants, of interoffice memoranda concerning pertinent facts, whether conflicting or supportive of any anticipated actions relating to the health, safety, welfare or habilitative goals of the individuals the agency serves.

The current rules were challenged in the Appellate Division of Superior Court after the Division would not disclose interoffice memoranda, which are considered agency records and protected by confidentiality stated in the current rules (see *Mr. and Mrs. J.E., on behalf of their son, G.E. v. State of New Jersey, Department of Human Services, Division of Developmental Disabilities* (N.J. App. Div., Dkt. No. A-1355-90T1, January 29, 1992)). The Appellate Division ruled in favor of the appellant and found that the matter required full disclosure of relevant facts and based this in part on N.J.A.C. 1:1-10.1(a). The regulation gives litigants access to all pertinent facts which tend to either support or undermine their position or that of their adversary. "So long as the request is not unduly burdensome or prejudicial, the material sought should be turned over to the requesting party. See N.J.A.C. 1:1-10.1(b)" (*Id.* at 11).

The Court also found that: "In the interest of fairness and in conformity with the Right to Know Law, N.J.S.A. 47:1A-1, the agency may not shroud itself in statutory cloak to evade a full review of its decision-making process" (*Id.*).

The Appellate Division directs the Division to make full disclosure of its information so that parents and/or guardians are fully informed as to the pros and cons of any anticipated action. The Court determined that their ". . . ruling fosters the goal of providing families with the factors which are weighed in important placement decision, thus implementing their understanding and acceptance" (*Id.* at 12).

The decision grants parents and/or guardians the right to examine interoffice communications and, in the event they consider it legally pertinent to the matter, the Court grants them the right to make further application to the Division and, if warranted, request reconsideration based on the ramifications of the undisclosed interoffice memoranda.

The Division is now amending the text at N.J.A.C. 10:41-2.8(b), Public and non-public agency records, and 10:41-2.9(a)6, client records, in response to the Court's concerned as summarized above.

Under the current rule at N.J.A.C. 10:41-2.8(b)1 and memos to file indicating informal agency actions not directly related to the client's medical or IHP goals were considered agency records and protected by confidentiality. N.J.A.C. 10:41-2.8(b)2 and 3 both refer to agency records. Therefore, in order to address the Court's concerns, N.J.A.C. 10:41-2.8(b) 2 and 3 have been combined and revised to specifically outline the internal communication and agency records that cannot be

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protected as confidential under the regulation. The amended text can be read at N.J.A.C. 10:41-2.8(b)2 in the proposal.

Under the current N.J.A.C. 10:41-2.9(a), internal communications were considered agency records, protected by confidentiality and not included in the client's record. In order to address the Court's decision about full disclosure of all pertinent information directly related the client's well-being, N.J.A.C. 10:41-2.9(a)6 has been revised to include internal communications and service plans.

Social Impact

The proposed amendments are intended to protect clients and their legal guardians from improper disclosure of information that relates to their health, safety, welfare or habilitative goals.

The proposed amendments provide guidelines for staff of the Division and agencies under contract with or regulated by the Division as to the agency records that are not considered confidential and would be releasable to the client and/or their legal guardian.

The Division currently serves approximately 14,000 individuals and contracts with approximately 800 private service providers. There has been uncertainty as to what records should be released. The proposed amendments benefit all affected parties by providing clear definitions and specific requirements for release of records.

Economic Impact

The existing rules require that individuals requesting copies of client or agency records pay for the duplication of the records. This requirement is necessary, since staff time and duplication costs to the Division or provider agency can be considerable. There is no anticipated economic impact on the clients or their families beyond the costs of duplication. Fees paid to the Division will be returned to the general fund of the Department of Treasury.

Regulatory Flexibility Analysis

The proposed amendments do not impose any new reporting or recordkeeping requirements on the approximately 800 private service providers, some of which may be classified as small businesses, pursuant to N.J.S.A. 52:14B-16, the Regulatory Flexibility Act. As a result of the inclusion of internal communications as agency records, which providers would be obliged to disclose to litigants, there may be costs incurred that involve securing storage of records and duplication fees of agency records for which agencies are to be reimbursed. However, these costs are expected to be minimal.

Because of an overriding concern for the welfare, safety and health of clients and their families, the Department will not exempt any small businesses from compliance with the proposed amendment.

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

10:41-2.3 Definitions

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

. . .

"Service component" means any developmental center, regional office, day training, adult activity center or [the Bureau of Special Residential Services] **special residential services.**

10:41-2.8 Public and non-public agency records

(a) (No change.)

(b) Agency records which are not public include:

1. Investigation of unusual incidents;

2. Internal communication, **not dealing with client's health, safety, welfare or habilitative goals,** between agency personnel;

[3. Memos to files which indicate informal agency action or which does not directly relate to the client's medical condition or IHP goal;]

[4.]**3.** Internal procedures; and

[5.]**4.** Referrals to other agencies.

10:41-2.9 Client record

(a) The client record contains official information which is required by law. Only court commitments and payments of maintenance shall be considered to be public information. The client record includes***,*** but is not limited to:

1. Eligibility determinations;
2. Applications for services;
3. Medical examinations and reports;
4. Evaluations reports;
5. Individual Habilitation Plan (IHP);
6. Progress notes **and internal communications** relating directly to the client's physical condition [or], IHP goals **or service decisions, for example, placement in a day program;**
7. Communication to legal guardian;
8. Initial reports of unusual incidents; and
9. Social history.

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Long Term Care Services Manual
Elimination of Salary Regions
Proposed Amendments: N.J.A.C. 10:63-3.3 and 3.8

Authorized By: Alan J. Gibbs, Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:4D-6a(4)(a)b(14), 30:4D-7, 7a, b and c; 30:4D-12, N.J. State Appropriations Act, P.L. 1992 c.40, 42 CFR 447.200, 205, 250.

Proposal Number: PRN 1992-538.

Submit written comments by March 3, 1993 to:
Henry W. Hardy, Esq.
Administrative Practice Officer
Division of Medical Assistance and Health Services
CN 712
Trenton, N.J. 08625-0712

The agency proposal follows:

Summary

The proposed amendments eliminate the recognition of geographic compensation differentials in the calculation of nursing facility (NF) rate calculations, as required by the New Jersey Appropriations Act cited above, P.L. 1992 c.40.

These provisions require that the previously utilized salary region differentials, as recalculated annually to recognize variations in salary levels for three types of salary regions (high, medium and low), will no longer be used in nursing facility rate calculation. This results in the elimination of salary region differentials in the calculation of both cost limits (screens) and the individual facility rates.

This change will be put into effect by: (1) the calculation of rates consistent with this provision for those facilities which were to receive new prospective rates effective July 1, 1992 and (2) the appropriate adjustment of current rates for those facilities which were not scheduled to receive a routine prospective rate change as of July 1, 1992. The change(s) occurred on July 1, 1992 in order to comply with the N.J. Appropriations Act cited above.

There were also routine rate adjustments (increases) for most NFs that occurred on July 1, 1992 as part of the normal Medicaid rate setting system.

There is a technical change being made at N.J.A.C. 10:63-3.8(b)2. The word "medical" is being deleted and replaced with the word "median" because this section explains a mathematical process.

There is also a technical change to the text of N.J.A.C. 10:63-3.3(a) in that long term care facilities (LTCFs) are now being identified as nursing facilities (NFs). The reason for this change in state regulations is to conform with the federal statutory definition of a nursing facility. Reference is made to 1919(a) of the Social Security Act, 42 U.S.C. 1396r.

Social Impact

This change in reimbursement will have an indirect impact on Medicaid patients residing in NFs. The indirect impact refers to the fact that the amount of Medicaid reimbursement to a NF may increase or decrease due to a change in the NF's per diem rates. Medicaid patients are not really involved in reimbursement methodology issues because this is a matter between the Division of Medical Assistance and Health Services and the Medicaid NF. The services currently provided by the NF will continue to be available under this change in reimbursement methodology.

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This change will definitely impact on NFs, who will continue to be reimbursed for staffing costs. However, the proposed change eliminates the three types of salary regions and establishes one Statewide rate.

Economic Impact

There should be no economic impact upon Medicaid recipients in NFs. While Medicaid recipients are required to reimburse NFs from their available income, this figure is not affected by the per diem rate paid by the Division to the NF.

There will be no fiscal impact on those NFs (formerly high, medium, or low) which do not have base period costs in excess of the General Services, Nursing, or Maintenance cost limits. For those NF's that were located in former high and medium salary regions and had facility base period costs in excess of the above-noted cost limits, there will be a loss in anticipated revenues. For affected high and medium salary region facilities, lost anticipated revenues will range from zero to a maximum of approximately two percent. For most facilities experiencing a loss in anticipated revenues, rate increases from a routine prospective rate change which became effective July 1, 1992 will offset any decrease in current revenues caused by this change. There will, however, be a few facilities which will experience an actual rate decrease effective July 1, 1992.

For affected low salary region facilities, there will be an increase in anticipated revenues which had base period costs in excess of these relevant cost limits. For affected low salary region facilities, revenue gains will range from zero to approximately three percent.

The rate changes affecting salary region classification have been made to comply with the N.J. Appropriations Act cited above.

The economic impact upon the State has been estimated to be a reduction in New Jersey Medicaid payments (in the aggregate) to nursing facilities by approximately $1,900,000 (Federal-State share combined) in the State Fiscal Year 1993. The impact on a specific NF would depend on the region in which they were located and/or their base period costs.

Regulatory Flexibility Analysis

A regulatory flexibility analysis is required because some NFs may be defined as small businesses, that is, they employ less than 100 full-time employees, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The proposed amendments impose no new reporting, recordkeeping or other compliance requirements. All Medicaid providers are required by law to keep sufficient records to fully disclose the name of the recipient to whom the service was rendered, date the service was rendered, nature and extent of each service rendered and any additional information as may be required by regulation (Reference is made to N.J.S.A. 30:4D-12). In addition, since NFs are reimbursed on a cost-related basis, all NFs are required by both Federal regulations (42 CFR 447.253(d)) and State rules (N.J.A.C. 10:63-1 et seq.) to file annual cost reports with the New Jersey Department of Health to establish a finalized per diem rate. Since this is an existing requirement, NFs are already required to keep sufficient data to indicate salary costs for their personnel and include this data on their cost report. The proposed amendments will not change this requirement as it really impacts upon the method by which the State analyzes the data. Therefore, the proposed amendments do not impose any additional reporting, recordkeeping or other compliance requirements. There are no capital costs associated with this proposal.

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

10:63-3.3 [Compensation equalization and equalized] **Equalized costs**

(a) In order to equitably develop and apply screens [in those functions with employee compensation components,] the following computation will be made:

1. (No change.)

[2. The average hourly compensation (salary and fringe benefits) will be calculated for each LTCF's nursing and general services personnel, exclusive of administrative employees.

3. LTCF's will be grouped geographically using as guidelines:

i. Location factors (metropolitan, surburban, rural, and so forth);

ii. Average actual compensation levels developed from paragraph (a)2 above, adjusted for timing differences among LTCF's base periods.

4. Using the data developed from (a)2 above, regional compensation indices will be developed for each region identified in (a)3 above.

5. Actual compensation costs (including fringes) will be adjusted ("equalized") by these indices to neutralize the effect of geographic compensation differentials. Contracted nursing services also will be equalized. Salary costs reported in the management, administrator, and patient care cost centers other than nursing will not be equalized.]

2. Costs will be equalized to adjust for timing differences among NF's fiscal years.

[6.]**3.** The term "equalized costs" means the net amount of [equalized] compensation costs **(salary and fringe benefits)** plus other expenses, less expense recoveries and nonallowable costs, adjusted for timing differences among [LTCF's] **NF's** fiscal years.

[7.]**4.** For NFs which provide residential, sheltered or domiciliary care, equalized nursing facility costs will be determined by apportioning [equalizing] **equalized** cost in the same ratio as the apportionment of unequalized net expenses.

[8.]**5.** The equalized net routine expenses will be apportioned to residential/sheltered care and [long term] **nursing facility** care in the same ratio as unequalized net routine expenses are apportioned, except in the case of land and building related items (see sections 6 and 10, of this subchapter).

10:63-3.8 Routine patient care expenses

(a) (No change.)

(b) Reasonableness limits for nursing services (RN's, LPN's and other) will be established as follows:

1. (No change.)

2. The percentage of hours paid for vacations, holidays, illness, and so forth (hours paid but not worked) to hours worked, will be ranked in descending order for all proprietary and voluntary [LTCFs] **NFs** in the State. The percentage for the [medical LTCF] **median NF** for each class of facility will be selected as the Statewide norm for the percentage of hours paid but not worked for that class of facility.

3. (No change.)

4. The average equalized hourly compensation rate of each [class] **type** of nurse [by salary region] (see N.J.A.C. 10:63-[3.2]**3.3**) [for proprietary and voluntary LTCF's] will be calculated **for each class of facility**.

i. The average equalized compensation rate for the median [LTCF] **NF** for each class of [LTCF] **NF** will be selected as the norm for the State.

ii. A separate calculation will be made for governmental facilities.

5. The compensation rates for each class of facility will be multiplied by the paid hours developed in (b)3 above for each [class] **(type)** of nurse and aggregated for all three [classes] **types**. [This total will be adjusted for timing differences to each LTCF's base period.]

6. The reasonableness limit for total nursing care will be established at 115 percent of this total, in order to allow for variations in staffing patterns, mix of nursing personnel, and so forth. **This total will be adjusted for timing differences to each NF's base period.**

(c)-(f) (No change.)

(a)

DIVISION OF FAMILY DEVELOPMENT

Service Programs for Aged, Blind, or Disabled Supplemental Security Income Payment Levels

Proposed Amendment: N.J.A.C. 10:83-1.11

Authorized By: William Waldman, Acting Commissioner, Department of Human Services.

Authority: N.J.S.A. 44:7-87 and Section 1618(a) of the Social Security Act.

Proposal Number: PRN 1993-54.

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Submit comments by March 3, 1993 to:
Marion E. Reitz, Director
Division of Family Development
CN 716
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Section 1618(a) of the Social Security Act requires that any State providing a Supplemental Security Income (SSI) supplement to "pass through" to SSI recipients the full amount of any Federal cost-of-living adjustment (COLA); or at State option, the State, if it is unable to meet the full Federal COLA amount, must at a minimum maintain the level of State expenditures during the current year at the same level experienced during the preceding year. New Jersey has maintained a consistent pass-through in all years of the full amount of the Federal COLA prescribed for that respective annum. Therefore, New Jersey proposes to once again "pass-through" to eligible SSI recipients the full amount of this year's three percent Federal COLA, which is effective January 1, 1993.

The Department is also proposing a new subsection (a), which provides that the Department has elected to pass-through to eligible SSI recipients the full amount of any future Federal COLA to Social Security payments based on the precedent set by the State as described above. Such future COLAs are incorporated into this rule by reference, and the annual pass-through of the full amount will be reflected in this rule through a notice of administrative change published in the New Jersey Register. This proposed amendment will eliminate the necessity for proposing and adopting annual amendments to the rule to reflect Federal COLAs.

Social Impact

The proposed amendment provides for an increase in payment levels to eligible low-income aged, blind, and disabled individuals. The increase will enable such persons to maintain a measure of parity with the increased cost of living.

The proposed subsection (a) will facilitate adjustment of the payment levels reflected in the rule.

Economic Impact

The increase in State expenditures over existing levels is estimated to be $415,758 through the end of calendar year 1993. The proposed amendment will not impact administratively on the Department as the SSI program is administered by the Social Security Administration.

Proposed subsection (a) will have no economic impact on SSI recipients, as pass-through of Federal COLAs to Social Security payment will be within the same time frame. The Department will achieve some minor administrative savings through the elimination of the need to propose and adopt the annual payment levels.

Regulatory Flexibility Statement

This proposed amendment has been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendment imposes no reporting, recordkeeping or other compliance requirements on small businesses; therefore, a regulatory flexibility analysis is not required. The rules govern a public assistance program designed to certify eligibility for the Supplemental Security Income program to a low-income population by a governmental agency rather than a private business establishment.

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

10:83-1.11 New Jersey Supplemental Security Income payment levels

(a) Pursuant to Section 1618(a) of the Social Security Act, the Department has elected to "pass-through" to eligible Supplemental Security Income (SSI) recipients, and to incorporate herein by reference, the full amount of any Federal cost-of-living adjustment (COLA) to Social Security payments. Notice of such COLAs shall be published in the New Jersey Register as a notice of administrative change to the payment levels set forth in (b) below, effective on the date specified in the notice.

[(a)]**(b)** New Jersey Supplemental Security Income payment levels are as follows:

Living Arrangement Categories	Payment Level [1/1/92]**1/19/3**
Eligible Couple	
Licensed Medical Facility (Hospital, Skilled Nursing Facility or Intermediate Care Facility) Publicly operated community residence of 16 or less	[$80/633.00*]**$80/652.00***
Residential Health Care Facilities and certain residential facilities for children and adults	[$1125.36]**$1149.36**
Living Alone or with Others	[$658.36]**$677.36**
Living in Household of Another, Receiving Support and Maintenance	[$515.76]**$527.76**
Eligible Individual	
Licensed Medical Facility (Hospital, Skilled Nursing Facility or Intermediate Care Facility) Publicly operated community residence of 16 or less	[$40/422.00]**$40/434.00***
Residential Health Care Facilities and certain residential facilities for children and adults	[$572.05]**$584.05**
Living Alone or with Others	[$453.25]**$465.25**
Living with Ineligible Spouse (No other individuals in household)	[$658.36]**$677.36**
Living in Household of Another, Receiving Support and Maintenance	[$325.65]**$333.65**

*The lower figure applies when Medicaid payments with respect to an individual equal an amount over 50 percent of the cost of services provided in a month.

CORRECTIONS

(a)

STATE PAROLE BOARD

Parole Board Rules
Conditions of Parole
Proposed Amendments: N.J.A.C. 10A:71-6.4 and 7.3

Authorized By: New Jersey State Parole Board, Louis Nickolopoulos, Chairman.

Authority: N.J.S.A. 30:4-123.48(d), 123.59 (P.L.1992, c.156) and 123.60 (P.L.1992, c.156).

Proposal Number: PRN 1993-58.

Submit comments by March 3, 1993 to:
Robert M. Egles
Executive Director
New Jersey State Parole Board
CN 862
Trenton, NJ 08625

The agency proposal follows:

Summary

Effective November 25, 1992, pursuant to legislation (P.L.1992, c.156) signed by the Honorable Jim Florio, Governor, State of New Jersey, the Chief of the Bureau of Parole, Department of Corrections, is authorized to petition the State Parole Board to commence parole revocation proceedings in the case of parolees arrested on new criminal charges. Under prior and current law, an arrest for a new offense does not automatically result in the initiation of revocation proceedings. Only upon the application of the prosecuting authority or now the Chief of the Bureau of Parole may the State Parole Board, upon acceptance of the application, authorize the detention of a parolee arrested on a new criminal charge(s) and the commencement of revocation proceedings.

The legislation also establishes as general conditions of parole the requirement that a parolee shall not own or possess any firearm as defined in N.J.S.A. 2C:39-1f; the requirement that a parolee shall not own or possess any other weapon enumerated in N.J.S.A. 2C:39-1r; and the requirement that a parolee shall refrain from the use, possession

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or distribution of a controlled dangerous substance, controlled substance analog or imitation controlled dangerous substance as defined in N.J.S.A. 2C:35-11.

The proposed amendments modify the State Parole Board's present rules to comply with the enacted legislation.

Social Impact

The proposed amendments will impact parolees released to community supervision on and after November 25, 1992. The parolees will be required to comply with additional general conditions of parole. Failure to comply with the additional general conditions may result in the implementation of parole revocation proceedings. Additionally, if arrested on new criminal charges, all parolees may expect the Chief of the Bureau of Parole to evaluate their case to determine whether the State Parole Board will be petitioned to commence parole revocation proceedings.

The proposed amendments will impact the personnel of the Bureau of Parole, Department of Corrections. Parole officers will be required to insure that parolees comply with the additional general conditions of parole and evaluate whether non-compliance with a general condition should result in the implementation of the parole revocation process. The implementation of said process will result in an increase in the number of probable cause hearings to be scheduled and conducted at the District Parole Office level and, therefore, the amendments will impact on the staff members assigned to conduct probable cause hearings and staff members assigned to process probable cause hearing materials.

The proposed amendments impact the responsibilities of the Chief of the Bureau of Parole who is now authorized to petition the State Parole Board to commence revocation proceedings in the cases of parolees arrested on new criminal charges. The Chief of the Bureau of Parole will have to evaluate said cases to determine whether the charges against an individual parolee are of a serious nature and the parolee is a danger to the public safety and whether application should be made to the State Parole Board to commence parole revocation proceedings.

The proposed amendments will impact the State Parole Board and its clerical, administrative and hearing officer personnel. It is anticipated that there will be an increase in the number of applications requesting the implementation of parole revocation proceedings based on parolees being arrested on new criminal charges. The applications will need to be evaluated and determinations rendered whether the revocation process is to be implemented. The commencement of revocation proceedings based on new criminal charges or for non-compliance of the additional general conditions of parole will result in an increase in the number of probable cause hearings conducted by the Bureau of Parole and an increase in the number of cases that must be processed by the Board's staff for the scheduling and conducting of final revocation hearings. The increase in the number of final revocation hearings conducted will result in an increase in the number of cases to be reviewed by the Board members for a determination as to whether parole will be formally revoked.

The proposed amendments will impact an increased number of victims of crimes, witnesses to the commission of crimes and police officers. The implementation of revocation proceedings based on the commission of criminal charges will generally result in the conducting of probable cause and final revocation hearings prior to the formal disposition of the criminal charges. Victims of crimes, witnesses to the commission of crimes and/or police officers will, therefore, be required, when deemed necessary, to participate in the revocation hearing process in order that probable cause may initially be established to believe that a parolee committed a new crime and to establish at a final revocation hearing by clear and convincing evidence that the parolee committed a new crime.

The proposed amendments will have an impact on county jail and state correctional facilities. It is anticipated that the number of parolees apprehended and detained on warrants for violation of parole will increase and, therefore, impact on the inmate population in county jail and state correctional facilities. Based on an anticipated increase in the number of revocation decisions rendered, county jail and State correctional facilities will be required to house an increased number of offenders.

Economic Impact

The economic impact of the proposed amendments which are based on recently enacted legislation is not easily identifiable. However, it is believed that the anticipated increase in the number of probable cause and final revocation hearings will require funding for additional staff positions in the Bureau of Parole and the State Parole Board. The anticipated increase in the number of parolees detained pending revocation hearings and the anticipated increase in the number of formal revocation decisions rendered will require the Department of Corrections to expend funds for the housing of additional state inmates in state correctional facilities and expend funds to reimburse county jail facilities for the housing of additional state inmates. Further, victims of crimes, witnesses to the commission of crimes and police officers may incur expenses, as a result of being required to participate in hearings, beyond mileage expenses reimbursed by the State.

Regulatory Flexibility Statement

The proposed amendments impose no reporting, recordkeeping or other compliance requirements upon small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendments pertain to the establishment of additional general conditions of parole and the authorizing of the Chief of the Bureau of Parole to petition the State Parole Board to commence revocation proceedings in the cases of parolees arrested on new criminal charges. A regulatory flexibility analysis is, therefore, not required.

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

10A:71-6.4 Conditions of parole

(a) The certificate of parole shall contain the following general conditions of parole:

1.-5. (No change.)

6. You are not to own or possess [a] **any** firearm, **as defined in N.J.S.A. 2C:39-1f,** for any purpose.

7. You are not to own or possess any weapon enumerated in N.J.S.A. 2C:39-1r.

8. You are to refrain from the use, possession or distribution of a controlled dangerous substance, controlled substance analog or imitation controlled dangerous substance as defined in N.J.S.A. 2C:35-2 and N.J.S.A. 2C:35-11.

[7.]**9.** (No change in text.)

(b)-(f) (No change.)

10A:71-7.3 [Prosecutor's motion] **Motion** for accelerated revocation

(a) (No change.)

(b) If the prosecuting authority **or the Chief of the Bureau of Parole** determines that the charges against the parolee are of a serious nature and the parolee otherwise poses a danger to public safety, the prosecuting authority **or the Chief of the Bureau of Parole** may apply in writing to the Chairperson or his or her designated representative for the prompt initiation of revocation proceedings. Such application shall include:

1.-4. (No change.)

(c) Upon review of the application and determination as to whether the charges against the parolee are of a serious nature and whether the parolee otherwise poses a danger to public safety, the Chairperson or his or her designated representative shall advise the prosecuting authority **or the Chief of the Bureau of Parole** and the District Parole Supervisor as to whether the revocation process shall be initiated.

(d)-(g) (No change.)

INSURANCE

(a)

DIVISION OF FINANCIAL EXAMINATIONS

Joint Insurance Funds for Local Governmental Units Providing Group Health and Term Life Benefits

Proposed New Rules: N.J.A.C. 11:15-3

Authorized By: Samuel F. Fortunato, Commissioner, Department of Insurance.

Authority: N.J.S.A. 17:1C-6(e), 17:1-8.1, and 40A:10-36 et seq.

Proposal Number: PRN 1993-47.

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Submit comments by March 3, 1993 to:
Verice M. Mason, Assistant Commissioner
Legislative and Regulatory Affairs
Department of Insurance
CN 325
Trenton, NJ 08625

The agency proposal follows:

Summary

N.J.S.A. 40A:10-36 et seq. authorizes two or more local units of government (as that term is defined in N.J.S.A. 40A:10-36) to form a joint insurance fund for the purpose of insuring against claims for liability, property damage and workers' compensation. The goal of this statute is to reduce insurance costs to local units of government by permitting them to pool risks. Pursuant to N.J.S.A. 40A:10-36 et seq., the Department of Insurance ("Department") adopted N.J.A.C. 11:15-2, (effective December 3, 1984, as amended) which provides standards governing the establishment and operation of joint insurance funds.

Amendments to N.J.S.A. 40A:10-36 et seq. were enacted on November 30, 1990 to expand the risks which a joint insurance fund may insure to include contributory or non-contributory group health insurance or group term life insurance. In order to implement these amendments, the Department proposes these new rules to set forth the requirements for the establishment, operation, oversight, modification and dissolution of joint insurance funds formed by two or more local units for the purpose of providing contributory or non-contributory group health insurance or group term life insurance, or both, to employees or their dependents or both pursuant to N.J.S.A. 40A:10-36 et seq. Although current rules are in effect governing joint insurance funds formed by local units to provide property and liability insurance, the Department believes it appropriate to provide separate rules governing joint insurance funds providing group health and life benefits in consideration of the additional issues to be addressed in the provision of health and life benefits, and to reduce the likelihood of confusion among joint insurance funds regarding the specific requirements governing the provision group health and term life benefits.

The general requirements set forth in these rules reflect the requirements set forth in N.J.A.C. 11:15-2 governing the formation and operation of joint insurance funds formed to provide liability, property damage and workers' compensation. These proposed rules, however, set forth additional requirements governing the provision of group health and term life insurance by joint insurance funds to employees of participating members to ensure that all persons covered for health and/or life benefits are fully apprised of their rights under any program established, as well as ensure that the interests of such covered employees are adequately protected. For example, the rules require that the fund's plan of risk management include additional items to address the provision of health and life insurance, including the initial and renewal assessment methodologies, provision for preferred provider, managed care and HMO networks, procedures for open enrollment for covered individuals annually, and plan booklets and coverage documents. In addition, the rules require that a fund cover not less than 1,000 employees in a self-funded health plan, unless otherwise approved by the Commissioner. The Department believes that this requirement is necessary to ensure that there is a sufficient number of lives upon which appropriate assessments may be determined in an actuarially sound manner.

These proposed rules also differ from the existing rules governing joint insurance funds by providing a fund more flexibility regarding certain aspects of its formation and operation. For example, these proposed rules permit a joint insurance fund to establish a separate contingency account to alleviate the need for supplemental assessments should a claim or loss retention account be inadequate to pay claims or other expenses. The rules also provide for a two-tier review process for the bylaws and plan of risk management. This revision is designed to facilitate the filing and review process, and address concerns raised by interested parties that not all information required to accompany the bylaws and plan of risk management is available or may be generated at the formative stages of a fund. The rules require a fund to initially submit only specified information. Within 90 days of the Commissioner's acceptance of that information, the fund completes the filing process by submitting specified additional information. The time within which the Commissioner must disapprove the bylaws and plan of risk management set forth in N.J.S.A. 40A:10-41 does not begin until after receipt of all information required in both stages of the application process. Upon promulgation of these rules, the Department shall conduct a review of N.J.A.C. 11:15-2 to determine if any changes to those rules consistent with the operating guidelines set forth in these proposed rules are appropriate, and propose amendments to N.J.A.C. 11:15-2 accordingly.

The proposed new rules, therefore, provide a regulatory framework by which the Department may ensure that joint insurance funds providing group health and term life benefits are operating in compliance with N.J.S.A. 40A:10-36 et seq., and by which it may assess the financial condition and viability of these funds, thus lessening the likelihood of fund insolvencies. This, in turn, should protect the interests of claimants and taxpayers of this State.

Proposed N.J.A.C. 11:15-3.1 sets forth the purpose and scope of the proposed new rules.

Proposed N.J.A.C. 11:15-3.2 sets forth definitions of terms used in the subchapter.

Proposed N.J.A.C. 11:15-3.3 sets forth the requirements for the agreement to join a joint insurance fund.

Proposed N.J.A.C. 11:15-3.4 sets forth general operational requirements for joint insurance funds formed pursuant to the subchapter.

Proposed N.J.A.C. 11:15-3.5 sets forth the filing requirements by the bylaws and the plan of risk management.

Proposed N.J.A.C. 11:15-3.6 sets forth the required contents of the bylaws and the plan of risk management.

Proposed N.J.A.C. 11:15-3.7 provides the guidelines under which the Commissioner may dissapprove the bylaws and the plan of risk management.

Proposed N.J.A.C. 11:15-3.8 provides the guidelines for the termination or suspension of a fund by the Commissioner.

Proposed N.J.A.C. 11:15-3.9 provides requirements by which non-members may join a joint insurance fund.

Proposed N.J.A.C. 11:15-3.10 provides the requirements governing the termination and/or withdrawal of fund members.

Proposed N.J.A.C. 11:15-3.11 sets forth specific procedures governing the insolvency and/or bankruptcy of fund members.

Proposed N.J.A.C. 11:15-3.12 provides for the voluntary dissolution of joint insurance fund.

Proposed N.J.A.C. 11:15-3.13 provides for the establishment of trust fund accounts and the requirements governing the transfer or withdrawal of funds from such accounts.

Proposed N.J.A.C. 11:15-3.14 requires the establishment of an administrative account utilized for payment of general operating expenses.

Proposed N.J.A.C. 11:15-3.15 sets forth the requirements governing assessments on members of the joint insurance fund.

Proposed N.J.A.C. 11:15-3.16 provides procedures governing supplemental assessments on members of the joint insurance fund.

Proposed N.J.A.C. 11:15-3.17 requires that a joint insurance fund notify the Commissioner if a member fails or refuses to provide required assessments.

Proposed N.J.A.C. 11:15-3.18 requires the custodian of the fund's assets to certify the availability of sufficient funds prior to any commitment or agreement requiring the expenditure of funds.

Proposed N.J.A.C. 11:15-3.19 provides the requirements governing investments and application of investment income.

Proposed N.J.A.C. 11:15-3.20 sets forth requirements governing the refund of monies in excess of amounts necessary to fund all obligations.

Proposed N.J.A.C. 11:15-3.21 sets forth the requirements governing disbursements and/or payment of claims.

Proposed N.J.A.C. 11:15-3.22 requires that employee claim information be privileged and confidential and sets forth specific procedures to ensure such confidentiality.

Proposed N.J.A.C. 11:15-3.23 sets forth specific requirements governing stop-loss insurance and/or reinsurance to be obtained by the fund.

Proposed N.J.A.C. 11:15-3.24 sets forth specific requirements governing the submission of financial statements and reports.

Proposed N.J.A.C. 11:15-3.25 requires the examination of joint insurance funds to determine compliance with applicable laws, and requires examination of joint insurance funds which are insolvent or in financial condition detrimental to the public.

Proposed N.J.A.C. 11:15-3.26 sets forth guidelines for servicing organizations or administrators of the joint insurance fund.

Proposed N.J.A.C. 11:15-3.27 provides that all officials or employees of member local units must comply with the "Local Government Ethics Law."

Proposed N.J.A.C. 11:15-3.28 provides for notice and opportunity for a hearing on any proposed suspension, revocation, cease and desist order, or other enforcement action.

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Proposed N.J.A.C. 11:15-3.29 provides for the issuance of orders by the Commissioner.

Proposed N.J.A.C. 11:15-3.30 provides that the provisions of the subchapter are severable.

Social Impact

The Department believes that these proposed rules will enable the Department to effectively monitor the operations and financial condition of joint insurance funds which provide contributory or non-contributory group health or group term life insurance to ensure their solvency, and thereby protect the interests of claimants and taxpayers. Joint insurance funds formed for the purpose of providing contributory or non-contributory group health insurance or group term life insurance will be required to file specified information with the Department prior to operation and operate in compliance with the managerial guidelines set forth in these proposed rules. As noted in the proposal Summary above, however, the general formation and operational requirements are substantially similar to those currently imposed on joint insurance funds providing liability, property damage, and workers' compensation coverage. The Department believes that by effectively maintaining the existing regulatory framework, joint insurance funds continue to be afforded uniformity, consistency, and the flexibility to operate in a cost-effective manner.

Economic Impact

As stated in the Social Impact statement above, the proposed new rules will enable the Department to effectively monitor the financial condition and operations of joint insurance funds formed to provide group health and term life insurance, and thereby protect the interests of claimants and taxpayers. Further, by effectively maintaining the current mechanism for the creation and operation of joint insurance funds formed for the purpose of providing group health and term life insurance, local units of government may better stabilize insurance costs and may experience premium savings similar to those savings which may be effectuated through the formation of joint insurance funds for the purpose of insuring against liability, property damage, and workers' compensation.

Joint insurance funds which seek to provide group health or group term life insurance will be required to file the required information, obtain the required actuarial certifications, bear the costs of examinations, and bear any costs associated with operating the joint insurance fund pursuant to the guidelines set forth in these rules. Since the general operational guidelines are substantially similar to those currently required of joint insurance funds providing liability, property damage, and workers' compensation, the Department believes that any additional costs should be minimal.

The Department will be required to review any additional information submitted in accordance with these rules and will be required to review the operations of joint insurance funds formed pursuant to these rules. The Department may experience additional costs to the extent that existing funds seek to provide, or additional joint insurance funds are formed to provide, group health or term life insurance.

Regulatory Flexibility Analysis

These proposed rules do not directly impose reporting, recordkeeping or other compliance requirements on small businesses. The proposed new rules directly apply only to public entities composed of member local units of government. These public entities do not meet the definition of "small business" as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

However, the Department notes that the proposed rules will indirectly impose reporting, recordkeeping, or other compliance requirements on other entities that have contracted with the joint insurance fund to provide specified services. For example, the rules require that the custodian of funds, servicing organizations and fund administrator report to the fund commissioners and the Commissioner on various activities related to the services it has been retained to perform (see for example, N.J.A.C. 11:15-3.4, 3.17, 3.18 and 3.21). The Department believes that virtually all of these entities would meet the definition of "small business" as defined in N.J.S.A. 52:14B-16 et seq. Accordingly, these small businesses will be required to bear any costs involved in complying with the requirements set forth in these rules.

For the reasons that follow, the Department does not believe that these requirements will impose any undue burden on these entities or that different reporting, recordkeeping and compliance requirements are feasible. These entities have contracted with a joint insurance fund to provide specified services. The information required to be reported is intended to ensure that the fund, which is comprised of public entities, is fully apprised of the status of the various services being provided. Accordingly, the information required to be reported should be readily available, and indeed would undoubtedly be required by the fund itself in the absence of specific regulatory requirements by the Department. Finally, any costs to the entity would be reflected in the compensation provisions voluntarily entered into between the entity and the fund.

Therefore, for the reasons discussed above, and to ensure consistency and uniformity in the data reported to joint insurance funds and the Commissioner, no differentiation in compliance requirements is provided based on business size.

Full text of the proposed new rules follows:

SUBCHAPTER 3. JOINT INSURANCE FUNDS FOR LOCAL GOVERNMENTAL UNITS PROVIDING GROUP HEALTH AND TERM LIFE BENEFITS

11:15-3.1 Purpose and scope

(a) This subchapter sets forth the requirements for the establishment, operation, oversight, modification and dissolution of joint insurance funds formed by two or more local units for the purpose of providing contributory or non-contributory group health insurance or group term life insurance, or both, to employees or their dependents, and to any other person eligible for coverage by a member local unit pursuant to N.J.S.A. 40A:10-36 et seq.

(b) This subchapter shall apply to all local units seeking to form a joint insurance fund for the purpose of providing contributory and non-contributory group health or group term life insurance and all joint insurance funds formed for such purpose pursuant to N.J.S.A. 40A:10-36 et seq. and this subchapter.

(c) No local unit of government shall join together with any other local unit or units to act as a joint insurance fund for the purpose of providing contributory or non-contributory group health or group term life insurance except as authorized by the Commissioner in accordance with the provisions of N.J.S.A. 40A:10-36 et seq. and this subchapter.

11:15-3.2 Definitions

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

"Actuary" in the case of health insurance means a fellow in good standing of the Society of Actuaries or the Casualty Actuarial Society with at least three years recent experience in health insurance pricing and reserving; "actuary" in the case of life insurance means a fellow in good standing of the Society of Actuaries with at least three years recent experience in life insurance pricing and reserving.

"Administrator" means a person, partnership, corporation or other legal entity engaged by the joint insurance fund commissioners or executive committee, as defined herein, to act as executive director to carry out the policies established by the joint insurance fund commissioners or executive committee and to otherwise administer and provide day-to-day management of the joint insurance fund. The administrator may also be the lead agency, an employee of a fund member or an independent contractor.

"Chairman" means the chairman of the fund commission elected by the commission pursuant to N.J.S.A. 40A:10-37.

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

"Department" means the Department of Insurance.

"Dependent" means dependent as defined pursuant to N.J.S.A. 40A:10-16.

"Executive committee" means the committee of insurance fund commissioners, as provided in N.J.S.A. 40A:10-36 et seq.

"Fiscal year" or "fund year" means either the calendar year January 1 through December 31, or the fiscal year July 1 through June 30, as designated in the fund's bylaws.

"Health insurance" means health insurance as defined pursuant to N.J.S.A. 17B:17-4; service benefits as provided by health service corporations, hospital service corporations or medical service corporations authorized to do business in this State, including basic health

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care services and/or supplemental health care services provided by health maintenance organizations; or dental care services provided by dental plan organizations and dental service corporations.

"Indemnity and trust agreement" means a written contract signed by the members of the joint insurance fund under which each agrees to jointly and severally assume and discharge the liabilities of each and every party to the agreement arising from their participation in the fund.

"Insolvent fund" means a joint insurance fund which has been determined by a court of competent jurisdiction to be unable to pay its outstanding lawful obligations as they mature in the regular course of business, as may be shown either by an excess of its required reserves and other liabilities over its assets or by its not having sufficient assets to reinsure all of its outstanding liabilities after paying all accrued claims owed by it, or for which, or for the assets of which, a receiver or liquidator, however entitled, has been appointed by a court of competent jurisdiction and authority, after the effective date of this subchapter.

"Joint insurance fund" or "fund" means a group established by two or more local units of government to create an insurance fund for the purposes of providing contributory or non-contributory group health insurance or group term life insurance to their employees or dependants and to any other person eligible for coverage by a member local unit pursuant to law, approved by the Department pursuant to N.J.S.A. 40A:10-36 et seq. and this subchapter.

"Joint insurance fund commissioners" means local unit representatives chosen to represent those units in the fund, as provided in N.J.S.A. 40A:10-36 et seq.

"Lead agency" means a member of the joint insurance fund responsible for the custody and maintenance of the assets of the fund and such other duties as may be designated by the joint insurance fund commissioners. The duties performed by a lead agency may include duties that may be performed by an administrator or servicing organization.

"Life insurance" means life insurance as defined pursuant to N.J.S.A. 17B:17-3.

"Local unit of government," "local unit" or "member" means a county, municipality, county vocational school (pursuant to N.J.S.A. 18A:18B-8 and 40A:10-50), county college (pursuant to N.J.S.A. 18A-25.40 and 40A:10-51) or any contracting unit as defined in N.J.S.A. 40A:11-2.

"Net current surplus" or "surplus" means the excess of the fund's unencumbered assets over its reserves and liabilities.

"Secretary" means the secretary of the fund commission elected by the commission pursuant to N.J.S.A. 40A:10-37.

"Servicing organization" or "program manager" means an individual, partnership, association or corporation, other than the administrator, that has contracted with the fund to provide, on the fund's behalf, any functions as designated by the fund commissioners including, but not limited to, actuarial services, claims administration, cost containment services, legal services, auditing services, financial services, compilation and maintenance of the fund's underwriting file, coordination and preparation of plan documents, employee booklets and other documents, risk selection and pricing, stop-loss or reinsurance producer services which include producer negotiations on behalf of the fund for stop-loss or reinsurance from an insurer, member assessment and fee development, report preparation pursuant to N.J.S.A. 40A:10-36 et seq. or this subchapter, and such other duties as designated by the fund.

"Stop-loss insurance" or "reinsurance" means insurance, purchased from an insurer authorized or admitted in the State of New Jersey, covering losses in excess of an amount established between the joint insurance fund and the insurer up to the limits of coverage set forth in the insurance contract on a specific per occurrence, per individual or annual aggregate basis.

11:15-3.3 Agreement to join joint insurance fund; duration

(a) Pursuant to N.J.S.A. 40A:10-36, the governing body of any local unit of government may by resolution or ordinance, as appropriate, agree to join together with any other local unit or units to establish a joint insurance fund as defined in this subchapter. The resolution or ordinance shall provide for execution of a written agreement specifically conditioning membership on acceptance of the fund's bylaws as approved and adopted pursuant to N.J.S.A. 40A:10-36 et seq. The agreement shall specify the extent of the local unit's participation in the fund with respect to the types of insurance coverage to be provided by the fund and shall include the duration of fund membership, which in no event shall exceed three years, pursuant to N.J.S.A. 40A:11-15(6) and subject to N.J.A.C. 11:15-3.10. The agreement shall also specify that the fund members have never defaulted on claims if self-insured, and, if not self-insured, have not been cancelled for non-payment of insurance premiums for a period of at least two years prior to application.

(b) Members may renew their participation by the execution of a new agreement to rejoin the joint insurance fund. If the existing ordinance or resolution did not specify the duration of fund membership, the member shall affirm the new membership agreement by resolution. If the existing ordinance or resolution specified the duration for fund membership, the member shall either amend the existing ordinance or resolution, or adopt a new ordinance or resolution, as appropriate, to authorize the continued participation in the joint insurance fund prior to the execution of the new membership agreement.

11:15-3.4 General requirements

(a) Every joint insurance fund shall be subject to and operate in compliance with the provisions of the "Local Fiscal Affairs Law" (N.J.S.A. 40A:5-1 et seq.), the "Local Public Contracts Law" (N.J.S.A. 40A:11-1 et seq.), regulations (N.J.A.C. 5:34), and the various statutes authorizing the investment of public funds, including but not limited to, N.J.S.A. 40A:10-10(b), 17:12B-241 and 17:16I-1 et seq.

(b) All monies, assessments, funds and other assets of a joint insurance fund shall be under the exclusive control of its board of insurance fund commissioners or executive committee, as applicable.

(c) A joint insurance fund shall be considered a local unit for purposes of the "Local Public Contracts Law" (N.J.S.A. 40A:11-1 et seq.) and shall be governed by the provisions of that law in the purchase of any goods, materials, supplies and services.

(d) Each joint insurance fund shall adopt a resolution designating its fiscal year period.

(e) Each joint insurance fund shall adopt a resolution designating a public depository or depositories for its monies pursuant to N.J.S.A. 40A:5-14. The resolution shall also designate a person to be custodian of funds for the joint insurance fund and shall authorize the custodian to invest temporarily free balances of any claim or administrative accounts periodically as authorized by law. The custodian of funds shall possess a certified municipal finance officer certificate issued pursuant to N.J.S.A. 40A:9-140.2. The custodian shall periodically report to the fund commissioners on investment and interest income.

(f) The joint insurance fund commissioners shall annually prepare, not later than 60 days prior to the beginning of the fund's subsequent fiscal year, the proposed budget for that subsequent year. The budget shall identify the proposed items and amounts of expenditure for its operations; the anticipated amounts and sources of assessments and other income to be received during the fiscal year; and the status of the self-insurance or loss retention trust accounts maintained by the joint insurance fund. The budget shall be prepared on a basis that does not recognize investment income or discounting of claim reserves, but recognizes all anticipated or forecasted losses and administrative expenses associated with that fiscal year.

1. A copy of the fund's proposed budget or any amendments thereto shall be made available to each member of the joint insurance fund at least two weeks prior to the time scheduled for its adoption. No budget or amendment shall be adopted until a public hearing has been held in accordance with N.J.S.A. 40A:4-1 et seq. giving all members of the joint insurance fund the opportunity to present comments or objections.

2. Not later than the end of the fund's current fiscal year, the joint insurance fund commissioners, or the executive committee thereof, shall adopt by majority vote the budget for the fund's operations for the subsequent fiscal year.

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3. A copy of each adopted budget shall be filed with the governing body of each participating local unit, the Commissioner and the Commissioner of the Department of Community Affairs within 30 days of its adoption.

4. An adopted budget may be amended by majority vote of the membership of the joint insurance fund commissioners, or executive committee thereof.

5. A copy of any amendment to a fund budget shall be filed quarterly with the governing body of each participating local unit.

6. A copy of any amendment to a fund budget shall be filed with the Commissioner and the Commissioner of the Department of Community Affairs within 30 days of the adoption of any budget amendment which either singly or cumulatively with other adopted budget amendments changes the total budget five percent from the original budget or the latest filed amended budget.

(g) All books, records, files, documents and equipment of the joint insurance fund are the property of the fund and, except as provided at N.J.A.C. 11:15-3.21(e), shall be retained by the fund administrator or program manager at the discretion of the fund commissioners. All books, records, files and documents of the fund shall be retained for not less than five years.

(h) Each fund shall maintain written minutes of its meetings and shall make the minutes available to the Commissioner upon request.

(i) A joint insurance fund shall provide its members with periodic reports covering the activities and status of the fund for the reporting period. The reports shall be made at least quarterly and may be made more frequently at the discretion of the joint insurance fund commissioners and shall include, but not be limited to, the minutes, the administrator's report and a summation of fund activity, including comments on previously reported claims and newly reported claims, and any other information required by the fund commissioners. The Department may require that the reports be submitted to the Department if it is deemed necessary to ensure compliance with these reporting requirements. The reports shall also be made available to the Department for review during any examination of the joint insurance fund.

(j) All officers, employees and agents, including the administrator, servicing organization and program manager of the joint insurance fund, on the final day of their contract or employment shall surrender and deliver to their successors all accounts, funds, property, records, books and any other material relating to their contract or employment.

(k) A joint insurance fund may utilize the services of a member to serve as lead agency for the fund.

1. A lead agency may be compensated for its reasonable expenses incurred in administering the affairs of a joint insurance fund. Any administrative costs agreed upon to be paid to a lead agency shall be received by it as a Miscellaneous Revenue and be available for expenditure through the budget appropriation method.

2. A lead agency shall not advance funds of its own to cover a purchase on behalf of the fund or the other participating units.

(l) Each fund shall cover a minimum of 1,000 employees in a self-funded health care plan providing hospital, surgical and medical benefits. A fund may cover less than 1,000 employees with the approval of the Commissioner if he or she determines that the proposed risk retention is actuarially sound in relationship to the projected employee participation.

11:15-3.5 Bylaws and plan of risk management; filing requirements

(a) Each joint insurance fund shall file with the Department for approval by the Commissioners of Insurance and Community Affairs, as provided in N.J.S.A. 40A:10-41, its bylaws and plan of risk management and any subsequent amendments thereto. In addition, the initial filing shall be accompanied by the information and documentation specified at N.J.A.C. 11:15-3.6(c) and such other information the Commissioner may request. All filings shall be in loose-leaf form inserted into standard two-ring or three-ring binders tabbed or otherwise indexed to correspond to the requirements set forth in N.J.A.C. 11:15-3.6. The loose-leaf sheets used shall be eight and one-half inches wide and 11 inches long and punched for two-ring and three-ring binders, as appropriate. The fund shall submit seven copies of a filing in the format set forth herein. All information shall be submitted completely and accurately.

1. All filings and accompanying documents shall be submitted to the Department and the Department of Community Affairs.

(b) All of the information and documentation set forth in N.J.A.C. 11:15-3.6 shall constitute the fund's bylaws and plan of risk management for purposes of N.J.S.A. 40A:10-41. In order to facilitate the filing and review process, the review of a filing shall be separated into two stages. The information set forth in N.J.A.C. 11:15-3.6(a) through (d) constitutes the initial stage. Within 90 days of the Commissioner's acceptance of the initial information filed, the fund shall complete the filing process by submitting the information set forth in N.J.A.C. 11:15-3.6(e). Failure to file the required subsequent information within 90 days may result in the disapproval of the fund's filing. No joint insurance fund shall begin providing insurance coverage to its member units until its bylaws and plan of risk management and other information required pursuant to N.J.A.C. 11:15-3.6 have been approved by the Commissioner.

(c) No amendment to a fund's bylaws or plan of risk management, or change in the information or documentation required to accompany the filing of the fund's bylaws of plan of risk management as provided in (a) above, shall take effect until the amendment or change is approved by the Commissioner and the Commissioner of the Department of Community Affairs.

(d) The bylaws and plan of risk management and all information required to accompany the initial filing shall set forth an identifying number or code and the filing date on each page of the specific document filed. For example, each page of the bylaws shall set forth an identifying number or code; each page of the plan of risk management shall set forth a different identifying number or code; the sample resolution and trust agreement shall set forth a different identifying number or code; etc. Any amendment or supplemental form to any information previously filed shall contain the original identifying number or code, indicate that the document is an amendment or supplement to the information previously filed, and set forth the date of revision.

(e) In addition to the information set forth in N.J.A.C. 11:15-3.6, the fund shall provide a cover letter stating the name, telephone number(s) and telefax number(s) of two contact persons (one primary, one secondary) familiar with the filing to whom the Department may direct any questions; as well as the fund's official mailing address for the purpose of disseminating Department information, in accordance with N.J.A.C. 11:1-25.

(f) All information required to be submitted shall be sent to the Department at:

New Jersey Department of Insurance
Division of Financial Examinations
Attn. Municipal Health JIF Admissions
20 West State Street
CN-325
Trenton, NJ 08625

11:15-3.6 Bylaws and plan of risk management; contents

(a) The prospective commissioners of a joint insurance fund shall prepare and, after the approval by resolution of the governing body of each participating local governmental unit, adopt bylaws for the joint insurance fund. The bylaws shall include, but not be limited to:

1. Procedures for the organization and administration of the joint insurance fund, the insurance fund commission and alternate commissioners and, if appropriate, the executive committee of the fund and alternates. The procedures may include the designation of one member local unit to serve as the lead agency;

2. Procedures for the assessment of members for their contributions to the fund and for the collection of contributions in default;

3. Procedures for the establishment, maintenance and administration of appropriate reserves in accordance with sound actuarial principles, including the assumptions and methodology to be used for the calculation of policy and claim reserves;

4. Procedures for the purchase of direct insurance, or reinsurance, if any;

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5. Contingency plans for paying losses in the event that the fund is exhausted, including provision for supplemental assessments as provided at N.J.A.C. 11:15-3.16;

6. Procedures governing loss adjustment and legal fees;

7. Procedures and admissions criteria for the joining of the fund by a non-member local unit;

8. Procedures in compliance with N.J.A.C. 11:15-3.10 for the withdrawal from the fund by a local unit;

9. Procedures for the expulsion of a member local unit;

10. Procedures for the termination and liquidation of the joint insurance fund and the payment of its outstanding obligations; and

11. Procedures governing trust fund accounts, including transfers, withdrawals and distribution of surplus therefrom and supplemental assessments.

(b) In addition, the bylaws shall:

1. Include the fund's name;

2. Provide that upon each fiscal year renewal of the fund, coverages and benefit levels as may be determined and specified by the fund and its members; provided the affected persons receive written notice of any changes in coverage or benefit levels at least 30 days prior to taking effect and that a copy of the written notice and the relevant rate changes shall be filed with the Department 30 days prior to taking effect;

3. Specify the subrogation rights of the fund;

4. Describe the responsibilities and obligations of the participants, the terms and conditions of continued participation and discontinuance of participation in the fund;

5. Be accompanied by a sample copy of the resolution or ordinance and written agreement adopted by each participating local unit as specified at N.J.A.C. 11:15-3.3. Within 30 days of approval, the fund shall send certified copies of the resolution or ordinance and written agreement from each participant to the Commissioner and the Department of Community Affairs;

6. Be accompanied by a sample copy of its indemnity and trust agreement as defined in N.J.A.C. 11:15-3.2, and in a form satisfactory to the Commissioner.

i. The agreement shall create a trust and govern the operation thereof under which monies shall be held by the fund commissioners as fiduciaries for the benefit of fund claimants.

ii. Where the fund shall provide for the retention on a self-insured basis of any or all of the risks or liabilities specified below, the agreement shall require and provide for the establishment of separate trust accounts for each of the following from which monies shall be disbursed solely for the payment of claims, allocated claim expenses and stop-loss insurance or reinsurance premiums for each risk or liability:

(1) Employer contributions to group health insurance;

(2) Employee contributions to contributory group health insurance;

(3) Employer contributions to group term life insurance;

(4) Employee contributions to contributory group term life insurance;

(5) Employer contributions to contingency accounts;

(6) Employee contributions to contingency accounts; and

(7) Other trust accounts as required by the Commissioner.

iii. Notwithstanding (b)6ii above to the contrary, a fund shall not be required to establish separate trust accounts for employee contributions, provided the fund provides a plan in its bylaws as required by (b)7 below which provides for the recording and accounting of the employee contributions of each member.

iv. Within 30 days of approval, the fund shall send certified copies of the indemnity and trust agreement from each participant to the Commissioner and the Department of Community Affairs;

7. If applicable pursuant to (b)6iii above, be accompanied by a plan which provides for the recording and accounting of the employee contributions of each member, including, but not limited to, the collection and distribution of such employee contributions;

8. Be accompanied by a copy of a resolution or ordinance of intent to form the fund from at least two local units;

9. Be accompanied by a feasibility study which shall include, but not be limited to:

i. The proposed date that the fund intends to begin providing coverage;

ii. The proposed location of the fund's principal office;

iii. The name and address of the fund's prospective charter members;

iv. The pro forma budget and assessments for the fund's first fiscal year;

v. A certification by an actuary that the pro forma budget is actuarially sound; and

vi. The minimum number of employees to be covered before the fund begins to provide coverage. Funds providing health or life insurance on a self-insured basis shall have membership resolutions from local units representing at least 1,000 covered employees before beginning to provide coverage; and

10. Be accompanied by a non-refundable filing fee in the amount of $1,500.

(c) Each joint insurance fund shall, concurrently with the filing of its bylaws as provided in (a) above, file its plan of risk management and any amendments thereto with the Department as provided in N.J.S.A. 40A:10-41 containing the information as specified in (d) below.

(d) The commissioners shall prepare, or cause to be prepared, a plan of risk management for the joint insurance fund. The plan description shall include, but not be limited to:

1. The lines of coverage to be provided and the minimum participation required of any member which, for the initial fiscal year of the fund, shall be the coverages and benefit levels of the member local units immediately prior to joining the fund unless changes in the coverages or benefit levels are approved by the Commissioner pursuant to N.J.A.C. 11:15-3.7;

2. The limits of coverage, whether self-insurance, insurance purchased from an insurer, or reinsurance;

3. The amount of risk to be retained by the fund on a self insured basis, which for group term life insurance shall not exceed a face amount of $5,000 per covered employee;

4. The assumptions and methodology to be used to calculate the policy and claims reserves;

5. The proposed method of assessing contributions to be paid by each member of the fund;

6. Coverage to be purchased from an insurer if any;

7. Reinsurance to be purchased, if any, and the amount of premium therefor;

8. The initial and renewal assessment methodologies, including rating methodologies, for the plan and individual members including actuarial principles, assumptions and methods of calculations in sufficient detail to enable the Commissioner to determine that the charges are not excessive, inadequate or unfairly discriminatory;

9. The rating periods for initial members and for members joining the fund during the fund's fiscal year;

10. The adjusted assessments and the underlying factors considered in the development of the adjusted rates, if the rates for members joining the fund during the fund's fiscal year are to be adjusted;

11. Provision of preferred provider, managed care and health maintenance organization networks and copies of any proposed and executed contracts or agreements for such services;

12. Procedures for open enrollment for all covered individuals not later than the first month of the fund's initial fiscal year, and annually thereafter for each subsequent fiscal year;

13. Options for the conversion of benefits, if any, and a detailed description of procedures for continuation of coverage for former employees of a member which terminates its membership in the fund;

14. The disclosure of all benefit limits for all covered benefits in plan booklets, certificates or other documents made available to covered participants;

15. The participation rules when all or part of the premium is to be derived from funds contributed by covered employees;

16. Retirees coverage including the assessment and rating plan for such coverage;

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17. The limits of coverage for newborn or adopted children, which shall be automatic from birth or adoption for 31 days and which may include an additional assessment for coverage beyond 31 days;

18. Provision for plan documents, benefit plan booklets and specimens of such which must contain at least the following information and be provided to all fund participants within 30 days of membership or renewal:

i. General information, including the following:

(1) Enrollment procedures and eligibility;

(2) Dependent eligibility;

(3) The time coverage begins;

(4) Timeframes within which coverage may be changed;

(5) The time coverage ends;

(6) Provisions for continuation of coverage;

(7) Conversion privileges; and

(8) The forms and instructions for enrollment;

ii. A description of benefits, including the following:

(1) Definitions;

(2) A description of each benefit, including the following:

(A) Eligible services and supplies;

(B) Deductibles and co-payments; and

(C) Examples of the above as needed; and

(3) Exclusions;

iii. Claim procedures, including the following:

(1) Submission of claims;

(2) Proof of loss;

(3) Complaint and appeal procedures; and

iv. Cost containment programs, including the following:

(1) Pre-admission programs;

(2) Second surgical opinion programs;

(3) Other cost containment programs; and

(4) Application and level of employee penalties (if any);

19. A summary statement which describes the benefits currently provided to covered employees by each prospective member of the fund, and the benefits proposed to be provided by the fund;

20. The procedures for the closure of fund years including the maintenance of all relevant accounting records; and

21. The maximum amount a certifying and approving officer may approve for payment pursuant to N.J.A.C. 11:15-3.21.

(e) The Commissioner shall notify the fund in writing whether the initial information submitted pursuant to (a) through (d) above meets the requirements of N.J.S.A. 40A:10-36 et seq. and this subchapter and whether the initial information has been accepted. If the Commissioner does not reject the initial information within 30 working days, the initial information shall be deemed accepted. Within 90 calendar days of the Commissioner's acceptance of the information submitted pursuant to (a), (b), (c) and (d) above, the fund shall complete the application process by submitting the following additional information and documentation:

1. The location of the fund's principal office, date of organization, and name and address of each initial member;

2. Designation of the fund commissioners, executive committee, if any, chairman, secretary, administrator and custodian of the fund's assets;

3. Copies of the fund's prospective and executed agreements or contracts, and any renewal or new agreements or contracts with any administrator, servicing organization or program manager. Copies of the above shall be accompanied by a list of all parties having or deriving any interest, right or benefit in the servicing organization, program manager or administrator;

4. A cash management plan;

5. A fidelity bond for the administrator and all persons handling fund assets in a form and amount acceptable to the Commissioner;

6. A surety bond for the claims administrator or any other servicing organization deemed necessary by the Commissioner in a form and amount acceptable to the Commissioner; and a surety bond for any other servicing organization as deemed appropriate by the fund commissioners in a form and amount acceptable to the fund commissioners;

7. Errors and omissions coverage for the servicing organization, program manager, administrator, and producer who negotiates stop-loss or reinsurance on behalf of the fund;

8. A designation and appointment of an agent in New Jersey to receive service of process on behalf of the fund as well as the address in this State where the books and records of the fund will be maintained at all times;

9. A list of commissioners, officers, executive committee members, and servicing organizations, updated annually;

10. Data forms incorporating the appropriate and necessary professional qualifications for senior officers and directors of the administrator and servicing organizations providing services to the fund, updated annually;

11. Copies of each insurance and reinsurance policy purchased by the fund;

12. A pro forma financial statement based on the fund's actual membership on a form acceptable to the Commissioner showing the financial strength and liquidity of the fund to assure that all obligations will be met promptly;

13. Where self-insured, a plan for specific and aggregate stop-loss insurance or reinsurance and/or for retention in accordance with sound actuarial principles and the plan of risk management;

14. Proof of competent personnel and ample facilities within the fund organization with respect to claims administration, including a claims processing manual, underwriting matters and loss prevention, or present a contract with a servicing organization(s) for the provision of such services specifying compensation schedules and standards of performance;

15. A description of any producer arrangement plan by which producers, who shall be licensed pursuant to N.J.S.A. 17:22A-1 et seq., represent members in their dealings with the fund. The description shall include, but not be limited to, copies of all producer contracts, which shall include a description of the producers' obligations, responsibilities and compensation; the duration of such contracts; and an indication whether the contracts are subject to renewal.

i. The compensation paid to producers shall be reasonable. The Commissioner may disapprove any arrangement if he or she determines that the terms of the arrangement are unreasonable;

16. The claims handling procedure to be utilized by the fund which shall provide for the prompt, fair, equitable and confidential settlement of claims and which shall be administered in compliance with N.J.S.A. 17B:30-13.1 and 17B:30-13.2, and N.J.A.C. 11:2-17 and 11:15-3.22; and

17. The complaint handling procedure to be utilized by the fund which shall provide for the confidentiality of the claimant's identity in compliance with N.J.A.C. 11:15-3.22 and including, but not limited to, procedures for the resolution of disputed claims operated and adjudicated by an independent organization or arbitrator.

11:5-3.7 Disapproval of bylaws and plan of risk management

(a) If the Commissioner determines that the bylaws or plan of risk management of the fund and all other information required pursuant to N.J.A.C. 11:15-3.6, or any subsequent amendments or changes thereto, do not meet the requirements of N.J.S.A. 40A:10-36 et seq., or this subchapter, the Commissioner shall disapprove the bylaws or plan of risk management and issue a written order containing the specific reasons for disapproval, and the requirements to be met before approval may be granted. Upon the receipt of the notice of disapproval, the commissioners of the affected joint insurance fund may request an informal Departmental public hearing. The public hearing shall be convened by the Commissioner in a timely manner.

(b) If, after submission of all of the information set forth in N.J.A.C. 11:15-3.6, the bylaws and plan of risk management containing all of the information required by N.J.A.C. 11:15-3.6 are not disapproved by the Commissioner within 30 working days of receipt of the supplemental information set forth in N.J.A.C. 11:15-3.6(e), the bylaws and plan shall be deemed approved, pursuant to N.J.S.A. 40A:10-41c.

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11:15-3.8 Suspension, termination, assumption of control, or other action by Commissioner

(a) After notice and opportunity for a hearing, the Commissioner may suspend or terminate the authority of any joint insurance fund, or direct or take any action deemed necessary for good cause, to enable a fund to meet its obligations, cover its expected losses, or to liquidate, rehabilitate or otherwise modify its affairs if a fund:

1. Is found to be insolvent or has experienced a deterioration in financial condition to the extent that it causes an adverse effect upon the ability of the fund to pay expected losses;

2. Fails to pay any fee or assessment; or

3. Fails to comply with any of the provisions of N.J.S.A. 40A:10-36 et seq. or this subchapter, or with any lawful order of the Commissioner within the time prescribed.

(b) In addition, the Commissioner may terminate or suspend a fund's authority if, after notice and opportunity for a hearing, he or she finds that:

1. There was a material misrepresentation or omission in any of the information supplied to the Commissioner or the Commissioner of the Department of Community Affairs;

2. The fund, or any of its commissioners or its administrator, has otherwise shown itself to be untrustworthy or incompetent; or

3. The fund, its commissioners or its administrator have misappropriated, converted, illegally withheld, or refused to pay over upon proper demand any monies that belong to a member, an employee of a member or a person otherwise entitled thereto and that have been entrusted to the fund, its commissioners, or its administrator in their fiduciary capacities.

11:15-3.9 Approval of non-member local units

(a) Prospective new members of the fund shall submit an application for membership to the fund's commission, or executive committee, as applicable, on a form acceptable to the Commissioner. The application shall include a copy of the resolution of participation and executed indemnity and trust agreement. The commission or executive committee may approve or disapprove the application for additional members, pursuant to the admissions criteria and bylaws of the fund.

(b) Any application approved by the fund shall be concurrently filed with the Department and the Department of Community Affairs and shall be accompanied by a revised budget with assessment detail, the name of the new member's insurance fund commissioners and alternates in accordance with N.J.A.C. 11:15-3.6(e), amendments to the fund's bylaws and plan of risk management as may be necessary, and any other information the Commissioner may deem necessary.

(c) No new membership in the fund shall become effective until the application and accompanying amendments to the fund's bylaws and plan of risk management are approved by the Commissioner and the Commissioner of the Department of Community Affairs.

(d) If a non-member local unit is not approved for membership, the fund shall set forth in writing the reasons for disapproval and send the reasons for disapproval to the non-member local unit. The fund shall retain a copy of all disapprovals for five years.

11:15-3.10 Termination and/or withdrawal of fund members

(a) A member of the fund may remain a member for the full term of membership, as provided in the fund's bylaws, unless terminated by the fund for nonpayment of assessments, noncompliance with risk management or underwriting standards, or for other reasons subject to the prior approval by the Commissioner as reasons for termination. However, a member shall not be deemed terminated for any reason until:

1. After 10 days written notice of the intention to terminate the member has been given by the fund to the member, which notice shall state the reasons for termination and shall be given by registered mail;

2. Like notice shall have been filed with the Department and the Department of Community Affairs, together with a certified statement that the notice provided for by (a)1 above has been given; and

3. Ten days have elapsed after the filing required by (a)2 above has been made.

(b) A member of the fund that does not desire to continue as a member after the expiration of its membership term, as provided in the fund's bylaws, must give written notice of its intent to withdraw 90 days before expiration of the term period. The fund shall immediately notify the Department and the Department of Community Affairs of all members that have given notice of withdrawal from the fund.

(c) A member of the fund that did not approve any amendment to the fund bylaws approved pursuant to N.J.S.A. 40A:10-43, or that does not otherwise want to continue membership prior to the termination of its membership term pursuant to (b) above shall provide written notice of its intent to withdraw 90 days prior to its withdrawal.

(d) A member that has been terminated by or does not continue as a member of the fund shall nevertheless share in any surplus in the appropriate trust accounts for that fund year and remain jointly and severally liable for claims incurred by the fund and its members during the period of its membership, including, but not limited to, being subject to and liable for supplemental assessments.

(e) Prior to the conclusion of the fund's current fiscal year, the fund shall provide written notification to a member that has been terminated by or withdrawn from the fund, of the estimated surplus or estimated supplemental assessment for which the member may share or be liable pursuant to (d) above.

(f) The fund shall immediately notify the Department and the Department of Community Affairs if termination or withdrawal of a member causes the fund to fail to meet any of the requirements of N.J.S.A. 40A:10-36 et seq. or this subchapter. Within 15 days of the notice, the fund shall advise the Department and the Department of Community Affairs of its plan to bring the fund into compliance.

11:15-3.11 Insolvency and/or bankruptcy of fund members

The insolvency or bankruptcy of a member does not relieve the fund or any other member of joint and several liability for the payment of any liability incurred by the member during the period of its membership, including, but not limited to, being subject to and liable for supplemental assessments.

11:15-3.12 Voluntary dissolution of a fund

(a) A fund may not voluntarily dissolve, or otherwise cease to do business and distribute its assets to its members, unless and until it satisfies the following requirements:

1. A majority of the fund's members must have voted in favor of a resolution to dissolve the fund, pursuant to the written plan contained in the fund's bylaws, at a meeting duly called for such purposes;

2. The plan of dissolution must provide for the payment of all incurred losses of the fund and its members, including all incurred but not reported losses, as certified by an actuary, before any assets of the fund or the trust fund accounts may be used for any other purpose;

3. The plan of dissolution shall contain a statement of the fund's current financial condition computed on a statutory basis and computed according to generally accepted accounting principles as attested to by an independent certified public accountant; and

4. The plan of dissolution, and such other information as may be required, must be filed with and approved in writing by the Commissioner and the Commissioner of the Department of Community Affairs.

11:15-3.13 Establishment of trust fund accounts; transfers or withdrawals prohibited

(a) Pursuant to the terms of the indemnity and trust agreement, each fund shall establish a separate trust fund account in accordance with N.J.A.C. 11:15-3.6(b)6 from which monies shall be disbursed solely for the payment of claims, allocated claim expenses and stop-loss insurance or reinsurance premiums retained jointly on a self-insured basis. The accounts shall be designated as claims or loss retention fund accounts.

1. Other than for the purposes specified in (a) above, or as otherwise authorized by this subchapter, no withdrawals may be

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affected for a claim or loss retention fund without prior written approval of the Commissioner.

(b) A fund may establish by resolution a separate trust fund account for contingencies and may include as a part of its budget an assessment for this account. The resolution shall provide a formula for the equitable assessment of members for the account, specify the uses of the contingency account, and provide a formula for the equitable distribution and return of contingency funds to terminated or withdrawing members in accordance with the procedures and time frames of N.J.A.C. 11:15-3.20. Pursuant to N.J.A.C. 11:15-3.6(b)6 and 7, the fund shall maintain a separate contingency account for employer contributions and employee contributions for contributory or non-contributory group health insurance and term life insurance.

1. In any one year an assessment, transfer of surplus or any combination of assessments for and transfers to a contingency account shall not exceed 2.5 percent of the fund's current fiscal year earned income. The contingency accounts of a fund shall not exceed 10 percent of the fund's current fiscal year income. The annual and aggregate limitations on the amount of the contingency account set forth herein may be increased with the prior approval of the Commissioner.

2. By resolution, a fund may transfer funds from a contingency trust fund account to a claims or loss retention trust fund account to pay claims, allocated claim expenses, and reinsurance and stop-loss premiums in a fund year which has an inadequate cash balance. The transaction shall be accounted for as a permanent transfer, and the fund shall notify the Department within 30 days of any such transfers.

3. A fund shall not transfer funds to a claims or loss retention trust fund account from a contingency trust fund account if the transfer would result in a statutory deficit in the contingency trust fund account.

4. If a fund utilizes an amount equal to 2.5 percent or more of its current fiscal year income from a contingency account during a fiscal year, the joint insurance fund commissioners shall, within 10 days of such utilization, submit to the Commissioner and the Commissioner of the Department of Community Affairs a report on the causes of the utilization and the steps taken to prevent a recurrence of such circumstances.

5. The fund shall maintain accounting records on contingency accounts by fund year which shall include:

i. The sources of contributions to the contingency account;

ii. Transfers from the account to a claims or loss retention trust fund account by fund year;

iii. Interest earned, which shall be allocated by the average balance in the contingency account by fund year; and

iv. The pro-rata share of each participating member local unit allocable to each member.

11:15-3.14 Administrative account

Each fund shall establish an administrative account which shall be utilized for payment of the fund's general operating expenses, cost containment activities, data processing services and general legal expenses.

11:15-3.15 Assessments

(a) Each participating member of a joint insurance fund shall appropriate and pay to the fund its assessments as required by the joint insurance fund. Assessments for contributory or non-contributory group health insurance and term life insurance may be paid in monthly installments.

(b) Each member's assessment shall consist of an amount allocated for the administrative account, contingency trust fund account when appropriate, plus a specific assessment to establish and/or replenish the claim or loss retention trust fund account for each type of coverage provided by the fund and in which the member participates.

(c) The total amount of each member's assessments to the joint insurance fund shall be certified by the joint insurance fund commissioners to the governing body of each participant at least one month prior to the next fiscal quarter. As a condition of continued participation in the joint insurance fund, each member shall pay the amount certified at the time and in the manner provided in the fund's bylaws.

(d) Nothing contained in this section shall preclude the assessment and payment of supplemental assessments as provided in N.J.A.C. 11:15-3.16.

11:15-3.16 Supplemental assessments

(a) Each fund shall levy upon its members an additional assessment whenever needed or so ordered by the Commissioner, to supplement the fund's claim or loss retention accounts or administrative accounts to assure payment of the fund's obligations.

1. The fund shall assess each participating member an additional proportionate amount, as provided in the fund's bylaws and plan of risk management or as directed by the Commissioner, to replenish claims or loss retention or administrative accounts.

(b) The joint insurance fund commissioners shall submit to the Commissioner and the Commissioner of the Department of Community Affairs a report of the causes of the fund's or any account's insufficiency, the assessments necessary to replenish it and the steps taken to prevent a recurrence of such circumstances.

(c) The members shall provide the additional assessments in accordance with the provisions of the Local Budget Law (N.J.S.A. 40A:4-1 et seq.), or Local Authorities Fiscal Control Law (N.J.S.A. 40A:5A-1 et seq.), as applicable.

11:15-3.17 Failure or refusal to provide required assessments

Should any member of a joint insurance fund fail or refuse to pay as directed its assessment(s) to the fund or to pay as directed any supplemental assessment(s), or should the joint insurance fund commissioners fail to assess funds required to meet the obligations of the fund, the chairman of the joint insurance fund commission or in the event of his or her failure to do so, the custodian of the fund's assets, shall notify in writing the Commissioner and the Commissioner of the Department of Community Affairs.

11:15-3.18 Certification of funds

Prior to any commitment or agreement requiring the expenditures of funds by the joint insurance fund, the custodian of the fund's assets shall certify the availability of sufficient unencumbered funds in the account to fully pay all charges or commitments to be accepted.

11:15-3.19 Investments; application of investment income

(a) The free balance of any account maintained by a joint insurance fund, whether for administrative, contingency or claims or loss purposes, shall be invested to obtain the maximum interest return practicable. All investments shall be in accordance with the fund's cash management plan and consistent with the statutes and rules governing the investment of public funds by local governments and pursuant to N.J.S.A. 40A:10-10b.

(b) The investment and interest income earned by the investment of the assets of each claim or loss retention fund account shall be credited to each account by fund year.

(c) The investment and interest income earned by investment of the assets of the administrative and contingency accounts shall be credited to each such account.

(d) With the prior approval of the Commissioner and the Commissioner of the Department of Community Affairs, a joint insurance fund may join together with other joint insurance funds to implement a joint investment and cash management program, as permitted pursuant to N.J.S.A. 40:8A-3.

11:15-3.20 Refunds

(a) Any monies for a fund year in excess of the amount necessary to fund all obligations for that fiscal year as certified by an actuary or in excess of the limits established for a contingency fund pursuant to N.J.A.C. 11:15-3.13(b) as certified by an actuary shall be declared to be refundable by the fund not later than 90 days after the end of the fiscal year. A refund of at least 50 percent of the amount declared to be refundable shall be made not later than 120 days after the end of the fiscal year. A refund of any remaining amounts shall be made not later than 180 days after the end of the fiscal year.

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(b) A refund for any fiscal year shall be paid only in proportion to the member's participation in the fund for the fiscal year. Payment of a refund on a previous year shall not be contingent on the member's continued membership in the fund after that year.

(c) At the option of the member, the refund may be retained by the fund and applied toward the member's next assessment payment.

(d) The commissioners or executive committee may appropriate a portion of any refund to the appropriate contingency account subject to the provisions of N.J.A.C. 11:15-3.13(b).

11:15-3.21 Disbursements and/or payment of claims

(a) All disbursements, payments of claims settlements or other expenditure of funds of the joint insurance fund whether for administrative expenses or for claims purposes must be approved by a majority of the joint insurance fund commissioners or the executive committee thereof, unless approved pursuant to (b) below.

(b) To allow the expeditious resolution of certain claims, the fund commissioners may designate the fund's administrator or servicing organization as a "certifying and approving officer" pursuant to N.J.S.A. 40A:5-17. The certifying and approving officer may be authorized by the fund commissioners to approve for payment any or specified types of claims not to exceed an amount approved by the Commissioner in the plan of risk management. The designation of the certifying and approving officer may be conditioned or restricted by the fund commissioners to require prior consultation, limitation as to the types or total amount of claims or payments which may be approved, or other procedures or restrictions as the fund commissioners may deem appropriate. The authority of the certifying and approving officer may be revoked at any time by the fund commissioners.

1. Upon approval, the certifying and approving officer shall certify the amount and particulars of the approved claims to the official having custody of the fund's assets, directing that a check for payment be prepared.

2. The certifying and approving officer shall prepare a report of all claims approved by him or her since the last report, detailing the nature and amount of the claim, the payee, the reasons supporting payment and any other pertinent information. This report shall be submitted to the fund commissioners at their next scheduled meeting. The fund commissioners shall review and approve the actions of the certifying and approving officer. In the event a claim approved and paid by the certifying and approving officer is not approved by the fund commissioners, they shall direct appropriate action to be taken.

(c) All requests for payments must be accompanied by a detailed bill of items or demand, specifying particularly how the bill or demand is made up, with the certification of the party claiming payment that it is correct, and must carry the certification of some officer or duly designated agent or employee of the fund having knowledge of the facts that the goods have been received by, or the services rendered to the fund. In the case of claims or losses to be charged against any loss fund, the fund's claims administrator, if there is one, shall certify the claim's correctness and validity.

(d) All claims shall be paid by check. The check shall be signed by two persons so designated by the fund commissioners.

(e) All claims and other disbursements approved for payments by the fund commissioners or the certifying and approving officer shall be recorded in a claims register maintained by the custodian of the fund's assets.

11:15-3.22 Confidentiality of claims

(a) Employee claims information is privileged and confidential and shall not be included as a part of any open public record.

(b) Fund commissioners and the officials of the member shall not have access to any employee claim information which reveals the identity of any individual plan participant.

(c) All claims are to be filed, and all inquiries are to be handled, directly by the designated claims' administrator. All employees of the administrator shall execute a non-disclosure statement to protect the identity of the plan participants.

(d) Only executive committee members and necessary fund professionals shall participate in any closed session discussion of claims. These claims discussions, whether general or specific to a coverage dispute, shall at all times be confidential and anonymous so that the identity of the municipality and claimant cannot be ascertained. The anonymity of the claimant shall be accomplished by assigning a blind claim number and deleting all references to the individual's name and place of employment. Only the claimant may demand, by written notice, that the matter be handled with disclosure of his identity.

(e) Documents identifying the employee, or from which the employee's identity might be deduced, shall not be accessible to any persons other than the administrator, program manager, fund attorney, or appointed claim auditors when such records are needed to verify the accuracy of claim data as part of an audit.

(f) Any person having access to claim information must sign a written non-disclosure statement.

11:15-3.23 Stop-loss insurance and/or reinsurance

(a) Each fund providing primary or underlying coverage on a self-insured basis shall secure stop-loss insurance or reinsurance in a form and amount acceptable to the Commissioner from an insurer authorized or admitted in the State.

(b) Certificates of stop-loss insurance and/or reinsurance showing policy limits and other information shall be available for the inspection of each member and shall be filed with the Commissioner.

(c) Losses in excess of the established self-insurance retention amount shall be borne by the stop-loss carrier(s) according to the terms and conditions of the stop-loss contract(s).

(d) Any proposed change in the terms or limits of stop-loss insurance and/or reinsurance shall be submitted to the Department and the Department of Community Affairs for approval at least 30 days prior to the effective date of the proposed change.

11:15-3.24 Financial statement and reports

(a) A sworn annual report in a form prescribed by the Commissioner shall be prepared by each fund, filed concurrently with the Department and Department of Community Affairs and made available to each fund member not later than 120 days after the end of the immediately preceding fiscal year. The report shall include:

1. An annual audited statement of the financial condition of the fund prepared by an independent certified public accountant or registered municipal accountant and performed in accordance with generally accepted accounting principles and N.J.S.A. 40A:10-46, which shall include a statement of the organization of the fund, including its balance sheet and receipts and disbursements for the preceding year;

2. Reports of outstanding liabilities by line of coverage showing the number of claims, amounts paid to date and current reserves for losses, claims and unearned assessments as certified by a qualified actuary;

3. Reports of all incurred but not reported liabilities certified by a qualified actuary;

4. Any material changes in information from that previously submitted;

5. The number of covered individuals by line of coverage; and

6. Such other information, as may be requested by the Department from a particular fund.

(b) In addition to the reports required pursuant to (a) above, for the initial two fiscal years of a fund, a fund shall file quarterly unaudited statements of the financial condition of the fund in a form prescribed by the Commissioner concurrently with the Department and the Department of Community Affairs within 45 calendar days after the end of each calendar quarter. After the initial two years, a fund shall file semiannual unaudited statements of the financial condition of the fund in a form prescribed by the Commissioner, concurrently with the Department and the Department of Community Affairs within 45 calendar days after the end of each six month period. All statements filed pursuant to this subsection shall include the information set forth in (a) above, except that certification by a certified public accountant, registered municipal accountant or a qualified actuary shall not be required.

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11:15-3.25 Examination of funds possibly in financial condition detrimental to the public

(a) The Commissioner may conduct an examination of any fund as he or she deems necessary, or at any time the Commissioner has reasonable cause to believe the fund may be insolvent or in a financial condition detrimental to its members or to the public. It shall be the duty of the fund members, commissioners or executive committee to notify the Commissioner of any information indicating that any fund may be insolvent or in a financial condition detrimental to the fund's members or the public.

(b) The fund members, commissioners or executive committee may, upon majority vote, request that the Commissioner order an examination of any fund member which the fund, commissioners or executive committee, if any, in good faith believes may be in a financial condition detrimental to other fund members or to the public.

(c) Any examination made pursuant to N.J.S.A. 40A:10-36 et seq. and this subchapter shall be conducted in a manner satisfactory to the Commissioner and by such persons as the Commissioner designates. The cost of any examination shall be borne by the fund.

11:15-3.26 Servicing organizations; administrator

(a) Except with the approval of the Commissioner, no servicing organization or program manager of a fund, or producer appointed by a fund pursuant to N.J.A.C. 11:15-3.6(e)15, or their employees, officers or directors shall have either a direct or indirect financial interest in the administrator of that fund, or be an employee, officer or director of the administrator.

(b) Except with the approval of the Commissioner, no administrator of a fund, or its employees, officers or directors shall be an employee, officer or director of, or have either a direct or indirect financial interest in, a servicing organization or program manager of that fund, or the insurance producer appointed by that fund pursuant to N.J.A.C. 11:15-3.6(e)15.

(c) Each contract with a servicing organization or program manager shall include a clause stating, "Unless the Commissioner otherwise permits, the servicing organization (or program manager, as applicable) shall handle to their conclusion all claims and other obligations incurred during the ocntract period."

(d) The fund commissioners or the executive committee, if any, may designate an administrator or lead agency to carry out the policies established by the commissioners or the executive committee, if any, and to provide day-to-day management of the fund. The minutes of the commissioners or executive committee meetings, if any, shall detail the areas of authority delegated to the administrator.

(e) Any employee, officer or director of an administrator, servicing organization, program manager or insurance producer appointed pursuant to N.J.A.C. 11:15-3.6(e)15 shall disclose to the fund commissioners or executive committee, as applicable, any direct or indirect financial interest such employee, officer or director has in any other administrator, servicing organization, program manager or insurance producer.

11:15-3.27 Conflict of interest

All officials or employees of a participating local unit or any members of the family of such officials or employees shall comply with N.J.S.A. 40A:9-22.1 et seq., (the "Local Government Ethics Law").

11:15-3.28 Notice and hearings

(a) The Commissioner shall give prior written notice of any proposed suspension of authority, revocation, cease and desist order, or other enforcement action to the fund commissioners, its executive committee, or member local unit as the case may be, or to any person to whom the proposed enforcement action applies specifically. The notice shall be served personally or by certified or registered mail upon all interested parties, shall set forth the grounds for the proposed enforcement action, and shall inform the fund or the person of their right to request a hearing on the proposed enforcement action. A copy of the written notice shall also be provided to the Commissioner of the Department of Community Affairs.

(b) The fund involved shall have 20 days from the mailing of the notice to request a hearing on the proposed enforcement action. Such a hearing shall be conducted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. Failure to mail a request for a hearing within the time prescribed shall result in the revocation, monetary penalty or cease and desist order becoming effective 30 days from issuance of the original notice. In no event shall any revocation become effective prior to the date that a hearing is scheduled.

11:15-3.29 Orders

(a) After notice and opportunity for a hearing, as provided in N.J.A.C. 11:15-3.28, the Commissioner may issue an order requiring a person or fund to cease and desist from engaging in an act or practice found to be in violation of any provision of N.J.S.A. 40A:10-36 et seq. or this subchapter.

(b) Upon a finding, after notice and opportunity for a hearing, as provided in N.J.A.C. 11:15-3.28, that a fund has violated any cease and desist order, the Commissioner may revoke his or her approval of the fund.

(c) Upon a finding, after notice and opportunity for a hearing, as provided in N.J.A.C. 11:15-3.28, the Commissioner may issue an order requiring the joint insurance fund commissioners, or the executive committee, if any to dismiss an administrator, servicing organization or program manager or terminate the contract of an administrator, servicing organization or program manager because of any fraud, material misrepresentation, incompetence or untrustworthiness, misappropriation or conversion of monies or violation of any fiduciary responsibilities by the administrator, servicing organization or program manager, or any of the employees, officers or directors thereof.

(d) A copy of any notice issued pursuant to this section shall be furnished to the Commissioner of the Department of Community Affairs.

11:15-3.30 Severability

The rules contained in this subchapter and any of the provisions thereof shall be severable, and if any of its provisions shall be held to be unconstitutional or otherwise invalid, the decision of the court shall not affect the validity of the remaining rules and regulations or any of the provisions thereof.

(a)

DIVISION OF ENFORCEMENT AND CONSUMER PROTECTION

Insurance Producer and Limited Insurance Representative Standards of Conduct

Marketing; Activities for Which a Person Must Be Licensed as an Insurance Producer or Registered as a Limited Insurance Representative; Delivery of Policies

Proposed Amendments: N.J.A.C. 11:17A-1.2, 1.3, 1.4 and 1.5; 11:17A-4.6

Authorized By: Samuel F. Fortunato, Commissioner, Department of Insurance.

Authority: N.J.S.A. 17:1C-6(e) and 17:22A-1 et seq.

Proposal Number: PRN 1993-61.

Submit comments by March 3, 1993 to:
Verice M. Mason
Assistant Commissioner
Legislative and Regulatory Affairs
New Jersey Department of Insurance
20 West State Street
CN 325
Trenton, New Jersey 08625

The agency proposal follows:

Summary

One purpose of these proposed amendments is to provide further clarification as to who must be licensed as an insurance producer or

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registered as a limited insurance representative pursuant to the producer licensing laws and regulations.

Accordingly, the Department proposes to amend the definitions of "solicit," "negotiate" and "effectuate" at N.J.A.C. 11:17A-1.2 to include new language stating that these terms, which would ordinarily trigger the licensing requirement, do not include "clerical activities of the kind set forth at N.J.A.C. 11:17A-1.5 carried out under the supervision and control of an insurer or licensed insurance producer, or procedures relating to loss control, inspection, or the processing, adjusting, investigating or settling of a claim or an existing insurance contract."

The Department proposes to amend N.J.A.C. 11:17A-1.3(e) so that this subsection will apply to officers and employees of insurance producers as well as to officers and employees of insurers. Employment with an insurance producer does not automatically exempt the employee from the insurance producer licensing requirements. The phrase "directly with the public" has been added to clarify the Department's intent that only officers and employees of insurers or insurance producers who solicit, negotiate or effectuate insurance by communicating directly with the public shall be required to be licensed as insurance producers. In addition, the Department has expanded the language stating that the requirement of licensure does not apply to insurer officers or employees whose activities are incidental to their employment duties by adding the phrase "and whose compensation is not dependent on sales."

The Department is proposing further clarification of specific activities set forth in N.J.A.C. 11:17A-1.5(a) for which licensure is not required. Included in this list of activities are the receiving, preparing, recording and transmission of certain information including preparation of appropriate endorsements or processing of appropriate changes through an automated system developed and maintained under the supervision of an insurer or licensed insurance producer, and the preparation of applications, binders, certificates, endorsements and identification cards or policies under the supervision of an insurance producer.

Also proposed is the addition of three activities not previously appearing in the listing including communication with prospective or existing insureds for the purpose of auditing records or providing loss control on underwriting verifications and inspections, and the dissemination of certain types of information or forms.

Another proposed clarification is set forth at N.J.A.C. 11:17A-1.5(a) where it is stated that the listing of clerical duties not requiring licensure applies to office employees "under the supervision or control of an insurer or licensed producer."

Finally, three proposed amendments are made to the list of specific activities at N.J.A.C. 11:17A-1.4(b) that do constitute solicitation, negotiation and effectuation of an insurance contract and consequently require licensure. The first of these amendments at paragraph (b)9 has to do with initiating inquiry as to the terms of existing coverage with an exception noted. The second amendment deletes the reference to "adding or deleting coverages" at former paragraph (b)14. The third amendment at codified paragraph (b)14 concerns responding to a policyholder's request for advice or counsel regarding policy provisions or coverage.

Helpful examples have been added to the rules in several instances.

Another purpose of these amendments is to amend the current definition of "insurance contract" to provide for commitments for title insurance. A commitment for title insurance is an insurance contract and therefore should be included in the definition of insurance contract. Also, the definition of "insurer" has been amended to include limited assignment distribution (LAD) carriers. Authorized LAD carriers are insurers because they are in the business of assuming risk and are otherwise transacting the business of insurance in this State. These revised definitions are set forth at N.J.A.C. 11:17A-1.2.

The Department proposes to add new language also relating to title insurance to N.J.A.C. 11:17A-4.6 which deals with delivery of policies. Title insurance is distinct from other types of insurance coverage. Therefore, separate provisions concerning the delivery of title insurance policies are necessary. The amendment requires insurance producers who prepare title insurance policies to deliver the policy to the insured or applicant within 30 days following the receipt by the insurance producer of the necessary proofs showing that all exceptions or requirements in the title commitment, which do not customarily appear in the policy, have been satisfactorily resolved. This amendment accommodates the differences in the way insurance producers prepare and issue title insurance.

Social Impact

The proposed amendments clarify which officers and employees of insurers and insurance producers must be licensed as insurance producers or limited insurance representatives. The determining factor is whether one's job responsibilities include the solicitation, negotiation and effectuation of insurance contracts within the context of revised definitions of these terms which are proposed herein and the specific activities which are listed at N.J.A.C. 11:17A-1.4(b) and 1.5(a). The proposed amendments reflect the Department's intent that officers and employees of insurers and insurance producers who engage in the solicitation, negotiation or effectuation of insurance contracts directly with the public should be licensed as insurance producers or limited insurance representatives as the case may be. This will result in enhanced professionalism within the insurance industry to the ultimate benefit of insurance consumers. Further clarification of who needs to be licensed will also improve compliance by insurers and insurance producers with the licensing requirements and increase the Department's efficiency in enforcing these requirements.

In addition, the amendments address problems peculiar to title insurance and limited assignment distribution (LAD). The proposed amendments will conform the rules more fully to the underlying statutory language and will clarify the Department's current policies where the rules are currently unclear and do not address current practice. Accordingly, the regulated public will be more fully and accurately apprised of its rights and obligations under the law. Upon adoption of these amendments, the Department will need to devote less resources to responding to inquiries concerning matters which are addressed herein.

Economic Impact

The proposed amendments will reduce considerably the increased cost initially anticipated by insurers and producers alike in complying with the new producer licensing requirements. Although the net effect of these new requirements will be an increase in the number of persons licensed, many employees previously thought to be in need of licensing no longer fall within that category. The anticipated licensing burden to be assumed by the Department is also correspondingly reduced.

The new 30-day delivery deadline for title insurance policies prepared by insurance producers, as proposed at N.J.A.C. 11:17A-4.6, will not impose any appreciable economic impact on the producers since there is no change in the duties they perform.

Regulatory Flexibility Analysis

The Department believes that few, if any, insurers subject to these proposed amendments are "small businesses" as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, there are small businesses to which these proposed amendments would apply that include insurance producers. In any event, the amended rules impose no undue burden or adverse economic impact upon insurers or producers which may qualify as "small businesses."

Because the proposed amendments to N.J.A.C. 11:17A-1.2, 1.3, 1.4 and 1.5 are of a clarifying nature, and impose no additional reporting, recordkeeping or compliance requirements on small businesses, no differential provisions applicable to small businesses have been provided in these amendments.

The proposed amendment to N.J.A.C. 11:17A-4.6 does impose a compliance requirement on title insurance producers who prepare the policies of insurance. The imposition of this requirement will impact small businesses but the impact will be minimal because the only change is to impose a reasonable time frame in which the same duties presently undertaken must be performed. It is anticipated that title insurance producers who qualify as small businesses will require no additional professional services in this regard and therefore no lesser requirement is provided based on business size.

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

11:17A-1.2 Definitions

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

. . .

"Effectuate" or "effectuation" means the act of [insuring] **binding** or making operable and effective an insurance contract **or any change thereto,** including all binders and endorsements, **but does not include clerical activities of the kind set forth at N.J.A.C.**

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11:17A-1.5 carried out under the supervision and control of an insurer or licensed insurance producer, or procedures relating to loss control, inspection, or the processing, adjusting, investigating or settling of a claim on an existing insurance contract.

. . .

"Insurance contract" means a contract, policy, [or] application, **binder or commitment,** where applicable, of life insurance, health insurance, indemnity, property and casualty, fidelity, surety, guaranty [and], title insurance, **a commitment for title insurance** or an annuity.

. . .

"Insurer" means any company that underwrites or issues an insurance policy or contract including fraternal benefit societies as defined [in] **at** N.J.S.A 17:44A-1 et seq. [and], risk retention groups and purchasing groups as defined [in] **at** 15 U.S.C. 3901 **and limited assignment distribution (LAD) carriers as defined at N.J.A.C. 11:3-2.2.**

. . .

"Negotiate" or "negotiation" means the act of conferring **directly** with, **or offering advice to,** a prospective purchaser of a contract of insurance concerning any of the substantive benefits, terms of, **proposed changes to,** or the premium to be charged for, the contract, **but does not include clerical activities of the kind set forth at N.J.A.C. 11:17A-1.5 carried out under the supervision and control of an insurer or licensed insurance producer, or procedures relating to loss control, inspection, or the processing, adjusting, investigating or settling of a claim on a existing insurance contract.**

. . .

"Solicit" or "solicitation" means any activities which are designed to [initiate] **result in** the purchase of a contract of insurance, **or a change to an existing contract of insurance,** [that is being offered for sale by or through the person making the solicitation] **but does not include clerical activities of the kind set forth at N.J.A.C. 11:17A-1.5 carried out under the supervision and control of an insurer or licensed insurance producer, or procedures relating to loss control, inspection, or the processing, adjusting, investigating or settling of a claim on an existing insurance contract.**

11:17A-1.3 Who must be licensed; exceptions

(a)-(d) (No change.)

(e) Officers or employees of insurers authorized to do business in this State and **officers or employees of licensed insurance producers,** who solicit, negotiate or effectuate insurance **by communicating directly with the public whether in person or by mail, fax, computer or telephone,** in the name of and on behalf of the insurer **or the licensed insurance producer,** for compensation of any type, shall [have secured licensure] **be licensed** as an insurance producer, or [registration] **registered** as a limited insurance representative, as appropriate[,]**. With respect to officers or employees of insurers, licensure shall be secured** on or before May 1, 1993. [This requirement shall apply to insurer officers or employees whose employment duties include the solicitation, negotiation and effectuation of insurance contracts on behalf of their employer.] This requirement shall not apply to insurer officers or employees whose participation in the solicitation, negotiation and effectuation of insurance contracts is incidental to their employment duties **and whose compensation is not dependent upon sales.**

11:17A-1.4 Solicitation, negotiation, effectuation of an insurance contract

(a) (No change.)

(b) Solicitation, negotiation and effectuation of an insurance contract includes, but is not limited to, the following activities:

1.-6. (No change.)

7. Disseminating information as to coverages in general or for any particular policy, except that this shall not prohibit the dissemination of [Buyer's] **buyer's** [Guides] **guides** or applications for coverage in response to requests from prospective policyholders;

8. (No change.)

9. [Inquiring] **Initiating an inquiry** as to the terms of existing coverage, **except as described at N.J.A.C. 11:17A-1.5(a)5;**

10. Discussing or describing the coverages or terms of a proposed contract of insurance with a prospective policyholder, including counseling as to which coverages to buy;

Example: If an insured or prospective insured requests advice in any communication with an unlicensed employee, the response must be made by a licensed producer.

11.-12. (No change.)

13. Authorizing the issuance or delivery of certificates of insurance, endorsements, binders or insurance policies or insurance identification cards; **and**

[14. Adding or deleting coverages; and]

[15.]**14.** Responding to a policyholder's [questions] **request for advice or counsel** regarding policy provisions or coverage.

Example: In the course of requesting an application form or a change to an existing policy, if a policyholder or prospective policyholder, while speaking to an unlicensed person, requests an opinion about the terms of the proposed insurance contract or the proposed change to the existing contract, the response must be made by a licensed producer.

(c) (No change.)

11:17A-1.5 Activities for which licensure not required

(a) Office employees who perform strictly clerical duties **under the supervision and control of an insurer or licensed producer** shall not be required to be licensed as an insurance producer. Such [clerical] duties shall include, but are not limited to, the following activities:

1. Receiving requests for coverage for transmittal to a licensed insurance producer **or for processing through an automated system developed and maintained under the supervision of an insurer or licensed insurance producer;**

2.-5. (No change.)

6. [Recording] **Receiving and recording** information from an applicant or policyholder and [typing] **preparing** for an insurance producer's review and signature all binders, certificates, endorsements, identification cards or policies pursuant to instructions from the insurance producer;

7. [Recording] **Receiving and recording** information from an applicant or policyholder and [typing] **preparing** an application for insurance pursuant to instructions from and for the review of an insurance producer;

8. [Taking a message] **Receiving and recording information** from a policyholder or prospective policyholder to give to an insurance producer for his or her response, or [giving a message] **transmitting information** to a policyholder or prospective policyholder [at the direction] **under the supervision** of an insurance producer;

9. [Taking and noting] **Receiving and recording** an insured's request concerning any additions or deletions to **an existing** policy[, typing] **and preparing** the appropriate endorsements **or processing the appropriate changes through an automated system developed and maintained under the supervision of an insurer or licensed insurance producer** and [giving the endorsements to the insurance producer for final action] **notifying the insurance producer of the endorsements or changes;**

Example: An unlicensed person may receive and process a request from an insured to delete an automobile on an existing policy and to add a replacement automobile, or may receive and process a request to delete physical damage coverage on a particular automobile, or receive and process a request for similar routine policy changes initiated by an insured. An unlicensed person may not, however, initiate a change by, for example, telephoning a life insurance policyholder and suggesting that the insured increase the face amount of the policy;

10-12. (No change.)

13. Communicating with the policyholder or prospective policyholder in order to obtain factual information necessary for an insurance producer to complete a review; [and]

Example: An unlicensed person may call an applicant to request the submission of additional documents.

14. Informing the insured as to his **or her** coverages as indicated in policy records[.]**;**

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15. Communicating with a prospective or existing insured for the purpose of auditing records or providing loss control on underwriting verifications and inspections;

16. Disseminating buyer's guides, applications for coverage, coverage selection forms or other similar forms in response to a request from prospective or current policyholders; and

Example: An unlicensed person may receive a request for an application and respond by mailing or giving an application for insurance and other related literature. The unlicensed person may not, however, initiate the conversation.

17. Disseminating information as to rates secured by reference to a published or printed list or computer data base of standard rates.

Example: An unlicensed person may respond to a specific request for the cost of a specific coverage from a rate manual published in print or in an electronic format. However, an unlicensed person may not provide advice or suggestions concerning the benefits or drawbacks of a particular coverage, deductible, limit, etc., in the course of disseminating this information.

11:17A-4.6 Delivery of policies

Policies, certificates, or other evidence of insurance which are received by an insurance producer or limited insurance representative from an insurer for delivery to an insured shall be delivered or mailed to the insured by the insurance producer or limited insurance representative within 10 calendar days of their receipt by the insurance producer or limited insurance representative, unless the insured agrees in writing that the insurance producer or limited insurance representative may retain them for a longer period of time. **With respect to title insurance only, in all cases where the insurance producer prepares the policies of insurance, those policies shall be delivered to the insured or to the applicant within 30 days following the receipt by the insurance producer of the necessary proofs showing that all requirements or exceptions to title as set forth in the title commitment, and which customarily do not appear in the policy, have been satisfactorily disposed of.**

LABOR

(a)

DIVISION OF BUSINESS AND WORKER DEVELOPMENT

Application and Review Process for Customized Training under Workforce Development Partnership Act

Proposed New Rule: N.J.A.C. 12:23

Authorized By: Raymond L. Bramucci, Commissioner, Department of Labor.

Authority: P.L. 1992, c.43.

Proposal Number: PRN 1993-60.

Submit written comments by March 3, 1993 to:

Linda Flores
Special Assistant for External and Regulatory Affairs
Office of the Commissioner
Department of Labor
CN 110
Trenton, New Jersey 08625-0110

The agency proposal follows:

Summary

The New Jersey Workforce Development Partnership Program (WDPP) is a seven bill legislative package which was signed into law (P.L.1992, chapters 43 through 49) on July 7, 1992. Chapter 43 provides for employment and training services for New Jersey's unemployed, employed, and displaced workers and is designed to provide opportunity for occupational development, increased productivity, and earning power. This will be accomplished through training grants to eligible, individual workers and customized training tailored to the needs of employers. Chapter 44 creates the Workforce Development Partnership Fund and establishes the financing mechanism to operate the program; this bill does not increase the total amount of payroll taxes paid by employers or employees. Chapter 45 provides tuition waivers for unemployed workers attending public higher education institutions in the State; the bill extends the existing waiver program to all public institutions of higher education and makes waivers available for any course which is part of an overall job training program approved for an unemployed worker by the State Department of Labor. Chapter 46 establishes guidelines for the approval of training programs in labor demand occupations that are likely to enhance marketable skills and earning power for workers receiving regular unemployment insurance benefits. Chapter 47 extends the unemployment insurance benefit period for as much as 26 weeks for approved, eligible individuals enrolled in authorized job training. Chapter 48 establishes guidelines for training programs funded under the Federal Job Training Partnership Act; many of the guidelines are already followed, but the purpose of the bill is to make compliance universal. Chapter 49 allows public institutions of higher education to establish literacy tutoring programs and offer course credit to students who elect to participate.

The Workforce Development Partnership Program, under Chapter 43, specifically establishes the Office of Customized Training in the Department of Labor. The Office of Customized Training will provide financial assistance to eligible employers, consortia of employers and educational and/or training institutions, labor organizations, community-based organizations, or other entities that will lead to increased job creation or retention in New Jersey. These proposed new rules specifically address the activities of customized training.

Subchapter 1 contains definitions of terms that will be used in this chapter. Subchapter 2 contains general provisions dealing with the purpose, eligibility and scope of the proposed new rules; covers the application process and describes the information that must be provided as part of the application for customized training assistance; addresses the conditions and standards of eligibility for customized training assistance; sets forth the process for the review of customized training applications; and indicates where to obtain and send an application for customized training assistance as well as identifying where assistance in completing the application may be obtained.

The proposed new rules constitute the first installment in a series of rules designed to implement the New Jersey Workforce Development Partnership Program (WDPP). The proposed rules which will be forthcoming will set forth the criteria for the approval of training programs under the WDPP, including the criteria establishing full-time training and the courses which may be approved under the Program; the procedure and eligibility for claiming additional benefits during training, including work search waivers, claim options, appeals, and related areas; guidelines and policies governing various aspects of the grants process, including the allocation of funds, vendor obligations, reimbursement and appeals; eligibility for individual grants, including conditions and parameters governing the issuance of individual grants and the selection criteria for entry into the Program; the procedures and guidelines governing the allocation of disadvantaged worker funds to participating employment and training agencies; and requirements necessary to qualify as a counselor under the Program. These additional rules implementing Chapters 43 through 49 will be published at a later date.

Social Impact

The establishment of the Office of Customized Training under the WDPP and the services available from that office will have a positive impact on both employers and workers in New Jersey. Employers will be eligible for financial assistance to help them arrange a comprehensive package of services to meet their employment and training needs by increasing productivity and competitiveness. Employers that are better able to compete in the marketplace are less likely to relocate out of New Jersey. Workers are similarly impacted by being able to obtain retraining on the job or in cooperation with an educational and/or training institution that should result in higher work skills and increased earning power. The New Jersey economy also benefits by having a better trained workforce for the future. Customized Training services will enhance workers' ability to retain or obtain employment, thus generating both tax revenue and contributions to rather than deductions from the unemployment insurance fund. At the same time, the general economy will be strengthened through stimulation from the earnings of employed workers.

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Economic Impact

The creation and retention of employment in New Jersey are critical to improving the State's economy. The wide range of employment and training services and financial assistance available through the Department's Office of Customized Training can help stimulate the economy, resulting in increased job creation and business retention. In addition, the Office of Customized Training will have the necessary resources to facilitate the expansion of companies through technological advancement and increased productivity. Customized training activities will contribute to an environment favorable to start-up, growth, and prosperity of all types of businesses, thereby expanding the employment base in the State. Customized training services will be particularly beneficial to small businesses which are the principal source of job creation but which often lack the financial resources necessary to expand their operations. Businesses seeking customized training services would have to bear the costs of application, which includes the formulation of a business plan pursuant to N.J.A.C. 12:23-3.1(a). Each employer that receives customized training services shall contribute a basic minimum of 40 percent of the cost of the services. An employer who receives customized training services who leaves the State within three years of the conclusion of the training agreement will be required to return all monies provided to the company by the State for customized training services.

Regulatory Flexibility Analysis

The proposed new rules will have minimal impact in terms of imposing additional burdens upon businesses of any type, including small businesses, in New Jersey. Through a relatively simple application and review process administered by the Department of Labor, eligible employers, educational institutions, labor organizations, and community-based organizations will be able to access financial assistance to help train workers and create, upgrade, or retain jobs.

Businesses seeking customized training services would have to bear the costs of application, which includes the formulation of a business plan pursuant to N.J.A.C. 12:23-3.1(a). Each employer that receives customized training services shall contribute a basic minimum of 40 percent of the cost of the services. An employer who receives customized training services who leaves the State within three years of the conclusion of the training agreement will be required to return all monies provided to the company by the State for customized training services.

Depending on the nature of the training provided, capital costs may be incurred for any needed training facilities and material. Professional services may need to be engaged to provide the training. Small business participants will be required to bear a portion of such capital costs and costs of services. As the aim of the program is to benefit employers and employees through training of the latter, and the requirements imposed on applicants/participants are the minimum necessary to meet that goal, no exemptions or lesser requirements based on business size are provided.

Full text of the proposed new rules follows:

CHAPTER 23
WORKFORCE DEVELOPMENT PARTNERSHIP PROGRAM

SUBCHAPTER 1. DEFINITIONS

12:23-1.1 Definitions

The following words and terms, when used in this chapter, shall have the following meanings:

"Act" means the 1992 New Jersey Employment and Workforce Development Act, P.L. 1992, c.43 (N.J.S.A. 34:15D-1 et seq.)

"Administrative cost" means any costs incurred by the Department to administer the program, including any cost required to collect information and conduct evaluations of service providers pursuant to section 8 of P.L. 1992, c.43 and surveys of occupations pursuant to section 12 of P.L. 1992, c.43, to the extent that funding is not available from Federal or other sources.

"Approved service provider" means a service provider approved pursuant to section 8 of P.L. 1992, c.43. "Service provider" or "provider" means a provider of assessment and counseling services by a counselor approved by the Commissioner. An approved service provider may not engage in both counseling and remedial or vocational training. "Approved training provider" means a provider of training services including but not limited to, a private or public school or institution of higher education, a business, a labor organization or a community-based organization which delivers services within the State of New Jersey.

"Commissioner" means the Commissioner of Labor or the Commissioner's designees.

"Customized training services" means services that are provided by the Office of Customized Training or through arrangements made or coordinated by the Office of Customized Training.

"Department" means the New Jersey Department of Labor.

"Employability development plan" means an agreement between a qualified job counselor and a claimant in which an occupational goal, course of training or educational and other related activities in the Workforce Development Partnership Program are specified.

"Employer" or "business" means any employer subject to the provisions of N.J.S.A 43:21-1 et seq.

"Employment and training services" means:

1. Counseling;
2. Vocational training;
3. Remedial education; or
4. Occupational safety and health training.

"Fund" means the Workforce Development Partnership Fund.

"Identifiable job skill" means a specific ability which provides for a reasonable opportunity for employment in an occupation.

"Labor demand occupation" means an occupation for which there is or is likely to be an excess of demand over supply for adequately trained workers as determined by the New Jersey Occupational Information Coordinating Committee.

"New Jersey Occupational Information Coordinating Committee (NJOICC)" is the interagency consortium responsible for developing, managing, and overseeing a Statewide comprehensive occupational labor market supply and demand system to meet the common information needs for the planning for, and the operation of, all public training and job placement programs.

"Occupational safety and health training" means training or education that is designed to assist in the recognition and prevention of potential health and safety hazards related to an occupation that is the subject of vocational training.

"Office" means the Office of Customized Training established pursuant to section 5 of P.L. 1992, c.43.

"Program" means the Workforce Development Partnership Program.

"Prospective recipient" means an organization, community-based organization, corporation, consortium, agency, unit of government, or other entities which may submit proposals for discretionary funds under the Workforce Development Partnership Program.

"Qualified disadvantaged worker" means a worker who is not a qualified displaced worker or a qualified employed worker, but who otherwise meets the following criteria:

1. Is unemployed;

2. Is working part-time and actively seeking full-time work or is working full-time but is earning wages substantially below the median salary for others in the labor force with similar qualifications and experience; or

3. Is certified by the Department of Human Services as:

i. Currently receiving public assistance;

ii. Having been recently removed from the public assistance rolls because of gross income exceeding the grant standard for assistance; or

iii. Being eligible for public assistance but is not receiving assistance because of a failure to apply for it.

"Qualified displaced worker" means a worker who:

1. Is unemployed, and:

i. Is currently receiving unemployment benefits pursuant to N.J.S.A. 43:21-1 et seq. or any Federal or state unemployment benefit extension; or

ii. Has exhausted eligibility for benefits or extended benefits during the preceding 52 weeks; or

2. Meets the criteria set by Title III of the "Job Training Partnership Act," P.L. 97-300 (29 U.S.C. 1651 et seq.) to be regarded as an "eligible dislocated worker" pursuant to that act.

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"Qualified employed worker" means a worker who is employed by an employer participating in a customized training program.

"Remedial education" means any literacy or other basic skills training or education that may not be directly related to a particular occupation but is needed to facilitate success in vocational training or work performance.

"Service provider" or "provider" means a provider of employment and training services including, but not limited to, a private or public school or institution of higher education, a business, a labor organization or a community-based organization. A service provider must be located in New Jersey.

"Total revenue dedicated to the program during any one fiscal year" means all monies received for the fund during any fiscal year, including monies withdrawn from the State disability benefits fund pursuant to section 3 of P.L. 1992, c.44, minus any repayment made during that fiscal year from the fund to the State disability benefits fund pursuant to that section.

"Training grant" means a grant provided to fund vocational training and any needed remedial education for a qualified displaced or disadvantaged worker pursuant to section 6 of P.L. 1992, c.43.

"Vocational training" means training or education that is related to an occupation and is designed to enhance the marketable skills and earning power of a worker or job seeker.

SUBCHAPTER 2. CUSTOMIZED TRAINING SERVICES; PURPOSE, ELIGIBILITY AND SCOPE

12:23-2.1 Purpose

The purpose of this subchapter is to establish guidelines concerning the application and approval process for customized training services under the Workforce Development Partnership Program.

12:23-2.2 Eligibility and scope

(a) The following shall be eligible for customized training services:

1. An individual employer who seeks customized training services to create, upgrade, or retain jobs in a labor demand occupation;

2. An individual employer who seeks customized training services to upgrade, retain or create jobs in an occupation which is not a labor demand occupation, if the Commissioner determines that the services are necessary to create jobs or prevent the likely loss of jobs and negative impact on currently employed workers, or that the services are being provided to employees at a facility which is being relocated from another state into New Jersey;

3. An employer organization, labor organization, or community-based organization seeking customized training services to provide training in labor demand occupations in a particular industry; or

4. A consortium made up of one or more educational or training institutions and one or more eligible individual employers or labor, employer, or community-based organizations which seeks customized training services to provide training in labor demand occupations in a particular industry.

12:23-2.3 Application for customized training assistance

(a) It is the intent of the Workforce Development Partnership Program to link customized training services directly to the training needs of New Jersey employers. The approval of applications and execution of contracts for the delivery of customized training services will be accomplished in accordance with this intent.

(b) Each applicant seeking customized training services shall submit an Application for Customized Training to the Commissioner. The completed application shall include the applicant's name and address, basic descriptive information concerning the applicant, and specific details concerning training needs and requirements. The applications linked with employers shall also include a business plan and/or human resources plan from each employer that will receive customized training services. The business plan shall include:

1. Justification of the need for the services and funding from the Office, including financial and other information sufficient to demonstrate to the satisfaction of the Commissioner that the applicant will provide significantly less of the services if the requested funding is not provided by the Office;

2. A comprehensive long-term human resource development plan which:

i. Extends significantly beyond the period of time in which the services are funded by the Office; and

ii. Significantly enhances the productivity and competitiveness of the employer's operations located in the State and the employment security of workers employed by the employer in the State;

3. Evidence, if the training sought is for an occupation which is not a labor demand occupation, that the customized training services are needed to prevent job loss caused by obsolete skills, technological change, or national or global competition or that the services are being provided to employees at a facility which is being relocated from another state into New Jersey;

4. Information demonstrating that most of the individuals receiving the services will be trained primarily for work in the direct production of goods or services. This does not preclude training in other areas of need, such as total quality management and remedial education to upgrade workplace literacy; and

5. Any additional information from a specific applicant which the Commissioner deems appropriate.

(c) Applications which are not directly linked with an employer shall include:

1. Justification of the need for the services and funding from the Office, including information sufficient to demonstrate to the satisfaction of the Commissioner that the applicant will provide significantly less of the services if the requested funding is not provided by the Office;

2. Information demonstrating that most of the individuals receiving the services will be trained primarily for work in the direct production of goods or services. This does not preclude training in other areas of need such as total quality management or remedial education to upgrade workplace literacy; and

3. Any additional information from a specific applicant which the Commissioner deems appropriate.

(d) The New Jersey Occupational Information Coordinating Committee (NJOICC) shall determine or clarify the labor demand status of an occupation which is contained in an application for customized training services. The NJOICC shall collect, review and analyze worker supply and demand data and other relevant information; evaluate this information in the context of current and projected local, State, and/or regional labor market conditions; and provide a determination of the current and projected labor demand status of the occupation in question. In making this determination, the NJOICC may consider any relevant information provided by the Office of Customized Training and the applicant for customized training services. The determination made by NJOICC shall be utilized by the Department in its review and evaluation of applications for customized training services.

12:23-2.4 Conditions and standards of eligibility for customized training assistance

(a) All vocational training provided shall be training which is likely to enhance substantially the individual's marketable skills and earning power, and shall be training for a labor demand occupation, except for customized training provided to the present employees of a business which the Commissioner deems to be in need of the training to create jobs or prevent job loss caused by obsolete skills, technological change, or national or global competition, or customized training provided to employees at a facility which is being relocated from another state into New Jersey.

(b) Funds available under the program shall not be used for activities that induce, encourage, or assist any displacement of currently employed workers by trainees, including partial displacement by means such as reduced hours of currently employed workers, or replacement of laid off workers by trainees, or any relocation of operations outside of the State, resulting in a loss of employment at a previous workplace located in the State.

(c) No activities funded by the program shall impair existing contracts for services or collective bargaining agreements, except that activities which would be inconsistent with the terms of a collective bargaining agreement may be undertaken with the written concurrence of the collective bargaining unit and employer who are parties to the agreement.

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(d) Each applicant that receives customized training services shall contribute a minimum of 40 per cent of the total cost of the customized training services, except that the Commissioner shall set a higher or lower minimum contribution by an applicant, if warranted by the size and economic resources of the applicant or other factors deemed appropriate by the Commissioner. Examples of employer contributions to the costs of services include items such as training facilities, training material, direct funds and training personnel.

(e) Each employer receiving customized training services shall hire or retain in permanent employment each worker who successfully completes the training and education provided through the customized training program. The employer shall be entitled to select those workers who will participate in the customized training, except that if any collective bargaining unit represents an employed worker, the selection shall be conducted in a manner acceptable to both the employer and the collective bargaining unit. The Commissioner of Labor shall withhold such funds as he or she deems necessary as final payment for customized training services contingent upon the hiring and retention of the workers completing the training program. The final payment amount will be stipulated in the contract for customized training services executed between the approved applicant for customized training services and the Department of Labor.

(f) The Department of Labor requires that if the company receiving financial assistance for customized training services relocates out of State within three years following the ending date of the customized training contract, the company must return all monies provided to the company by the State for customized training services.

(g) Any employer seeking customized training services for workers represented by a collective bargaining unit shall notify the collective bargaining unit and permit it to participate in developing the plan. No customized training services shall be provided to a business employing workers represented by a collective bargaining unit without the written consent of both the business and the collective bargaining unit.

(h) Any employer receiving customized training services shall be responsible for providing workers' compensation coverage for any worker participating in the customized training.

12:23-2.5 Review and evaluation of customized training applications

(a) The factors that will be considered in reviewing and evaluating applications for training services which are directly linked to employers are:

1. The number and type of jobs created or retained;

2. Whether the training is in occupations leading to higher wages;

3. Whether the training is in occupations requiring higher or increased skills level;

4. Whether there will be an emphasis on the training of individuals primarily for work in the direct production of goods and services;

5. Whether the training will be provided within the context of a Business Plan and long-term Human Resources Development Plan; and

6. The extent to which an applicant who is a previous recipient of a customized training contract has provided opportunity for occupational development, increased productivity and, earning power.

(b) The factors that will be considered in reviewing and evaluating applications for training services which are indirectly linked to employers are:

1. The number and type of jobs created or retained;

2. Whether the training is in occupations leading to higher wages;

3. Whether the training is in occupations requiring higher or increased skills level;

4. Whether there will be an emphasis on the training of individuals primarily for work in the direct production of goods and services;

5. Whether the training will be provided within the context of a Business Plan and long-term Human Resources Development Plan;

6. The extent to which an applicant who is a previous recipient of a customized training contract has provided opportunity for occupational development, increased productivity and earning power; and

7. Whether potential employers have certified that they have reviewed the proposed training program and determined that it will enhance the productivity of the trained workers and make them better able to compete for employment.

(c) The factors that will be considered in reviewing and evaluating applications for training services which are not linked to employers are:

1. Whether the training is in occupations leading to higher wages;

2. Whether the training is in occupations requiring a high skill level;

3. Whether there will be an emphasis on the training of individuals primarily for work in the direct production of goods and services; and

4. The extent to which an applicant who is a previous recipient of a customized training contract has provided opportunity for occupational development, increased productivity, and/or earning power.

(d) Consideration for customized training assistance to applicants will be provided based upon the following order of priority:

1. Applications directly linked with an employer(s):

i. Priority will be given to those applications where there is a clear participation by an employer (completion of an Employer Application and Business Plan) who has committed to hire and/or retain in permanent employment each worker who successfully completes the education or training described in the customized training application;

2. Applications indirectly linked with an employer(s):

i. Consideration will be given to those applications which are accompanied by a certification by an employer documenting supporting the need for the customized training and an indication that the prospects of the employer's hiring or retaining the trainees will be enhanced as a result of their successful completion of the customized training program. These applications must describe how, as a result of this training, workers will be more productive, better able to compete for employment, or more attractive to employers as better trained workers;

3. Applications not linked with an employer(s):

i. Consideration will be given to those applications with no clear participation by, or certification from, an employer to hire following training. These applications must describe how, as a result of this training, workers will be more productive, better able to compete for employment, or more attractive to employers as better trained workers.

(e) Applications will be reviewed and evaluated by a panel made up of members of the Business Resource Network consisting of representatives from the New Jersey Departments of Commerce and Economic Development, Education, Higher Education, and Labor. Business Resource Network members will:

1. Serve as an objective, independent source of comments and recommendations concerning the merit of training applications for consideration within the Department of Labor's internal review process; and

2. Help ensure that a training proposal will be as effective as possible through the full coordination and best use of the appropriate resources of all participating departments.

(f) All applications will be reviewed within a reasonable amount of time.

(g) No application will be funded unless approved by the Commissioner of Labor.

(h) The Commissioner retains the authority to modify application review factors based on the changing needs of the New Jersey economy and to establish appropriate application review and approval methods consistent with those conditions.

(i) Upon approval of the application, a contract for customized training services containing the terms and conditions of the application will be executed between the applicant and the Department. A copy of the mandatory contract provisions is available from the Department of Labor upon request.

12:23-2.6 Where to obtain and send an application

(a) Customized training applications may be obtained from the Department of Labor, Office of Customized Training.

(b) Assistance in completing an application is available from the Office of Customized Training.

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(c) Completed applications should be forwarded to:
Office of Customized Training
New Jersey Department of Labor
Division of Business and Worker Development
CN 058
Trenton, New Jersey 08625

(a)

DIVISION OF WORKPLACE STANDARDS
OFFICE OF WAGE AND HOUR COMPLIANCE

Prevailing Wages for Public Works

Proposed Readoption: N.J.A.C. 12:60

Authorized By: Raymond L. Bramucci, Commissioner, Department of Labor.
Authority: N.J.S.A. 34:11-56.25 et seq., specifically 34:11-56.43.
Proposal Number: PRN 1993-57.

Submit written comments by March 3, 1993 to:
Linda Flores, Special Assistant for External and Regulatory Affairs
Office of the Commissioner
Department of Labor
CN 110
Trenton, New Jersey 08625-0110

The agency proposal follows:

Summary

N.J.A.C. 12:60, Prevailing Wages for Public Works, expires on March 21, 1993 under the five-year limit on rules pursuant to the sunset provisions of Executive Order No. 66(1978). The Department has reviewed these rules and has determined them to be necessary, reasonable and proper for the purpose for which they were originally intended.

N.J.A.C. 12:60, concerning the New Jersey Prevailing Wage Act, consists of rules promulgated to enforce the statutory requirements of N.J.S.A. 34:11-56.25 et seq., which provides that a worker employed in the performance of a contract placed by a public body with public funds shall be paid at not less than the prevailing wage rate for that worker's craft in that locality.

The chapter has been amended since the adoption of the rules on February 16, 1988 as published in the New Jersey Register on March 21, 1988 at 20 N.J.R. 664(a).

Subchapter 6 covering the inspection of records was added effective August 15, 1988 (see 20 N.J.R. 2064(a)), as was subchapter 7 on the ratio of apprentices to journeymen (see 20 N.J.R. 2064(b)). Also, subchapter 8 concerning debarment was added effective January 3, 1989 (see 21 N.J.R. 21(b)).

N.J.A.C. 12:60-9, Violations, Penalties and Fees, were added effective December 21, 1991 (see 23 N.J.R. 3812(a)) to the Prevailing Wage Rules to effectuate the requirements of the amendments contained in P.L. 1991, c.205.

An amendment to subchapter 6 concerning the submission of certified payroll records was added effective February 18, 1992 (see 24 N.J.R. 662(b)).

Chapter 60 contains nine subchapters. N.J.A.C. 12:60-1 contains the general provisions dealing with purpose, scope and validity. N.J.A.C. 12:60-2 contains definitions of terms. N.J.A.C. 12:60-3 covers the categories of crafts, trades or classes of workers.

N.J.A.C. 12:60-4 covers the criteria for the establishment of crafts, trades or classes of workers. N.J.A.C. 12:60-5 identifies the standards and publications referred to in this chapter. N.J.A.C. 12:60-6 deals with the inspection of records. N.J.A.C. 12:60-7 contains the criteria for determining the apprentice to journeymen ratio. N.J.A.C. 12:60-8 concerns debarment from contracting. N.J.A.C. 12:60-9 addresses violations, fees and penalties.

Social Impact

Implementation of the proposed readoption will continue to provide employers, workers and other concerned parties with a ready reference to the building crafts, trades and classifications of workers covered by the Prevailing Wage Act. This chapter will also continue to provide the criteria to be used to establish crafts, trades and classes of workers. The readopted rules will ensure that workers will receive the wages and benefits which they are due and that the Department will be able to enforce this chapter for the protection of the workers.

Economic Impact

As required under the Prevailing Wage Act, these rules may impose additional economic costs upon public entities entering into public works contracts covered under the statute. The rules carry out the mandate of the statute by establishing the prevailing wage level for workers engaged in public works, which level may not be the lowest wage at which the public work may be performed. This requirement is imposed under the statute in order to safeguard the efficiency and general well-being of workers and to protect them as well as their employers from the effects of serious and unfair competition resulting from wage levels detrimental to efficiency and well-being.

Economic benefits accrue to workers when the Department obtains wages due them under the Act, but which were denied them by employers in violation of the law. The amount of wages recovered by the Department on behalf of workers entitled to prevailing wages on a public works contract in fiscal year 1992 amounted to approximately $1.45 million.

The rules proposed for readoption also impose additional costs on those employers covered under the Prevailing Wage Act in the form of penalties assessed against them for non-compliance with the rules. Since the adoption in 1988 of the rules enforcing the Prevailing Wage Law, statutory amendments have been adopted which impose penalties upon employers who are in violation of the Act. The penalty schedule imposed by the Act is expected to increase compliance with the Act, thereby inuring to the economic benefit of workers and the public entity placing the public work contract.

In addition, there are some recordkeeping costs incurred in maintaining payroll records, although much of these costs are already required under the various wage and hour laws of the State.

Regulatory Flexibility Analysis

The rules proposed for readoption impose reporting and recordkeeping responsibilities on public works employers, some of which may be small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Specifically, under N.J.A.C. 12:60-6.1, public works employers are required to submit certified payroll records each pay period to the public body which contracted for the public works contract. The costs associated with these requirements of the rules are routine administrative costs to the employer. The rules also carry out the mandate of the Prevailing Wages Act by establishing the prevailing wage level for workers engaged in public works.

The Department recognizes that employers also undertake public works projects funded by Federal funds which are covered by Federal regulations. The Department proposes to maintain a similar protection for workers engaged in State projects.

In order to protect the interest of workers, the Department cannot provide exemptions for small businesses since doing so would jeopardize the well-being of workers engaged in public works projects.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 12:60.

(b)

DIVISION OF WORKPLACE STANDARDS

Safety and Health Standards for Public Employees Occupational Exposure to Hazardous Chemicals in Laboratories

Proposed Amendments: N.J.A.C. 12:100-4.2

Authorized By: Raymond L. Bramucci, Commissioner, Department of Labor.
Authority: N.J.S.A. 34:1-20, 31:1A-3(e), 34:6A-25 et seq., specifically 34:6A-30.
Proposal Number: PRN 1993-55.

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Submit written comments by March 3, 1993 to:
Linda Flores
Special Assistant for External and
Regulatory Affairs
Office of the Commissioner
Department of Labor
CN 110
Trenton, New Jersey 08625-0110

The agency proposal follows:

Summary

The Public Employees Occupational Safety and Health Act, N.J.S.A. 34:6A-25 et seq., requires the Department of Labor to establish health and safety standards for public employees.

On November 5, 1984, rules were promulgated by the Commissioner of Labor which adopted the Federal Occupational Safety and Health Administration (OSHA) standards by reference at N.J.A.C. 12:100, Safety and Health Standards for Public Employees.

The Federal Occupational Safety and Health Administration issued in the Federal Register, Volume 55, No. 21, page 3300, a final rule, 29 CFR 1910.1450, on occupational exposure to hazardous chemicals in laboratories effective May 1, 1990 with a compliance date of January 31, 1991. This final standard applies to all laboratories that use hazardous chemicals in accordance with the definition of laboratory use and laboratory scale provided in the standard.

The Federal agency followed all regulatory procedures required by Federal laws and court decisions including public hearings, risk assessment and feasibility analyses. The final standard provides for employee training and information, medical consultation and examination, hazard identification, respirator use, and recordkeeping.

Specifically, the standard, 29 CFR Part 1910.1450, sets forth the scope and application of the employers regulated under the standard. The standard imposes upon employers a duty to assure that laboratory employees exposed to hazardous chemicals are not exposed to levels exceeding the Permissible Exposure Limits (PELs) set forth in 29 CFR Part 1910, Subpart Z. The standard also imposes initial and periodic monitoring requirements where there is reason to believe that the PELs are being exceeded, as well as making provision for the termination of such monitoring.

In addition, the standard requires employers to formulate and implement a Chemical Hygiene Plan (CHP). The CHP must include the necessary work practices, procedures and policies to ensure that employees are protected from all potentially hazardous chemicals.

The final standard also calls for training of employees so that they will be aware of both physical and health hazards associated with hazardous chemicals present in their workplace. This training is provided at the time of initial assignment and prior to assignments involving new hazardous chemicals or new situations.

The standard also requires the designation of an employee who will serve as the Chemical Hygiene Officer to provide technical guidance and to determine the steps to be taken when overexposure or the potential for overexposure is suspected. The proposed final standard also sets forth requirements associated with hazardous chemicals such as labeling, handling, and storage requirements as well as describes the protective equipment, fire hazards, poisons and emergency situations as currently present in the OSHA Hazard Communication Standard, 29 CFR Part 1910.1200.

The proposed new standard requires that any use of respirators which is necessary to maintain exposures below specified Permissible Exposure Limits (PELs) must comply with the requirements in the Respiratory Protection Standard, 29 CFR 1910.134. This standard describes the acceptable program for respirator use and provides guidelines for the selection of respirators, inspection of respirators, respirator fit, cleaning, replacement and repairs.

The medical and exposure records requirements established in connection with this proposed new standard must be maintained in accordance with 29 CFR Part 1910.20, which is the generic standard for access to employee medical and exposure records. The standard sets forth the level of access provided to employees and designated representatives to employee exposure records and requires that the employer assure access to the employee's medical records by OSHA. The standard also provides guidelines for the observance of trade secrets, the length of time records must be maintained and the method by which such records may be disposed.

Standard 29 CFR Part 1910.1450, Occupational Exposure to Hazardous Chemicals in Laboratories, addresses the protection of employees in laboratories. The standard consists of paragraphs and appendices as follows:

a. Scope and application
b. Definitions
c. Permissible exposure limits
d. Employee exposure determination
e. Chemical hygiene plan
f. Information and training
g. Medical consultation and medical examination
h. Hazard identification
i. Use of respirators
j. Recordkeeping
k. Dates
l. Appendices

This is a generic laboratory standard and is based upon evidence that laboratories typically differ from industrial operations in their use and handling of hazardous chemicals and that this difference calls for an approach different from that applied in other OSHA standards, which are substance specific standards.

N.J.S.A. 34:6A-30 states, in part: . . . the Commissioner shall provide, at the minimum, for the adoption of all applicable occupational health and safety standards, amendments or changes adopted or recognized by the secretary under the authority of the "Occupational Safety and Health Act of 1970." . . .

This final Federal rule is a new rule as described under N.J.S.A. 34:6a-30 and is a rule which the Division of Workplace Standards of the Department of Labor proposes to adopt by reference as a State rule. This new Federal rule, 29 CFR Part 1910.1450, on occupational exposures to hazardous chemicals in laboratories, can be adopted by reference by amending N.J.A.C. 12:100-4.2(a).

It should be noted that paragraph (k) of 29 CFR 1910.1450 addresses an effective date and start up dates. These dates represent implementation dates set by the United States Department of Labor for the protection of employees in the private sector by private employers. The effective date of the amendment for the State program and for the public employers and public employees will be the date the adoption notice of this amendment is published in the New Jersey Register and the compliance date will follow on a similar schedule as used by Federal OSHA which is seven months after the effective date.

Social Impact

The proposed amendment incorporating the new rule will protect the health, safety and welfare of public employees handling or exposed to hazardous substances which are listed in Tables Z-1, Z-2, and Z-3 of the Federal rule, 29 CFR Part 1910.1000, Air Contaminants. There exists sufficient documented scientific information that exposure at concentrations above the permissible exposure limits is associated with occupational disease and ill-health symptoms.

Implementation of this amendment will reduce illness occurring among public employees employed in laboratories and using hazardous chemicals. The proposed amendment will improve working conditions, reduce time lost caused by exposure to these hazardous substances and it will enhance the welfare and morale of public employees affected.

Economic Impact

Compliance with this amendment may impose some increased costs on public employers. These may be incremental costs incurred due to the requirement of a chemical hygiene plan. Additional costs may also be incurred by complying with requirements for medical consultation. The development of the chemical hygiene plan and medical consultation may require the retention of professional services, in those cases where the public employer does not already retain such services. OSHA has made a comprehensive compilation and survey of such increased costs on an industry by industry basis. Such specific cost figures are difficult to ascribe to the public sector, wherein the incidence of the hazardous contaminants is less than in the various source manufacturing industries.

Regulatory Flexibility Statement

The reporting, recordkeeping and other compliance requirements of the Federal regulations incorporated by reference would not be imposed on any small business, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. acting on behalf of a governmental entity. Accordingly, a regulatory flexibility analysis is not required.

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

12:100-4.2 Adoption by reference

(a) The standards contained in 29 CFR Part 1910, General Industry Standards with all amendments published in the Federal Register through [March 6, 1989] **January 31, 1991** with certain exceptions noted in (b) and (c) below are proposed as occupational safety and health standards and shall include:

1.-18. (No change.)

19. Subpart Z—Toxic and Hazardous Substances

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

(a)

DIVISION OF WORKPLACE STANDARDS

Safety and Health Standards for Public Employees Occupational Exposure to Formaldehyde

Proposed Amendment: N.J.A.C. 12:100-4.2

Authorized By: Raymond L. Bramucci, Commissioner, New Jersey Department of Labor.

Authority: N.J.S.A. 34:1-20, 31:1A-3(e), 34:6A-25 et seq., specifically 34:6A-30.

Proposal Number: PRN 1993-56.

Submit written comments by March 3, 1993 to:

Linda Flores
Special Assistant for External and Regulatory Affairs
Office of the Commissioner
Department of Labor
CN 110
Trenton, New Jersey 08625-0110

The agency proposal follows:

Summary

The Public Employees Occupational Safety and Health Act, N.J.S.A. 34:6A-25 et seq., requires the Department of Labor to establish health and safety standards for public employees.

On November 5, 1984, rules were promulgated by the Commissioner of Labor which adopted the Federal Occupational Safety and Health Administration (OSHA) standards by reference at N.J.A.C. 12:100-4, Safety and Health Standards for Public Employees. On December 4, 1987, OSHA published a new rule on occupational exposure to formaldehyde at 29 CFR 1910.1048. This Federal rule was also adopted by reference by the Department as a safety and health standard for public employees effective June 6, 1988. See 20 N.J.R. 1232(a).

The Federal Occupational Safety and Health Administration issued in the May 27, 1992 issue of the Federal Register, Volume 57, No. 102, page 22290, a final rule, 29 CFR 1910.1048, on Occupational Exposure to Formaldehyde effective June 26, 1992.

This final rule amends the existing regulation for occupational exposure to formaldehyde. The amendments to the regulation were made by OSHA in response to a remand by the U.S. Court of Appeals following challenges to the standard by various labor unions, a public interest group and an industry association. The challenges ranged from a request for a review of the hazard communication provision to a charge that the standard was insufficiently protective in various respects. These parties developed recommendations that they believed represented a reasonable resolution of the outstanding issues, and jointly presented such recommendations to OSHA.

The final amendments now adopted by OSHA include a lowering of the permissible exposure level from one part per million (ppm) as an eight-hour time weighted average (TWA) to an eight-hour TWA of 0.75 ppm. The amendments also add protective assignment transfer provisions, specific hazard labelling requirements and annual training requirements for all employees exposed to formaldehyde at levels of 0.1 ppm or higher.

N.J.S.A. 34:6A-30 states, in part: . . . the Commissioner shall provide, at the minimum for the adoption of all applicable occupational health and safety standards, amendments or changes adopted or recognized by the secretary under the authority of the "Occupational Safety and Health Act of 1970". . . This final rule, as amended, constitutes an occupational health and safety standard as described in N.J.S.A. 34:6A-30 which the Division of Workplace Standards of the Department of Labor proposes to adopt by reference as a State rule. The Federal rule, 29 CFR 1910.1048, can be adopted by reference by amending N.J.A.C. 12:100-4.2(a).

Social Impact

The proposed amendments on exposure to formaldehyde will protect the health and safety of those public employees such as hospital and medical staff, teachers in chemistry and biology laboratories, and in rare instances, office workers exposed to the off-gassing of new furniture such as rugs, wallboard, etc.

Economic Impact

In 1987, the Occupation Safety and Health Administration (OSHA) of the U.S. Department of Labor prepared a Regulatory Impact and Flexibility Assessment (RIA) for this proposed regulation (their Docket Number Ex. 206).

This analysis showed that in laboratories where engineering controls and good work practices were implemented in response to the standard which was adopted in 1987, occupational exposure levels of 0.5 ppm level or less were achieved. As a result, no further engineering controls would be necessary to meet the new 0.75 ppm maximum level of exposure to formaldehyde. The costs of the medical removal provision in the standard were also surveyed by OSHA under the RIA (Docket Ex. 206 and Ex. 169). The additional economic burden imposed by this amendment was declared by OSHA to be small, and OSHA anticipated there would be offsetting cost savings from this provision in the form of reduced absenteeism and reduced medical care costs.

Accordingly, compliance with the proposed amendments is expected to result in minimal incremental cost in the enforcement of the standard, and it is expected that these costs will be absorbed in the existing budget.

Regulatory Flexibility Statement

The reporting, recordkeeping and other compliance requirements of the Federal regulations incorporated by reference would not be imposed on any small business, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. acting on behalf of a governmental entity. Accordingly, a regulatory flexibility analysis is not required.

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

12:100-4.2 Adoption by reference

(a) The standards contained in 29 CFR Part 1910, General Industry Standards, with amendments published in the Federal Register through [March 6, 1989] **May 27, 1992** with certain exceptions noted in (b) and (c) below are adopted and are incorporated herein by reference as Occupational Safety and Health Standards and shall include:

1.-19. (No change.)

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

LAW AND PUBLIC SAFETY

(b)

BOARD OF NURSING

Board of Nursing Rules

Proposed Amendments: N.J.A.C. 13:37

Authorized By: Board of Nursing, Sister Teresa Harris, Executive Director.

Authority: N.J.S.A. 45:11-24 and 45:1-3.2.

Proposal Number: PRN 1993-30.

Submit written comments by March 3, 1993 to:

Sister Teresa Harris, Executive Director
Board of Nursing
P.O. Box 45010
Newark, New Jersey 07101

The agency proposal follows:

Summary

The Board of Nursing has reviewed its entire body of rules and found them in general to continue to be reasonable, necessary and effective

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for the purposes for which they were originally promulgated. However, the Board believes that some changes are required to clarify the wording and to bring the rules into conformity with current Board practice and/or State and Federal requirements.

Many of the revisions the Board now proposes are merely technical changes. Specific amendments include the following:

A new paragraph 6 was added to N.J.A.C. 13:37-1.2(n) requiring Board notification within six months of the implementation of a program at a new clinical facility.

A new subsection (z) was added to N.J.A.C. 13:37-1.2 requiring Board approval at least six months prior to any hiatus in admitting students to a nursing program. This regulation, which was formerly among the Board's rules, is being reinstated to provide for orderly Board procedures in such an event.

N.J.A.C. 13:37-1.3 has been moved to previously-reserved subchapter 7, now called "Other Requirements," and a sentence has been added to advise licensees that failure to notify the Board of a change of address may result in action by the Board. N.J.A.C. 13:37-1.4 is also recodified as N.J.A.C. 13:37-7.2; the text is unchanged on the subject of reporting unlawful conduct.

N.J.A.C. 13:37-2.3(b)1 has been amended to clarify that the required fee must accompany an official application for licensure as a professional nurse. Similar changes were made in N.J.A.C. 13:37-3.5(b)1 in regard to licensure as a practical nurse, and in N.J.A.C. 13:37-4.4(b)1 in regard to an application of a foreign nurse.

N.J.A.C. 13:37-2.3(b)2 now requires that, rather than a written request for a temporary permit, an official temporary work permit application and the required fee must accompany an application for licensure as a professional nurse. This change reflects current Board practice. Similar changes were made to N.J.A.C. 13:37-3.5(b)2 regarding applications for a temporary permit to work as a practical nurse and to N.J.A.C. 13:37-4.4(b)2 regarding an application of a foreign nurse.

N.J.A.C. 13:37-2.3(b)3, which requires a professional nurse to submit with the application for a temporary permit his or her written intention to take the first licensing examination following graduation from an approved course of study, has been deleted. In its place, language was added to N.J.A.C. 13:37-2.3(d) to provide that failure to surrender a temporary work permit upon failure to take or pass the first licensing examination following an approved course of study will prevent the candidate from applying to take any further licensing examination. These changes are designed to conform the regulation to current Board practice. Similar changes were made to N.J.A.C. 13:37-3.5(b)3 in regard to applications for a temporary permit to work as a practical nurse and to N.J.A.C. 13:37-4.4(b)3 in regard to an application of a foreign nurse.

N.J.A.C. 13:37-4.1, concerning procedures upon initial inquiry from a foreign nurse applicant, has been amended. The requirement of an information form has been deleted (N.J.A.C. 13:37-4.1(a) and (b)) as have the requirements that the foreign nurse applicant for licensure as a professional nurse submit (1) a final nursing school record or equivalent or proof of graduation from an approved school of professional nursing (N.J.A.C. 13:37-4.1(a)3); and (2) evidence of completion of four years of high school or the equivalent (N.J.A.C. 13:37-4.1(a)4.) These changes will conform the rule to current Board procedures, pursuant to which these proofs are submitted with the official application. A new requirement, that of submission of a properly issued visa or immigration card, has been added (N.J.A.C. 13:37-4.1(a)4 and (b)5) in order to comply with current Federal immigration law. N.J.A.C. 13:37-4.1(b)4 has been amended for clarification only. As presently worded, this paragraph may be misread to require the foreign practical nurse applicant to submit evidence of having completed—in the country of nursing education—two years of secondary school. The amendment more accurately states the statutory requirement that the applicant complete the equivalent of secondary education or tenth grade in the United States. See N.J.S.A. 45:11-27.

N.J.A.C. 13:37-4.6(b) was amended to delete the Board's obligation to determine annually the minimum TOEFL (Test of English) score acceptable to the Board. The Board will accept the recommendation of the administrators of that test as to the minimum passing score.

The following changes have been made to subchapter 5 regarding licensure by endorsement. N.J.A.C. 13:37-5.1(a)2 and (b)2 have been amended to clarify that the official application for licensure by endorsement must be accompanied by the required fee. Under N.J.A.C. 13:37-5.1(a)3 and (b)3, the applicant is required to submit verification of licensure in all states where the applicant holds current licensure; formerly, verification from "another state" was required. This change has been made so that the Board will be advised of an applicant's status in all states in which he or she is licensed. N.J.A.C. 13:37-5.1(a)4, regarding proof required from foreign nurse graduates, has been amended to add the alternative of submission of a Commission on Graduates of Foreign Nursing Schools (CGFNS) certificate. N.J.A.C. 13:37-5.5, regarding employment prior to licensure, has been amended to provide that an individual submitting an application for licensure by endorsement will be issued a license, rather than a temporary work permit. The Board believes that temporary work permits are not needed because it will be able to issue licenses almost immediately upon presentation of the proper qualifications.

A new subchapter 7, now entitled "Other Requirements," contains the sections formerly codified as N.J.A.C. 13:37-1.3 and 1.4.

Social Impact

The proposed amendments update various procedures for the orderly administration of the Board's duties toward the end of ensuring that truly qualified individuals practice in the nursing profession in New Jersey. The Board believes that these amendments will have an advantageous social impact in that they maintain high standards of practice while clarifying current wording for the benefit of licensees.

Many of the proposed amendments merely bring the current rules into conformity with State and/or Federal requirements and with current Board practice. Other amendments will have a more distinct beneficial impact. For example, the amendment to N.J.A.C. 13:37-1.2(n) and new subsection (z), requiring that the Board be notified six months prior to the opening of a new facility or a hiatus in admitting students to an existing facility, provide the Board with sufficient time within which to review and plan for these situations. The requirement in N.J.A.C. 13:37-5.1(a)3 and (b)3 that the applicant for licensure by endorsement submit verification of licensure from all states where he or she holds a current license will ensure that the Board has all relevant information concerning the applicant. Finally, two rules formerly set forth elsewhere have been repositioned as part of the new subchapter 7, thus providing licensees with a consolidated group of miscellaneous requirements. Licensees should find that the improved organization and cohesion enhance understanding of the Board's rules.

Economic Impact

The proposed amendments will have no significant adverse economic impact on the general public because these are largely "housekeeping" amendments, intended to correct, clarify and modernize the Board's rules. Neither is there any economic impact upon licensees. However, it is possible that the new requirement of a properly issued visa or immigration card may impact adversely upon a few foreign applicants who do not possess either document; they will not be licensed. The requirement is obviously necessary to conform to Federal law. Also, an applicant for licensure by endorsement must now provide verification of licensure not just in another state but in all states where he or she holds a license. That requirement may entail postage costs and verification fees but the amounts are negligible.

Regulatory Flexibility Analysis

The compliance and reporting requirements established by these proposed amendments will affect individual applicants for licensure, Board licensees, nursing schools and institutions of higher education which offer nursing programs. Each of the nursing schools and institutions of higher education employ more than 100 people. The Board has determined that a regulatory flexibility analysis is not required because the affected individuals, schools and institutions would not qualify as "small businesses" as defined in 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]):

13:37-1.1 Application for establishment of a new program in nursing or reorganization of an existing program.

(a) (No change.)

(b) The application shall be submitted to the Board no later than 11 months prior to the [establishment of] **planned implementation date of** a new program or the reorganization of an existing program.

(c)-(e) (No change.)

13:37-1.2 Criteria for accreditation

(a) The following educational entities shall be considered eligible for accreditation:

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1. A school, division, **college, or university** department of nursing authorized to operate by its own charter, articles of incorporation or resolution of the governing board of its sponsoring institution.

2. Degree granting institutions shall be approved and licensed by the New Jersey [State] Department of Higher Education and accredited by the appropriate academic accrediting agencies.

(b) The following educational programs shall be considered eligible for accreditation:

1. Baccalaureate Degree Program: Programs leading to a baccalaureate degree in nursing, accredited by the New Jersey [State] Board of Nursing, conducted by an educational unit in nursing as an integral part of a higher educational institution licensed by the New Jersey [State] Department of Higher Education for the purpose of granting baccalaureate degrees. Baccalaureate degree programs shall include both generic and upper division curricula.

2. Associate Degree Program: Programs leading to an associate degree with a major in nursing accredited by the New Jersey [State] Board of Nursing, conducted by an educational unit in nursing as an integral part of a higher educational institution, licensed by the New Jersey [State] Department of Higher Education for the purpose of granting associate degrees.

3. Diploma Program: Programs leading to a diploma in nursing, (and, for a cooperative program, an Associate in Applied Science degree or Associate in Science degree) accredited by the New Jersey [State] Board of Nursing, conducted by an educational unit in nursing under the sponsorship of a hospital or consortium of hospitals in the State of New Jersey.

4. Practical Nursing Program: Within the meaning of N.J.S.A. 45:11-27(a)(4), programs leading to a diploma conducted for the purpose of giving basic required education in practical nursing accredited by the New Jersey [State] Board of Nursing. A program in practical nursing operated by the public school district or Board of Education and certified by the New Jersey [State] Department of Education, offering a course of study in practical nursing shall show evidence of its compliance with the requirements of New Jersey [State] Board of Nursing **regulations** and shall include clinical experience within cooperating clinical affiliates approved by the **New Jersey** Board of Nursing.

(c) Accreditation shall be granted as follows:

1. (No change.)

2. Conditional accreditation shall be given to any accredited program which subsequently fails to meet and maintain the standards and requirements for accreditation contained in this subchapter. The Board may limit the number of students enrolled in such program. The institution shall be given the opportunity for a hearing to appeal this decision.

i. (No change.)

ii. The Board may place a program on conditional accreditation if it fails to comply with any of the rules of the Board contained in this subchapter. The program shall be notified [by letter] **in writing** of conditional accreditation[, by the Board] **status** including the conditions which must be corrected within a specific time period established by the Board. Removal from conditional accreditation may be granted if it can be demonstrated that the standards and requirements contained in this subchapter have been met.

iii. (No change.)

3.-6. (No change.)

(d) (No change.)

(e) The requirements for the philosophy and objectives [of the program follow] **shall be subject to the following:**

1.-7. (No change.)

(f) Administrator qualifications follow:

1. Administrator of Registered Nursing Programs (Baccalaureate): In addition to the qualifications contained in (g)1 below, the administrator shall hold a master's degree with a major in nursing **from an accredited college or university** and an earned doctoral degree.

2. (No change.)

3. Administrator of Licensed Practical Nursing Programs: In addition to the qualifications contained in (g)1[.] i, iii, iv and v below, the administrator shall hold a minimum of a bachelor's degree in nursing **from an accredited college or university** with additional courses in education.

(g) Faculty qualifications [follow] **shall be subject to the following:**

1. The program shall provide and maintain a qualified faculty. For purposes of this subsection, faculty shall include persons from out-of-state nursing programs who are responsible for teaching students in a clinical affiliate located in New Jersey. The qualifications for all faculty members shall include:

i.-iii. (No change.)

iv. Maintenance of up-to-date professional competence [(that is,] **by** participation in on-going clinical practice, continuing education, professional conferences, workshops, seminars, advanced academic courses, research projects and [writing)] **publications;**

v. (No change.)

NOTE: (No change.)

2. (No change.)

3. Faculty in Licensed Practical Nursing Programs: In addition to the qualifications contained in (g)1i, iii, iv and v above, all instructors shall hold a bachelors degree with a major in nursing **from an accredited college or university.** [Instructors in any school] **Faculty in any local or county district school** operated by a public board of education [in any local or county school district] **and conducting a nursing program** shall meet the same professional qualifications.

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

(k) Curriculum content shall include the following:

1.-4. (No change.)

5. All practical nursing programs shall be designed to incorporate materials and concepts from the physical, biological and behavioral sciences relevant to the [principals] **principles** and practice of nursing and contemporary issues in health care. The course of study shall be a minimum of 44 weeks in length excluding holidays and vacation. Forty percent of the total hours shall be devoted to classroom theory and laboratory. The remaining 60 percent shall be devoted to clinical experience and clinical conference. The program shall be organized so that theory and clinical practice are offered concurrently throughout the entire program.

6. (No change.)

(l)-(m) (No change.)

(n) Every clinical affiliate shall be approved or disapproved on the basis of the following:

1.-5. (No change.)

6. Whenever a new clinical facility is contemplated, the Board shall be notified of the proposed new facility in writing for its review and approval six months prior to the planned implementation date of the program.

(o) All programs in nursing and clinical affiliates shall be visited at regular intervals as determined by the Board by a [field representative] **professional staff member** of the Board [staff]. The [field representative] **professional staff member** shall examine all "Criteria of Accreditation" in accordance with this subchapter and prepare a written report for [the] review [of] **by** the Board.

(p)-(r) (No change.)

(s) Every nursing program shall maintain a system of recordkeeping which shall contain all data relating to its accreditation. Such data shall include course outlines, faculty organization, committee minutes, agency contracts, pertinent correspondence, reports of standardized tests and [survey] **surveys**. These records shall be made available to the Board of Nursing upon request.

(t)-(x) (No change.)

(y) Within 10 days of the official date of closure, the date on which the last student is properly transferred or completes the program, the administrative officer shall notify the Board of the same in writing. The institution shall be responsible for the safekeeping of the records and, at termination, shall notify the Board **in writing** of the future custody of such records.

(z) If, for any reason, a school intends to refuse to admit students for a predetermined, fixed period of time, Board approval of such intent shall be obtained at least six months prior to the hiatus.

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13:37-1.3 [Change of address] **(Reserved)**

[A licensee of the Board of Nursing shall notify the Board in writing of any change of address from that currently registered with the Board and shown on the most recently issued license. Such notice shall be given not later than 30 days following the change of address.]

13:37-1.4 [Report unlawful conduct] **(Reserved)**

[Every nurse licensee shall report in a timely manner to the Board of Nursing or its designated representative any and all incidents or series of incidents which upon objective evaluation leads to the good faith belief that the conduct is in violation of the Nurse Practice Act (N.J.S.A. 45:1-14, 45:11-23 et seq.) or any regulation adopted by the Board. (See the "Guidelines on Reporting Unlawful Conduct" available on request from the Board of Nursing office.)]

13:37-2.2 Nature of examinations

The examination shall be the licensing examination approved by the New Jersey [State] Board of Nursing.

13:37-2.3 Examination; temporary work permits

(a) An individual who has met all of the qualifications [of a] **for licensure as a** registered nurse shall be required to apply for and pass the licensing examination in order to receive a license to practice nursing in the State.

(b) If an individual has submitted an application to take the first licensing examination scheduled by the Board following completion of an approved course of study in nursing such person shall be issued [a] **an official** temporary work permit [enabling] **which enables** such person to work as a graduate professional nurse in hospitals, institutions and agencies approved by the Board for this purpose, pending the results of the first licensing examination. Said application shall include the following [items]:

1. An official application for nursing license **with the required fee that is non-refundable**;

2. [A written request for a temporary work permit] **An official temporary work permit application with the required fee**;

[3. Written intention to take the first licensing examination following graduation from an approved course of study;]

[4.]**3.** Written verification from the Program Director that the applicant has successfully completed an approved course of study;

[5.]**4.** A written promise of employment to work as a graduate nurse in a hospital, institution or agency approved by the Board for this purpose.

(c) (No change.)

(d) If an individual fails to take or pass the first licensing examination following completion of an approved course of study, such person shall be required to forthwith surrender the **official** temporary work permit to the Board and immediately refrain from further practice as a graduate nurse. **Failure to do so shall prevent said candidate from applying to take any further licensing examination.**

(e)-(g) (No change.)

[(h) Every applicant is responsible to return the temporary work permit to the Board immediately upon failing to take or pass the first licensing examination following completion of an approved course of study. Failing to do so shall prevent said applicant from applying to take any further licensing examination.]

Recodify existing (i) and (j) as **(h) and (i)** (No change in text.)

13:37-3.3 Nature of examination

The examination shall be the licensing examination approved by the New Jersey [State] Board of Nursing.

13:37-3.5 Examinations; temporary work permits

(a) An individual who has met all of the qualifications [of a licensed] **for licensure as a** practical nurse shall be required to apply for and pass the licensing examination in order to receive a license to practice nursing in the State.

(b) If an individual has submitted an application to take the first licensing examination scheduled by the Board following completion of an approved course of study in nursing such person shall be issued **an official** temporary work permit, **which enables such person** to work as a graduate **practical** nurse in hospitals, institutions and agencies approved by the Board for this purpose, pending the results of the first licensing examination. Said application shall include the following [items]:

1. An official application for a nursing license **with the required fee that is non-refundable**;

2. [A written request for a temporary work permit] **An official temporary work permit application with the required fee**;

[3. Written intention to take the first licensing examination following successful completion of the nursing course.]

[4.]**3.** Written verification from the Program Director that the applicant has successfully completed the nursing course;

[5.]**4.** A written promise of employment to work as a graduate nurse in a hospital, institution or agency approved by the Board for this purpose.

(c) (No change.)

(d) If an individual fails to take or pass the first licensing examination following successful completion of the nursing course, such person shall be required to forthwith surrender the **official** temporary work permit to the Board and immediately refrain from further practice as a graduate nurse. **Failure to do so shall prevent said candidate from applying to take any future licensing examination.**

(e)-(g) (No change.)

[(h) Every applicant is responsible to return the temporary work permit to the Board immediately upon failing to take or to pass the first licensing examination following successful completion of the nursing course. Failure to do so shall prevent said applicant from applying to take any further licensing examination.]

Recodify existing (i) and (j) as **(h) and (i)** (No change in text.)

13:37-3.6 Waiver; practical nurse; license by examination

(a) A practical nurse licensed in this State by waiver pursuant to N.J.S.A. 45:11-27(b)(3) shall be permitted to apply for a license to practice practical nursing by examination and shall be granted said license provided that the applicant:

1.-2. (No change.)

3. Successfully completes the examination for practical nurses as approved by the **New Jersey** Board **of Nursing.**

13:37-4.1 Initial inquiry

(a) Professional nurse: Upon receipt of an initial inquiry from a foreign nurse applicant, the applicant shall be required to submit: [an information form. If the applicant appears to satisfy the requirements for licensure, the applicant shall be required to submit.]

1.-2. (No change.)

3. [Student final record or an equivalent of nursing record, or in the event such record is unavailable, proof that the applicant is a graduate of an approved school of professional nursing or a] **A** valid certificate issued by the Commission of Graduates of Foreign Nursing Schools;

4. [Evidence of completion of four years of high school or the equivalent] **A properly issued visa or immigration card.**

(b) Practical nurse: Upon receipt of an initial inquiry from a foreign nurse applicant, the applicant shall be required to submit [an information form. If the applicant appears to satisfy the requirements for licensure, the applicant shall be required to submit]:

1.-3. (No change.)

4. Evidence of having completed [two years of secondary school in the country of nursing education or the equivalent.] **Secondary education equivalent to secondary education or tenth grade in the United States; and**

5. A properly issued visa or immigration card.

13:37-4.4 Examination; temporary work permits

(a) An individual who has met all the qualifications [of] **for licensure as** a nurse shall be required to apply for and pass the licensing examination in order to receive a license to practice nursing.

(b) If an individual has submitted an application to take the first licensing examination scheduled by the Board following completion of an approval course of study in nursing and arrival in this country, **such person** shall be issued **an original** temporary work permit if eligible [enabling] **which enables** such person to work as a graduate

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nurse in hospitals, institutions and agencies approved by the Board for this purpose, pending the results of the first licensing examination. [Said] **The examination** application shall include the following [items]:

1. An official application for a nursing license **with the required fee that is not refundable**;

2. [A written request for a temporary work permit] **An original temporary work permit application**;

[3. Written intention to take the first licensing examination following graduation from an approved course of study and arrival in this country;]

Recodify existing 4.-6. as **3.-5.** (No change in text.)

(c) (No change.)

(d) If an individual fails to take or pass the first licensing examination following completion of an approved course of study and arrival in this country such person shall be required to forthwith surrender the **original** temporary work permit to the Board and immediately refrain from further practice as a graduate nurse. **Failure to do so shall prevent said candidate from applying to take any further licensing examination.**

(e)-(g) (No change.)

[(h) Every applicant is responsible to return the temporary work permit to the Board immediately upon failing to take or pass the first licensing examination following completion of an approved course of study. Failing to do so shall prevent said applicant from applying to take any further licensing examination.]

Recodify existing (i) and (j) as **(h) and (i)** (No change in text.)

13:37-4.6 Language comprehension requirement

(a) (No change.)

(b) Practical nurse: All foreign nurse candidates from non-English speaking countries or countries wherein the primary language is other than English, prior to taking the examination, shall submit to the Board a TOEFL (Test of English) certificate with a minimum score acceptable to the Board [and determined annually].

13:37-5.1 Initial inquiry

(a) Professional nurse: Upon receipt of an initial inquiry from an applicant who has been licensed by examination or original waiver in another state, the applicant shall be required to submit:

1. (No change.)

2. Official application for licensure by endorsement **with required fee that is not refundable**;

3. Verification of licensure in [another state] **all states where the applicant holds current licensure** to be completed by the state board in the state(s) of licensure;

4. Foreign nurse graduates shall submit proof of completion of the equivalent in high school and school of nursing record **or a Commission on Graduates of Foreign Nursing Schools (CGFNS) certificate**.

(b) Practical nurse: Upon receipt of an initial inquiry from an applicant who has been licensed by examination or original waiver in another state, the applicant shall be required to submit:

1. (No change.)

2. Official application for licensure by endorsement **with required fee that is not refundable**;

3. Verification of licensure in [another state] **all states where the applicant holds current licensure** to be completed by the state board in the state(s) of licensure. In the event such form is incomplete concerning high school, the applicant shall be required to provide proof of completion of at least 10th grade in high school.

4. (No change.)

13:37-5.5 Employment [prior to] **upon** licensure

(a) If an individual has submitted an application for licensure by endorsement **and has met all the requirements set forth in this subchapter**, such person shall be issued a [temporary work permit] **license.** [to work as a nurse pending the Board's evaluation of his or completed application or for a period not to exceed one year from the date the temporary work permit was issued, whichever is first said application. Shall include the following items:

1. An official application for a nursing license by endorsement;

2. Written verification from the original state of licensure indicating licensure in good standing.]

(b) Every [applicant] **person licensed by endorsement** is responsible to show the [original temporary work permit] **license** to his or her employer prior to beginning employment and upon request.

[(c) Every applicant is responsible to return the temporary work permit to the Board immediately upon failing to submit a completed application within one year of the date the temporary work permit was issued. Failing to do so shall prevent said applicant from applying take any further licensing examination.]

SUBCHAPTER 7. [(RESERVED)] **OTHER REQUIREMENTS**

13:37-7.1 Change of address

A licensee of the Board of Nursing shall notify the Board in writing of any change of address from that currently registered with the Board and shown on the most recently issued license. Such notice shall be given not later than 30 days following the change of address. Failure to comply with this regulation may result in disciplinary action by the Board.

13:37-7.2 Report unlawful conduct

Every nurse licensee shall report in a timely manner to the Board of Nursing or its designated representative any and all incidents or series of incidents which upon objective evaluation leads to the good faith belief that the conduct is in violation of the Nurse Practice Act (N.J.S.A. 45:1-14, 45:11-23 et seq.) or any regulation adopted by the Board. (See the "Guidelines on Reporting Unlawful Conduct" available on request from the Board of Nursing office.)

TRANSPORTATION

(a)

DIVISION OF TRANSPORTATION ASSISTANCE OFFICE OF REGULATORY AFFAIRS

Autobus Dimensions

Proposed Amendment: N.J.A.C. 16:53-3.2

Authorized By: Kathy A. Stanwick, Deputy Commissioner, Department of Transportation.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 48:4-2.1(a).

Proposal Number: PRN 1993-49.

Submit written comments by March 3, 1993 to:

Charles L. Meyers
Administrative Practice Officer
Department of Transportation
Bureau of Policy & Legislative Analysis
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625
(609) 530-2041

The agency proposal follows:

Summary

The proposed amendment increases the maximum length of a single unit bus from 40 feet to 45 feet. Applicable Federal standards, as found in the Motor Carrier Act of 1991, allow states to permit single unit buses with a length of 45 feet.

Under the provisions of the Federal Americans With Disabilities Act (ADA), new buses used on a fixed route must be accessible to the handicapped. Bus manufacturers have expressed the concern that to accommodate two wheelchair passengers they must eliminate four standard seats. With the cost of a standard 40 foot bus being in excess of $250,000, a loss of passenger seats could reduce total revenues and have a significant and adverse impact upon profitability. To offset such revenue losses, manufacturers have introduced bus designs that are five feet longer. The additional capacity increases the potential number of revenue passengers, thereby increasing economies of scale to the benefit of both passengers and operators.

The proposed change is in conformance with applicable Federal standards. It is needed to facilitate the manufacture and use of buses which

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accommodate wheelchair lifts and/or elevators without adversely impacting revenue opportunities or safety. The proposed changes promote public policies regarding accessibility for the handicapped.

The Department therefore proposes to amend N.J.A.C. 16:53-3.2, dimensions of autobuses, to increase the maximum allowed length of autobuses from 40 feet to 45 feet. Also proposed are nonsubstantive technical amendments at N.J.A.C. 16:53-3.2(d) and (e) to change the words "length" to "height." The use of the word "length" in these sections of the current rule is clearly improper as they in fact refer to "height." In N.J.A.C. 16:53-3.2(d), the phrase "in the center aisle" is clarified as "in the center of the aisle."

Social Impact

The proposed amendments will make State bus length standards compatible with applicable Federal standards. Compatibility of these standards is desirable to ensure uniform national implementation of public policies which benefit the handicapped and to eliminate State regulatory barriers which may adversely impact mass transportation or interstate commerce. There is direct social benefit to providing improved mass transit access for passengers in wheelchairs. The proposed rule is consistent with Federal policies which direct that all components and modes of our national transportation networks be accessible to all persons.

Economic Impact

The proposed amendment allows for the operation of buses with increased lengths. The installation of wheelchair lift/elevator devices on buses can reduce the total number of revenue passenger seats. The manufacturers of charter buses, for example, have indicated that to accommodate two wheelchair passengers they must eliminate four standard seats. With the cost of a standard 40 foot bus being in excess of $250,000, any loss of total passenger seats may have an adverse economic impact on autobus operators. To resolve this problem, manufacturers have introduced autobus models that are five feet longer, with additional seating capacity. The added seats should increase revenues, compensating for the lost seats and the cost of special fittings, such as wheelchair lifts.

Regulatory Flexibility Statement

The proposed amendments do not place any reporting, recordkeeping, or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These amendments primarily affect autobus manufacturers, which are not located in this State and are not small businesses.

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

16:53-3.2 Dimensions of autobuses

(a) The overall length, for a single unit bus, shall not exceed [40] **45** feet, 0 inches, excluding bumpers, except that an articulated bus shall not exceed 61 feet, 0 inches, excluding bumpers.

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

(d) The inside [length] **height** of autobuses transporting passengers shall not be less than six feet, three inches measured vertically from the floor level in the center **of the** aisle to the ceiling.

(e) The overall [length] **height** of an autobus shall not exceed 13 feet, six inches.

TREASURY-GENERAL

(a)

DIVISION OF PENSIONS AND BENEFITS

State Health Benefits Commission
Local Employer Reentry
Proposed Amendment: N.J.A.C. 17:9-1.5

Authorized By: State Health Benefits Commission, Patricia A. Chiacchio, Acting Secretary.
Authority: N.J.S.A. 52:14-17.27.
Proposal Number: PRN 1993-51.

Submit comments by March 3, 1993 to:
Peter Gorman, Esq.
Executive Assistant
Division of Pensions and Benefits
CN 295
Trenton, New Jersey 08625-0295

The agency proposal follows:

Summary

The proposed amendment revises the procedure for the reentry of a local government employer into the State Health Benefits Program. At present, a local employer who terminates coverage is prohibited from reentering the State program for five years. This amendment eliminates that prohibition. Instead, the State Health Benefits Commission may from time to time establish a reentry application period. Reentry will be automatic for an employer that has previously terminated coverage only one time. An employer that has terminated coverage more than once may only re-enter the program upon the approval of the Commission, after review of the facts as presented in a resolution for re-entry and upon the reimbursement to the Commission of administrative expenses for re-enrolling the employer.

Social Impact

The proposed amendment will be of social benefit to local government employers, since it will establish a more flexible administrative system for the re-entry of employers into the State Health Benefit Program. At the same time, it will impress upon employers who consider termination to give careful thought to the advantages and disadvantages of the continuation or termination in the State Health Benefits Program.

Economic Impact

This proposed amendment will be of economic benefit to local government employers who are either considering termination or have terminated their coverage in from the State Health Benefits Program. For those who have terminated coverage once, it will provide them with an opportunity to re-enter the program, most likely because the costs will be lower than the health coverage available from a private carrier. For those who are considering termination, it will encourage them to review in advance the long-term costs and benefits associated with a withdrawal.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because this proposed amendment does not impose reporting, recordkeeping or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment establishes a procedure for the reentry of local government employers into the State Health Benefits Program.

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

17:9-1.5 Voluntary termination of employer; notice

(a) (No change.)

(b) For purposes of local coverage, [where] **when** a participating employer voluntarily terminates coverage, the coverage for [his] **the employer's** active and retired employees shall terminate as of the first of the month following a 60-day period beginning with the receipt of the resolution by the Health Benefits Commission. [The employer shall be barred as a participating employer from future reentry into the program for a period of five years.] **The Commission may, from time to time, establish a re-entry application period not to exceed 30 days for those employers who have terminated coverage. During this period, an employer who has terminated coverage only once may submit a resolution for automatic re-entry. The re-entry shall be effective upon a date set by the Commission which date shall be not less than 60 days nor more than 365 days following the receipt of the resolution for re-entry. Automatic** [Reentry] **re-entry** into the program will be permitted only once.

1. An employer who has terminated coverage more than once may submit a resolution for re-entry during the re-entry application period. The Commission shall consider the relevant facts accompanying the resolution, including any hardship or emergency, the impact of re-entry on the program and individual members, and whether re-entry is consistent with statutory law or judicial determinations. The Commission shall approve or disapprove the resolution for re-entry and shall so notify the employer within 30

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days following receipt of the resolution. If the Commission approves the re-entry, the re-entry shall be effective upon a date determined by the Commission, which date shall be not less than 60 days nor more than 365 days following the Commission's approval. The re-entry shall be contingent upon the employer's reimbursement to the Commission of administrative expenses reasonably based upon the approximate cost to the Commission of re-enrolling the employer.

(c)-(d) (No change.)

(a)

STATE PLANNING COMMISSION

State Planning Rules

Proposed Readoption: N.J.A.C. 17:32

Authorized By: State Planning Commission, Charles Newcomb, Acting Secretary and Principal Executive Officer.

Authority: N.J.S.A. 52:18A-203.

Proposal Number: PRN 1993-29.

Submit comments by March 3, 1993 to:

Charles Newcomb, Acting Secretary and
Principal Executive Officer
State Planning Commission
New Jersey Department of the Treasury
33 West State Street, CN 204
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to the requirements and criteria of Executive Order No. 66(1978), N.J.A.C. 17:32 expires on March 21, 1993. As required by the Executive Order, the State Planning Commission (Commission) has reviewed these rules and has determined them to be necessary, reasonable, and proper for the purpose for which they were originally promulgated. The Commission proposes to readopt these rules without change.

The State Planning Act of 1985 (N.J.S.A. 52:18A-196 et seq.) created a State Planning Commission and an Office of State Planning in the Department of the Treasury for the purposes of establishing a cooperative planning process that would result in the preparation and adoption of a State Development and Redevelopment Plan. That process, known as "cross-acceptance," was to involve the full participation of State, county and local governments. According to the State Planning Act, New Jersey needs integrated and coordinated planning in order to conserve its natural resources, to revitalize its urban centers, to provide affordable housing and adequate public facilities at a reasonable cost, to promote equal social and economic opportunity for New Jersey's citizens, and to prevent sprawl and promote the suitable use of land.

Subsequent to the enactment of the State Planning Act, the Commission promulgated the State Planning Rules, N.J.A.C. 17:32, to carry out the cross-acceptance process. The Commission adopted subchapters 1 through 3, effective March 21, 1988, to establish procedures for the preparation of a "preliminary" State Development and Redevelopment Plan, and for "cross-accepting" that preliminary plan with State agencies, counties and municipalities. Those rules also included guidelines for the preparation of cross-acceptance reports by counties and municipalities.

The Commission received a petition for rulemaking dated November 20, 1989, from the law firm of Hutt and Berkow, on behalf of the New Jersey Builders Association, which requested better definition of certain aspects of the cross-acceptance process which was now evolving into three distinct phases: comparison, negotiation and issue resolution. In response, the Commission adopted amendments to the State Planning Rules, effective July 2, 1990, further clarifying subchapter 3 which was retitled "Procedures for Conducting the Comparison Phase of Cross-acceptance," and added subchapter 4, establishing the procedures for conducting the negotiation phase. Effective September 3, 1991, the Commission further amended the rules with the addition of subchapter 5, establishing the procedures for conducting the issue resolution phase of cross-acceptance. The latter amendments also incorporated certain time frames and public hearings relevant to an impact assessment of an "interim" State Development and Redevelopment Plan that was required by P.L. 1989, c.332, which amended the State Planning Act on January 12, 1990.

Following the completion of cross-acceptance as outlined in subchapters 1 through 5, the Commission adopted the State Development and Redevelopment Plan (SDRP) on June 12, 1992. The State Planning Act anticipates that municipal and county master plans and State agency functional plans will be drawn to be consistent with the SDRP. Administrative rules, codes, ordinances, regulations and other devises designed to implement master and functional plans should then be drawn to be consistent with the respective master, or functional, plan(s) of the governing body(ies), or agency(ies), promulgating such rules, codes, etc. In order to accommodate these review and revision processes, the Commission again amended the State Planning Rules with the addition of subchapters 6, 7 and 8, effective June 15, 1992. These amendments had the following stated purposes:

1. To provide governments, organizations and individuals an opportunity to petition for clarification on the meaning, intent and applicability of specific provisions of the SDRP, through "letters of clarification";

2. To provide a process whereby governments and governmental agencies can petition for "reviews for consistency" between their plans and the SDRP, thereby furthering the goal of the State Planning Act relative to the coordination and integration of planning Statewide; and

3. To provide a process whereby governments, organizations and individuals may petition to amend the Resource Planning and Management Map (RPMM) of the SDRP to ensure that it is maintained up-to-date between its triennial reviews and revisions and to help ensure effective and efficient implementation of the SDRP.

The State Planning Act requires that the SDRP be revised and readopted at least every three years following its original adoption. In preparation for that next round of cross-acceptance and drawing on the lessons learned over the past five years, the Commission intends to review and revise as necessary the State Planning Rules, in their entirety. Due to the rules' expiration date of March 21, 1993, there is not enough time to conduct such an in-depth review at this time. The Commission will take up this matter subsequent to the readoption of the rules as they now stand.

Summary of the text of N.J.A.C. 17:32 follows:

Subchapter 1, General Provisions, sets forth general information including the purpose, authority and applicability of the rules, and the definitions for the chapter.

Subchapter 2, Preparation of Preliminary State Development and Redevelopment Plan, establishes a process for State agency review of a draft preliminary plan, public comment on the draft preliminary plan, and approval of the preliminary plan for cross-acceptance.

Subchapter 3, Procedures for Conducting the Comparison Phase of Cross-acceptance, establishes procedures for conducting the first phase of cross-acceptance. This subchapter covers the designation of negotiating entities, requirements for cross-acceptance work programs and for grants-in-aid, municipal participation, public participation, public meetings, map reviews, negotiating entity reports, and municipal reports.

Subchapter 4, Procedures for Conducting the Negotiation Phase of Cross-acceptance, establishes procedures for conducting the second phase of cross-acceptance. This subchapter covers Commission, county, and municipal representation during negotiations, how negotiations will actually be conducted, and how the public will participate.

Subchapter 5, Procedures for Conducting the Issue Resolution Phase of Cross-acceptance, establishes procedures for conducting the third and final phase of cross-acceptance including required public hearings, opportunities for county and municipal review and comment, and public participation. This subchapter also establishes a time frame for the adoption of the SDRP.

Subchapter 6, Letters of Clarification, sets forth who is eligible to request a clarification, what can be the subject of a clarification, and how to request one. The subchapter also provides for a suspension or extension of time frames and stipulates the tenure of clarifications.

Subchapter 7, Voluntary Submission of Plans for Consistency Review, establishes eligibility requirements for consistency reviews, public notification requirements, general procedures, and circumstances for the suspension or extension of time frames.

Subchapter 8, Amendment of the Resource Planning and Management Map, defines the official map of the SDRP and sets forth procedures for amending that map. The subchapter includes eligibility requirements, public notification requirements, and circumstances for the suspension or extension of time frames.

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Social Impact

N.J.A.C. 17:32 has had a beneficial social impact. These rules have provided for an orderly and open process (cross-acceptance) that has led to the completion and adoption of the State Development and Redevelopment Plan. In so doing, the State Planning Rules have laid the groundwork for the continuation of cooperative, coordinated planning among all levels of government in New Jersey. This in turn will promote the public health, safety, welfare, and convenience through well-planned, resource-efficient, and beneficial growth and development.

The extent to which the Plan itself will have social impacts is beyond the scope of N.J.A.C. 17:32, which primarily establishes administrative procedures. However, the overall impact of the SDRP on the economy, environment, fiscal capacity of governments, community life and intergovernmental relations has been assessed by an independent contractor (Rutgers University, Center for Urban Policy Research.) The overall finding of that assessment is found on page 7 of Volume III of its report, which states the following: "Implementation of the State Development and Redevelopment Plan will be beneficial to the State of New Jersey. It will bring benefits to the State and its citizens that traditional development will not."

Economic Impact

The proposed readoption of these rules will not increase or decrease the fiscal impact on municipalities, counties, individuals, or organizations that choose to participate in the procedures established in N.J.A.C. 17:32. Participation in the cross-acceptance process, and petitioning for clarifications, consistency reviews, or map amendments is totally voluntary. While participation may require the commitment of staff and/or consultant resources, the level of effort and expenditures will vary from county to county and from municipality to municipality. Variables such as size (county sizes range from 12 to 70 municipalites), basic interest in the overall planning process, available staff/expertise either in-house or consultant, and complexity of local issues as they relate to the State Plan will all effect the level of effort in a particular jurisdiction. However, it is expected that any fiscal impact experienced by counties and municipalities, as a result of their participation in the cross-acceptance process, is warranted in view of the positive fiscal consequences which will result from the development and adoption of a State Development and Redevelopment Plan and its subsequent refinement.

The overall economic impact of the SDRP was assessed by the Rutgers /C.U.P.R. study which made the following finding (Volume III, page 7): "The SDRP will not drive people or businesses from the State of New Jersey. To the contrary, it will cause jobs and housing to be located where they are most needed in the State and where they can develop and be publicly serviced with more efficiency. As a result, it will provide an average annual operational cost savings of $380 million to municipalities and school districts by the year 2010. Over the 1990-2010 twenty-year projection period this saving, which increases over time, amounts to $3.8 billion cumulatively."

Regulatory Flexibility Analysis

The procedures which would be continued under the readoption of these rules are to be utilized on a voluntary, rather than a mandatory, basis. As such, the rules impose no reporting, recordkeeping, or other compliance requirements on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., unless such businesses elect to utilize such procedures. To the extent that small businesses may choose to do so, the rules make no distinction as to the types or sizes of businesses to which they apply.

To the extent that small businesses may elect to utilize such procedures to seek letters of clarification or amendments to the Resource Planning and Management Map, they may, like all other applicants, incur certain costs in the preparation and submission of such applications. However, since the rules pertain solely to the submission of written petitions, they will not impose any capital costs on such businesses. Further, since petitions need only be submitted once, the rules will not impose any annual compliance costs.

To the extent that any costs will be incurred by small businesses, or any other applicants, under the rules, such costs will be those associated with compiling and setting forth such information as may be necessary to support a petition. These costs may include costs for legal or engineering services. As noted, however, such costs will only be incurred once, rather than on a recurring basis. Further, such costs will presumably only be incurred where an applicant has determined that the incurrence of such costs is warranted on financial or other grounds. Therefore, lesser requirements or exemptions for small businesses are not provided.

Full text of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 17:32.

TREASURY-TAXATION

(a)

DIVISION OF TAXATION

Notice of Correction to Proposal Summary Litter Control Tax

Proposed Readoption: N.J.A.C. 18:38

Take notice that the Division of Taxation included in the Summary of its proposed readoption of the litter control tax rules, at 24 N.J.R. 4502(a), the statement "It must be noted that, although the Clean Communities and Recycling Act remains in effect, the provision levying the litter control tax expired effective December 31, 1991. The final litter control tax filing was due March 15, 1992 for the 1991 tax year." This statement, although correct at the time made, is now incorrect since, subsequent to the filing of this proposed readoption, Governor Florio signed into law, on November 24, 1992, P.L. 1992, c.150, which extends the litter control tax an additional four years from December 31, 1991 to December 31, 1995. Therefore, the March 15, 1992 tax return filing for the 1991 tax year will not be the final filing for the litter control tax. All taxpayers who have a litter control tax liability for the 1992 tax year must file an LT-5 litter control tax return on or before the March 15, 1993 due date.

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RULE ADOPTIONS

AGRICULTURE

(a)

DIVISION OF MARKETS

New Jersey Sire Stakes Program
Stallion Standing Full Season
Adopted Amendment: N.J.A.C. 2:32-2.4

Proposed: November 2, 1992 at 24 N.J.R. 3981(b).
Adopted: January 8, 1993 by the Sire Stakes Board of Trustees, Bruce A. Stearns, Executive Director, and Arthur R. Brown, Jr., Secretary, Department of Agriculture.
Filed: January 8, 1993 as R.1993 d.70, **without change.**

Authority: N.J.S.A. 5:5-91.

Effective Date: February 1, 1993.
Expiration Date: May 13, 1997.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adopted amendment follows.

2:32-2.4 Stallion standing full season

A stallion, in order for his foals to be eligible for the New Jersey Sire Stakes Program, must stand for breeding purposes the full season, extending from January 1 through December 31, on a farm in New Jersey, and shall not be moved from the farm on which he was registered without prior permission (excluding medical emergency) of the Sire Stakes Board of Trustees. A stallion shall not be permitted to race during a registered breeding period, that is, January 1 through December 31. A stallion who is moved to a location outside the State of New Jersey cannot be re-registered for two full calendar years after moving. The foals of a stallion that does race or is moved without prior permission of the Sire Stakes Board of Trustees during a registered breeding year will not be eligible to the Sire Stakes.

BANKING

(b)

DIVISION OF REGULATORY AFFAIRS

Secondary Mortgage Loan Act Rules
Readoption: N.J.A.C. 3:18

Proposed: November 2, 1992 at 24 N.J.R. 3982(a).
Adopted: December 23, 1992 by Jeff Connor, Commissioner, Department of Banking.
Filed: December 24, 1992 as R.1993 d.55, **without change.**

Authority: N.J.S.A. 17:11A-54.

Effective Date: December 24, 1992.
Expiration Date: December 24, 1997.

Summary of Public Comments and Agency Responses:
A comment was received from Samuel J. Damiano, President, New Jersey Council of Savings Institutions. In the comment, the Council agreed that the rules proposed for readoption are necessary, reasonable and proper for the purpose for which they were originally promulgated.

Take notice that significant amendments and new rules were adopted in this chapter and are published in the January 19, 1993 New Jersey Register at 25 N.J.R. 285(a).

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 3:18.

COMMUNITY AFFAIRS

(c)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code
Administration and Enforcement Process; Increase in Size
Adopted Amendments: N.J.A.C. 5:23-2.5

Proposed: April 20, 1992 at 24 N.J.R. 1421(a).
Adopted: January 4, 1993 by Stephanie R. Bush, Commissioner, Department of Community Affairs.
Filed: January 6, 1993 as R.1993 d.61, **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.

Effective Date: February 1, 1993.
Expiration Date: March 1, 1993.

Summary of Public Comments and Agency Responses:
Comments were received from the following persons and organizations:

Robert H. Karen, President, New Jersey Builders Association;
Russell Kunz, Assistant Secretary, New Jersey and New York Volunteer Firemen's Association;
H. Douglas Hansen, Fire Official, Borough of Ramsey;
Norman Russell, Fire Official and Fire Subcode Official, Township of Verona;
Felix Esposito, Secretary, Bergen-Passaic Municipal Inspectors Association, Inc.
William I. Schultz, President, New Jersey Fire Prevention and Protection Association;
Gary Lewis, President, Essex County Fire Prevention and Protection Association;
William J. Lynn, Fire Subcode Official, Borough of Paramus;
Jeffrey A. Betz, Fire Subcode Official, Township of Mendham;
Todd Stephans, Secretary/Treasurer, Bergen County Fire Prevention Association.

COMMENT: The New Jersey Builders Association supports the proposal and believes that it will eliminate substantial technical and economic barriers without compromising the fire safety protection of the occupants.

COMMENT: The New Jersey and New York Volunteer Firemen's Association unanimously voted to support this amendment.

RESPONSE: The Department appreciates these expressions of support for its proposal. It is the policy of the Department always to weigh costs and benefits in order to maximize public safety while, at the same time, minimizing waste, cost of compliance and inability of members of the public to comply.

COMMENT: The Essex County Fire Prevention and Protection Association believes that the requirement that hard-wired, interconnected smoke detectors be installed in bedrooms, established by the most recent supplement to the building subcode, is a major step forward in fire safety. A detector in the hallway may fail to awaken a sound sleeper when a room air conditioner or a fan is in use and the door is closed. Allowing use of battery-operated detectors would be a dangerous step backwards in fire safety. However, requiring hard-wired detectors in every bedroom may be considered by some to be too restrictive for small additions and batteries could be used in bedrooms if hard-wired detectors are required on each level.

COMMENT: The New Jersey Fire Prevention and Protection Association does not believe that the current requirements impose any hardship upon property owners. The cost to install a hard-wired, interconnected detector on each level is between $300.00 and $400.00, hardly a significant percentage of the cost of most additions. However, the new code requirement for hard-wired detectors in bedrooms may be burdensome for some modest additions and the Association would endorse requiring only one detector on each level, hard-wired and with battery backup, for all area and height increases between five percent and 25 percent.

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RESPONSE: The construction code is not, in general, retroactive, and rewiring entire existing buildings solely to accommodate a new hardwired detector system can be very expensive and/or difficult structurally. In a compromise accepted both by proponents of this change and by fire service representatives who had opposed it, the Department has amended the proposal to require hardwired, inter-connected smoke detectors with battery back-up in each story of an R-3 or R-4 dwelling to which there has been an addition of at least five percent, and less than 25 percent, in floor area. The Department believes that this compromise solution, which restores the requirements for buildings with additions that existed prior to recent changes in the BOCA National Building Code, will adequately address both cost and safety concerns.

COMMENT: The Bergen-Passaic Municipal Inspectors Association, Inc., the Bergen County Fire Prevention Association, and several fire officials and fire protection subcode officials are concerned that battery-powered detectors show a high failure rate and are often useless because people fail to replace batteries. Several of these commenters also expressed objection to allowing the floor area of buildings built after the effective date of the State Uniform Construction Code to be calculated on the basis of the total area of all stories, rather than the building "footprint," thereby allowing larger additions to such buildings before the requirements set forth in this subsection become applicable.

RESPONSE: As previously indicated, a compromise solution to issue of the use of hardwired inter-connected detectors rather than battery-powered detectors has been incorporated into the rule as adopted. The Department accepts the comment concerning use of the building "footprint" and has amended the rule on adoption so as to retain use of the "footprint" for calculation for smoke detector installation purposes in all buildings in Use Group R-3 and R-4.

Full text of the adoption follows (additions indicated in boldface with asterisks ***thus***; deletions indicated in brackets with asterisks *[thus]*).

5:23-2.5 Concerning increase in size

(a) If the structure is increased in floor area or height, the entire structure shall be made to conform with the requirements of the regulations in respect to means of egress, fire safety, light and ventilation.

1. This requirement shall not apply to increases of less than five percent to the floor area of a building of any use group, unless the construction official and appropriate subcode officials determine in writing that the application of this requirement is necessary in the public interest.

2. This requirement shall not apply to increases of less than 25 percent of the floor area in any detached owner-occupied single family dwelling of Use Group R-3 or R-4; provided, however, that ***hardwired inter-connected*** smoke detectors ***with battery back-up*** meeting the requirements of NFiPA 74***, except as otherwise provided in the building or fire protection subcode,*** shall be installed and maintained in each story within the dwelling unit, including basements*[, in the immediate vicinity of the bedrooms and in all bedrooms. Such detectors may be either single station or multiple station interconnected units and may be battery operated or AC powered]*.

(b) For the purpose of applying the requirements of this section, the floor area shall be ***calculated as follows:***

1. With respect to smoke detectors in detached owner-occupied single family detached dwellings, the floor area shall be* the gross floor area of ***the largest floor;***

2. For buildings erected on or after January 1, 1977, except as provided in (b)1 above, floor area shall be the gross floor area of* all floors combined *[for]***;

3. For* buildings erected *[on or after]* ***before*** January 1, 1977, *[and]* ***the floor area*** shall be the gross floor area of the largest floor *[only for buildings erected prior to January 1, 1977.]***;

4. Except as otherwise set forth in (b)1 through 3 above, habitable* *[Habitable]* attics, habitable basements and garages not separated by fire walls shall be included in the gross floor area of the building*[.]***;

5.* Mezzanines and penthouses shall not be included in the gross floor area of the building.

Recodify existing (b) as (c) (No change in text.)

ENVIRONMENTAL PROTECTION AND ENERGY

(a)

WATER TECHNICAL PROGRAMS

Ground Water Quality Standards

Adopted Repeal and New Rules: N.J.A.C. 7:9-6

Proposed: January 21, 1992 at 24 N.J.R. 181(a).

Adopted: January 7, 1993 by Scott A. Weiner, Commissioner, Department of Environmental Protection and Energy.

Filed: January 8, 1993 as R.1993 d.73, **with substantive and technical changes** not requiring additional public notice and response (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.

Effective Date: February 1, 1993.

Expiration Date: January 18, 1996.

The following is the Hearing Officer Report proposed by Richard V. Sinding, Assistant Commissioner for Policy and Planning. Although Assistant Commissioner Sinding made no specific recommendations to the Department, the Report serves as a concise summary of the issues raised during the public comment period and the Department's responses.

HEARING OFFICER REPORT
GROUND WATER QUALITY STANDARDS
(24 NJ Register 191 et seq.)

The Ground Water Quality Standards were proposed by the Department of Environmental Protection and Energy on 21 January 1992, in 24 N.J.R. 181. This proposal was prepared by the Department, based upon an interested party review draft that was released in June, 1991, and public comments on that draft. A 60 day period was provided for public comment to the proposed standards, during which time two public hearings were held. The first hearing was in the Freeholders Meeting Room of the Morris Cuunty Administration and Records Building in Morristown, New Jersey, on February 20. The second hearing was in the Cherry Hill Township (New Jersey) Municipal Building on February 26. Richard V. Sinding, Assistant Commissioner for Policy and Planning, was hearing officer for both hearings. Daniel J. Van Abs, Ph.D., Environmental Scientist with the Bureau of Water Supply Planning & Policy, assisted. The comment period closed at the end of 21 March 1992. The Department received oral testimony and written testimony from over 70 individuals, many of whom represented organizations or corporations. The commentors are listed following this report.

The written testimony and hearing record included over 800 specific comments, suggestions, recommendations and questions. The Department's responses to all of these comments is provided below. In addition, some comments received on the Department's proposed Cleanup Standards (N.J.A.C. 7:26D) have been incorporated into this response since they relate directly to the Ground Water Quality Standards. Each comment is listed separately, even when two or more commentors provided essentially or exactly the same comment. The Department has taken the liberty of grouping comments that focus on a similar issue or make the same comment, so as to reduce the amount of duplication in responses. Providing one reponse to grouped comments also will allow the public to see more clearly how the Department considered the many implications of the comments in its response.

A review of the full set of comments reveals several issues that arose frequently or presented a critical foundation to the Department's proposal. This hearing officer report presents a general review and response to each of these issues, in addition to the specific responses provided later. The seven key issues are:

1. Use of the Ground Water Quality Standards as regulatory "requirements" rather than "goals" and the relationship between the Standards and regulatory programs of the Department;

2. Risk assumptions used in the derivation of health-based criteria for Class II, including the risk level of one-in-one-million for additional carcinogenicity and the use of seventy year (lifetime) exposure scenario for ground water;

3. The relationship between the Ground Water Quality Criteria, Maximum Contaminant Levels used in the Safe Drinking Water Program,

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numerical Ground Water Cleanup Criteria, and ground water Practical Quantitation Levels;

4. The use of Class II criteria that are based upon concerns other than human health impacts;

5. The potential need for reanalysis of health-based criteria using more current data;

6. The derivation of Practical Quantitation Levels using reagent water rather than actual ground water samples, and the use of EPA's 500 Series analytical techniques (used for drinking water analysis) rather than the 600 Series (used for surface water and wastewater analysis);

7. The Class II-B concept.

Goals versus Regulatory Standards

Some commentors apparently misinterpreted language in the Basis & Background document for the proposed Standards, that the Standards would be implemented through the Department's regulatory programs and would not be "self-executing." These commentors then suggested that the Ground Water Quality Standards should be viewed as goals rather than as regulatory standards, to avoid a situation where the Standards would impose restrictions on the regulatory programs. Some commentors also recommended that the ground water quality criteria should be labelled "goals."

The New Jersey Water Pollution Control Act clearly authorizes the adoption of water quality standards by the Commissioner of the Department. The Ground Water Quality Standards respond to that mandate for ground water, just as the Surface Water Quality Standards (N.J.A.C. 7:9-4) respond to the same mandate, regarding surface water. The use of the two standards is similar. They do indeed provide direction and constraints upon the decisions developed through regulatory programs. Just because they are not "self-executing" does not mean that the Standards are advisory.

NJPDES permits for both surface water and ground water will rely upon the two sets of standards to determine the target concentrations of constituents **in the ambient water body.** The Site Remediation program will use both standards in a similar manner. The standards do not, however, speak to the development of effluent limitations or to the actual technology used to reach the standards. These site-specific decisions are the responsibility of the appropriate regulatory program. Flexibility is also provided to the regulatory programs to determine where compliance with the Standards is infeasible. Therefore, the Department concludes that the Ground Water Quality Standards are in fact regulatory requirements that are used by and must be met by the applicable regulatory programs, within the context of site-specific decisions. Considerable flexibility is available to the regulatory programs within that constraint.

At the same time, the Department will not enforce the Standards directly in a case decision (e.g., assessing a fine against a regulated party for violation of the Standards). Instead, enforcement will occur through the most appropriate regulatory programs (e.g., NJPDES, Spill Act, ECRA), resulting in actions to comply with the Standards using the authorities of those programs. The Department was referring to this mechanism when it stated that the Standards were not "self-executing."

Risk Assumptions

A number of commentors questioned the use of drinking water program risk assumptions for the Standards. The most significant issues relate to the risk of carcinogenicity and the length of projected exposure. In keeping with the New Jersey Safe Drinking Water Act, the Department chose a carcinogenic risk level of one-in-one-million additional cancers for a single carcinogen. The drinking water program's use of a lifetime exposure scenario was also carried to the Standards. Commentors suggested that the Department use a broader risk range, of one in ten thousand to one in one million, which they contend is used by EPA. They also suggested that a 30 year exposure time be used instead of a lifetime exposure (70 years) to reflect the time that people actually may live in one area.

The Department chose the risk assumptions carefully, as an acknowledgement that half of the state's residents use ground water for potable purposes, and may use ground water directly, with no treatment. (Thirteen percent of the state's residents rely on ground water from domestic wells.) Because the designated use of ground water in Class II is drinking water, it is fully appropriate to have consistent risk assumptions for the drinking water and ground water quality standards. In addition, EPA does not use the broader risk assumptions so much for one criterion, but rather considers the broader range when assessing the overall health risks posed by a site. The Standards include a similar provision now at Section 6.7(h), for situations where a site has multiple carcinogens in ground water.

Criteria for Human Health and Welfare

Some commentors took issue with the Department's decision to include criteria for substances that generally do not pose a threat to public health. Their point seems to be that only substances that are health threats have any impact on the potability of ground water. The Department disagrees. Substances that are offensive due to their smell, taste or aesthetic impacts all reduce the potability of ground water. Every water supply system is aware that consumers demand water that is not only healthful to drink, but also is pleasing to the eye, nose and tongue. Water that smells, tastes or looks foul is not "potable" to the average citizen. The New Jersey Water Pollution Control Act requires the Department to protect the **integrity** of water for certain purposes. High on that list is potable water uses. The inclusion of criteria for constituents with human welfare or aesthetic concerns is appropriate.

Commentors also have suggested that the criteria for some of these substances are excessively stringent because the constituents occur naturally and may be in equilibrium between the ground water concentration and the concentration in the soil and aquifer matrix. The Department recognizes that such conditions may exist and is considering proposing a modification of these Standards to allow additional flexibility in the antidegradation policies for these substances. As part of a reproposal, the Department intends to modify the Standards to provide additional flexibility to their application of the criteria for these substances. The modification will affect the antidegradation policies in N.J.A.C. 7:9-6.8.

Relationship Between Water Quality Regulations

The Department is responsible for several different programs that regulate water quality. The similarities and differences between these programs (Drinking Water Quality Standards, Ground Water Quality Standards, Cleanup Standards, New Jersey Pollutant Discharge Elimination System) have caused confusion among some commentors. For instance, some commentors recommended that drinking water quality standards be used as ground water quality standards because the drinking water standards protect human health. In fact, much of the derivation process is the same for the two standards. Both programs start with the development of criteria that will protect human health and welfare (e.g., to the carcinogenic risk levels discussed above). Both programs also develop Practical Quantitation Levels that indicate the concentration at or above which laboratories can be relatively certain of accurate measurement. The difference between the two programs lies in the use of these two numbers. For the drinking water quality standards, measurement at the tap is the only parameter of concern to protect consumers. Therefore, the drinking water quality standard (or Maximum Contaminant Level, MCL) is the higher of either the criteria or the PQLs. One implication is that MCLs for some carcinogens are actually at a higher risk level than one-in-one-million additional cancers.

The ground water quality standards, on the other hand, are concerned about the quality of ground water in the ground, not at the tap. They also may be used by the NJPDES program to derive discharge limits that apply at the discharge point itself, based upon a back-calculation from the ground water standards. Even where the criteria or standards are not measurable in the ground, the resultant discharge limitations may be measurable (i.e., above an applicable PQL) because of mixing or attenuation effects in the ground water. Statutory goals to minimize degradation of ground water quality are also important, leading to the development of the antidegradation policies contained in Section 6.8. Therefore, the criteria and PQLs within the Standards are kept separate, rather than combined, because they have independent uses.

The Cleanup Standards are concerned both about the actual ground water quality and about the concentration of contaminants in soils that might leach to ground water. For this reason, the proposed Cleanup Standards used the ground water quality criteria (without use of the ground water PQLs) to derive subsurface soil cleanup standards through use of a leaching model. To measure compliance with the required ground water quality, however, the proposed Cleanup Standards adopt a convention much like the drinking water MCLs, where the higher of either the criteria or PQLs are used as the numeric ground water cleanup standards. This approach is **dissimilar** to the MCLs in that the measurement is of raw water quality in the ground, rather than of delivered water at the tap.

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In summary, then, the derivation of human health-based and welfare-based criteria is essentially the same for each of the programs. The Department is striving for consistency in its approach to criteria development. In addition, the derivation of PQLs is consistent. What differs is the use of these values, depending upon the particular needs of each regulatory program.

The Department proposed the Ground Water Quality Standards and the Cleanup Standards with ground water quality values, criteria derivation methods and PQL derivation methods in both regulations. The purpose was to allow reviewers to view the entire set of regulations in one package. Although minor differences from typographic errors may have occurred in the proposals, the language was intended to be identical. Upon review of public comments and consideration of the relationship between the two regulations, the Department has decided to remove the criteria, PQLs and derivation methods from the Cleanup Standards and leave them in the Ground Water Quality Standards. It is intended that the values and methods will be used in the Cleanup Standards by reference. To assist the public, a single table has been developed that lists all regulated constituents with the appropriate Class II-A ground water quality criteria and Practical Quantitation Levels.

Updating the Health-Based Criteria

Several commentors noted that the Department had used information from EPA's two data bases (IRIS and HEAST) that was over one year old as of the time of publication. They recommended that a new search of the data bases take place, with modifications of the criteria as needed. The Department is fully in agreement with this request. The criteria in the proposal were developed in the late fall of 1990, and subject to two phases of publication—in a draft released in June, 1991, and in the proposal released in January, 1992. The long lead time prior to formal proposal unfortunately resulted in the use of some outdated material (though most of the criteria have not changed during the intervening period). For this reason, the Department prepared an updated list of criteria this fall using the August 1992 release of IRIS and the 1992 HEAST. Where major modifications to the criteria result, such that the public review of the earlier criteria is not relevant, these new criteria are being reproposed. Otherwise, they are listed as the adopted criteria for Class II. Eleven criteria will be reproposed to replace the criteria for those constitutents proposed on January 21, 1992.

Practical Quantitation Levels

In general, the Department received support or acceptance that enforcement of standards that are lower than levels measured by standard laboratory practices is difficult and inequitable. The Standards use PQLs not to modify the constituent standards, but to identify a threshold below which the actual ground water quality cannot be measured, and below which the discharger would be considered in compliance with the standards.

A controversy exists, however, regarding the laboratory analytical techniques and the methodology used to derive the PQLs. The Department chose to use drinking water analytical methods (EPA's 500 Series methods) wherever available to derive PQLs. Many commentors from the regulated community took issue with this decision, arguing that the 500 Series was developed for analysis of finished drinking water, not raw ground water. They also contend that some of the 500 Series methods are not in common use by the laboratories. They recommend use of the EPA 600 Series, which was developed for use with surface water and wastewater, both of which are more difficult matrices to analyze than finished drinking water. These methods are commonly available.

After further consideration, the Department has decided to adopt its original proposed method. Half of New Jersey's finished drinking water is ground water. Much of the ground water from public water systems receives very little treatment and is essentially raw ground water with some chlorination. Almost all ground water from domestic wells receives no treatment at all. The 500 series has been used by the Department for years to ensure compliance with the Safe Drinking Water Act requirements. Given that ground water in compliance with the Standards in essence will be clean water, the use of the 500 Series is appropriate. Where significantly higher concentrations are present, other methods may be used for monitoring purposes.

The Department does recognize that 500 Series methods are not available for all constituents listed in the Standards. In that case, the use of less sensitive methods is the only available alternative, until new methods are developed. Where 500 Series methods are available but not as commonly used, the Department fully expects that the laboratories will become proficient in these methods to meet the needs of the regulated community. Even if the Department were not to use 500 Series methods in these standards, the many additional Maximum Contaminant Levels being proposed and adopted by the Environmental Protection Agency will require laboratory proficiency in many of these methods in the near future. Regulations must force the adoption of new methods and technologies in some circumstances, to ensure protection of human health and the environment. The Department firmly believes that this is one such instance.

Class II-B

New Jersey has taken a significant step to acknowledge the existence of heavily polluted ground waters, recognize that current technologies are not sufficient to achieve compliance with the Class II-A Standards, and yet absolutely reject any consideration that these areas be "written off" or use as dumping sites for hazardous substances. The Department proposed that areas be designated as Class II-B if they have little or no current or potential ground water use in the foreseeable future, extensive (widespread) exceedance of the Class II-A criteria such that current technologies are insufficient, and minimal potential for the harm of downgradient areas. Ground water pollution remedies would be required, pursuant to the proposed Cleanup Standards, to achieve source control, free product removal and protection of downgradient receptors. Continuing discharges, on the other hand, would be required to meet the Class II-A standards unless the background concentrations of the substances they discharge are higher. The intent is to ensure that ground water quality improves toward the criteria for all existing pollution problems, and does not exceed the criteria for all other constituents.

Industrial interests, not surprisingly, hailed this proposal as a major step forward. They especially were concerned that current regulations can require massive expenditures to achieve standards that are beyond the scope of current technology. However, they rebuked the Department for not proposing at least one Class II-B area to serve as a model and template for petitions from outside interests, especially as the Department has information from hundreds of contamination cases in potential Class II-B areas. Business interests also questioned the use of the Class II-A criteria generally as the criteria for Class II-B.

Environmental interests acknowledged the concern about wasting money on infeasible remedies and generally accepted the Class II-B rationale, but wanted assurances that the expressed intent of the Class II-B classification would be met over time, that improved technology would be applied once it is developed, and that the Class II-B policies would be applied to the minimum area necessary. To them, use of the Class II-A criteria in Class II-B helped ensure implementation of the proposed Class II-B concept.

There are three issues, then. First, is the Class II-B concept appropriate. Second, should the Class II-A criteria be used in both areas. Third, should the Department propose one or more Class II-B areas at this time.

Based upon the history of ground water pollution in certain parts of New Jersey, the Department believes that the Class II-B concept is appropriate. By excluding all areas that make even relatively limited use of ground water, current water supplies are conserved. Less than ten percent of the State's area achieves this criterion. By including only areas that have extensive exceedance of ground water quality criteria, areas that have isolated contamination incidents are excluded. The Department expects that such areas will be a relatively small subset of the areas that do not use ground water. Many surface water use areas have little history of industrial use and contamination, which is the primary land use that has caused extensive exceedance of criteria. Further, the Department believes that all areas that will ever be candidates for Class II-B reflect historic pollution problems, and that no additional candidate areas should be created in the future due to new discharges.

The Class II-A criteria are entirely appropriate for Class II-B areas. Where the criteria are exceeded, the Cleanup Standards will determine the scope of active cleanups, and the remaining pollution will await new technology and natural attenuation processes. Where the criteria are not exceeded, no ongoing discharge should be allowed to cause criteria violations. Using the Class II-A criteria, site-by-site consideration of background water quality and technological feasibility provides a flexible yet stringent standard for Class II-B. The major difference for ongoing discharges between Class II-A and II-B is not in the criteria, but rather in the antidegradation policy, which is more stringent in Class II-A than in Class II-B.

Regarding a Department proposal, it is agreed that the Department has a great deal of information on contaminated sites within potential

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Class II-B areas. It was the Department's original intent, as mentioned in the proposed Standards, to develop a Class II-B proposal. Several considerations arose in the interim. First, there are severe constraints upon staff time in the Department. Assignment of staff to a Class II-B project would delay cases that those staff would have handled otherwise. Second, most of the benefits of a Class II-B area accrue to the regulated community. The Department recognizes the costs of petition development, but also recognizes that such costs are a fraction of the cost of a Remedial Investigation/Feasibility Study, much less a full ground water cleanup. Therefore, the Department decided not to develop a proposal at this time. However, the Department may decide to develop a proposal at a later date, as part of the RI/FS for a publicly-funded cleanup site that appears to be within a candidate Class II-B area.

The Department does recognize that the decision criteria at Section 6.5(e)2 and Section 6.10 do not provide extensive detail regarding the format, data requirements and review process that will be used for Class II-B petitions. For that reason, the Department has developed a Class II-B Guidance Document that should assist petitioners and the public in developing and reviewing petitions. The Guidance Document does not establish any new policies or rules; it hews directly to the decision criteria in the Standards and to the rule-making process of the Administrative Procedure Act. Therefore, the Department does not consider proposal and adoption of the Guidance Document to be necessary. The Guidance Document is available to any interested party from the Bureau of Water Supply Planning & Policy, CN 426, Trenton, NJ 08625. You may also call the bureau at (609) 633-1179.

Conclusion

The Department is deeply aware of the debt it owes to the Ground Water Quality Task Force, those who commented on the interested party draft in 1991, and those who commented on the proposed Standards this year. We thank you for your interests and detailed attention to the proposal, and to your words of support for the overall proposal as well as your suggestions for improvement. By necessity, standards of this type mandate some compromise between site-specific flexibility and regional consistency. The bottom line is that the environment and public welfare be protected within the meaning and mandates of state law. With the modifications made in this adoption in response to public comments and Department review, the Department believes that the Ground Water Quality Standards achieve the intent and mandates of law with maximum benefit to the environment and reasonable impact on regulated interests.

Summary of Public Comments and Agency Responses:

List of Commenters—Written Comments

Agency/Interest—Person

American Cyanamid—Joel Jerome, Mgr., Site Remediation and J.F. Terenzi
Amoco Oil Company—Michael E. Erickson, Remediation Serv.
Applied Wastewater Technology—Stephen M. Risse
Ashland Chemical—Glenn W. Hammer, VP
ANJEC—Abigail Fair, Director, Water Res.
Atlantic Electric—Andrew C. Shawl, Envl. Affairs
American Industrial Health Council—Marvin Friedman
Browning-Ferris Ind.—Ken Wishnick, External Affairs
CFM Environmental Services—Frank J. Mangravite
Chemical Land Holdings—Dave Rabbe, Project Manager
Chemical Industry Council/NJ—Thomas J. Detweiler, Reg. Affairs
Chevron USA—David M. Lucas Mgr., Perth Amboy
Ciba-Geigy—Barry J. Berdahl, Compliance Mgr.
CITGO Asphalt Refining Co.—Paul M. Parchinski, Process Supervisor
CPS Chemical Company
Chemrisk Mclaren/Hart—Dennis Pasteurize
Conestoga-Rovers & Associates Limited—Jack Michels
Citgo Petroleum—Tepedino Antonio
Cohen, Shapiro, Polisher et al.—William Warren
Carpenter Technology Corp.—Michael Hart
Dock Resins Corp.—Wayne Tamarelli, Chairman
Dupont-Chambers Works—Albert J. Boettler, Envl. Affairs
Dupont Chemicals—Phil Griffin
Eckenfelder, Inc.—Robert D. Mutch, Jr., Exec. VP
Ecolab Corporation—Leonard R. Schwalm, QA Supvr.
Elizabethtown Water Company—Anthony Matarazzo, Envl. Spec.
Englehard Corporation—T.W. Leary, Jr., Manufacturing Dir.
ENSR Consulting & Engr.—David Urban, Senior Chem. Engr.
Exxon Company—D.D. Esch, Envl. & External Affairs
Exxon Chemical Co.—A.N. Bogard, Performance Products Group
Environmental Testing and Certification Corp.—Vijaya Mylavarapu
Environ Corp.—Virginia White
Elf Atochem North America Inc.—John Hartung
Enviro Sci. In Fuel Merchants Assn. of NJ—Curt Macysyn, Associate Director
GE Corporate Envl. Programs—David W. Thompson, Mgr., Envl. Remediation
GM Truck & Bus Group—Lois A. Knowlson, Sen. Envl. Engr.
Institute for Responsible Envl. Policy—Joseph R. Fallon and William Hood
ISP Environmental Services—William S. Turetsky, Envl. Risk Assess.
IPS Enviro. Services—A.J. Ten Braak
JCP&L—RK Lacey, Mgr., Envl. Affairs
Kerby, Cooper, English—Jerry F. English and Gary Danis
Merck Manufacturing Div.—Jeremiah J. Laurizio, Special Proj.
Middlesex County Plnng. Board—William J. Kruse, Asst. Director
Mobil Oil Corporation—Patrick B. Henretty, Envl. Advisor
Musconetcong Watershed Assn.—Susan Dickey, VP
Natl. Agricultural Chem. Assn.—Arthur T. Hart
NAIOP—NJ Chapter—Jeffrey A. Horn, Exec. Dir. and Sheryl Barsky
Newport—William F. Wisseman, Project Eng.
NJ-American Water Company—Howard J. Woods, Jr., VP
NJ Builders Association—Robert H. Karen, President
NJ Business & Industry—Jim Sinclair, First VP
NJ Dept. of Agriculture—Samuel R. Race, SSCC
NJ Health Products Council—Joseph R. Cerchiaro, Envl. Compliance
NJ Manufactured Housing Assn.—Judith A. Thornton, Exec. Dir.
NJ Petroleum Council—Oliver Pappa, Associate Director
NJ PIRG—Jeannie Jenkins
NJ Natural Gas Co.—Edward Sawicki
Occidental Chemical—T.S. Nasife, Plant Mgr.
OHM Corporation—Peter LaGoy
Porzio, Bromberg & Newman—Edward A. Hogan, Principal (For Allied-Signal)
PPG Industries—Leonard S. Bryant, Envl. Projects
Princeton University—Katherine B. Norcross, Univ. Counsel
PSE&G—James A. Shissias, Envl. Affairs
Ruetgers-Nease—Howard Greenberg, General Counsel
Rutgers Envl. Law Clinic—William C. Sullivan, Esq. (For NJEL, NJEF)
Hoffman-La Roche—Douglas Hatler
Saul, Ewing, Remick, Saul—Mark R. Zehner (For Chemical Waste Management of New Jersey)
Schering Laboratories—Daniel Caramagno, Env. Engr.
Schwartz, Tobia & Stanziale—Steven T. Singer
Sherwin Williams Co.—Gordon S. Kuntz, Sr. Envl. Scientist
Southeast Morris County MUA—William Hutchinson, Superintendent
Shell Oil Company—L.M. Polocheck
Texas Eastern Gas Pipeline Co.—S.L. Horton, Envl. Affairs
TTI Environmental—Richard Oki
Union Carbide—Ronald T. Marold, Site Manager
USEPA—Dore LaPosta, Chief, GW Man. Section
USEPA Region II—Kathleen Callahan
Waste Management of NA—Megan A. Milford, Reg. Affairs Coord.

Oral Comments

Agency—Person

Citizen—Doug Hatler
Citizen—Frank Markewicz
Citizen—Peter Spimmey
CFM Environmental Services—Frank Mangravite (For himself)
CH2M HILL—Mike Christopher
Eckenfelder, Inc.—Robert Mutch
Jackson Township Envl. Comm.—Richard Bissuc, Chairman
Morris County MUA—Thomas Branch, Ch. Eng.
NJ Business & Industry Assn.—Jim Sinclair
NJ Manufactured Housing Assn.—Edward J. Dolan
Pinelands Pres. Alliance—Janet N. Larson
Porzio, Bromberg & Newman—Edward Hogan (For himself)
Southeast Morris County MUA—William Hutchinson, Super.
Woodward-Clyde Consultants—Alfred M. Hirsch
Woodward-Clyde Consultants—Marcus Simmons (For PSE&G)

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Support of the Proposed Ground Water Quality Standards

1. COMMENT: New Jersey Business and Industry Association voiced support for the process used by the Department in developing the proposed Ground Water Quality Standards and noted that there was a lot of give and take between the business community, professional consultants, the environmental community and the Department's staff.

2. COMMENT: Frank Markewicz commented that the proposed Ground Water Quality Standards were really needed and complimented the Department for having done a wonderful job.

3. COMMENT: Porzio, Bromberg & Newman applauded the change in the Department's standard setting process which allows the Department to have the benefit of public input before coming out with proposals.

4. COMMENT: Eckenfelder, Inc. said that the proposed Ground Water Quality Standards addressed a number of important issues and were very well thought out in many respects.

5. COMMENT: Atlantic Electric said that allowing the regulated community to review and comment on a pre-proposal of the proposed Ground Water Quality Standards was very beneficial.

6. COMMENT: Browning-Ferris Inc. strongly supports the development of rational, cost-effective ground water quality standards that ensure the protection of human health and the environment.

7. COMMENT: Chemical Industry Council/NJ commended the Department on the effort and thought that has obviously been expended in the development of the proposed Ground Water Quality Standards.

8. COMMENT: Eckenfelder, Inc. commended the Department on the effort and thought that went into the drafting of the proposed Ground Water Quality Standards.

9. COMMENT: Texas Eastern Gas Pipeline Co. said that they appreciated the Department's intent to make proposed standards more specific with regard to definitions, aquifer classification, risk assessment and alternative control technologies and that they believe this is a very positive step towards achieving more rational and feasible ground water remedies.

10. COMMENT: Merck Manufacturing Division commended the Department for developing these Ground Water Quality Standards saying that the current method of negotiating clean up standards on a case by case, site by site basis is a very time consuming endeavor which expends both time and money of both the regulated community and the Department which can be used for more beneficial purposes. Merck Manufacturing Division said that promulgation of these standards will eliminate most, if not all, of these negotiations enabling site clean ups to proceed.

11. COMMENT: GE Corporate Environmental Programs applauds the Department's recognition that the existing quality of ground water within the State can differ from one geographical location to another, and that the impact of past discharges has created areas within the State where ground water can not be restored to potable quality based on present remedial technology.

12. COMMENT: GE Corporate Environmental Programs commends the State's efforts to establish a classification system which while being protective of ground water, is realistic in recognizing the constraints, both scientific and technical, faced by the regulated community in conducting business and remedial activities in New Jersey.

13. COMMENT: GE Corporate Environmental Programs applauded the Department's intention to protect the quality of currently potable, and potentially potable water supplies and said that the Department's protection of potable water in this manner is consistent with guidance of the Environmental Protection Agency ("EPA") on this important subject, see Protecting the Nation's Ground Water: EPA Strategy for the 1990s—The Final Report of the EPA Ground Water Task Force, 1991. GE Corporate Environmental Programs went on to say that one of the EPA's primary principles, as enunciated in that document, is that ground water should be protected to ensure that the nation's drinking water supplies, currently used or reasonably expected to be used, both public and private, present no adverse health risks and are preserved for present and future generations. Clearly, the Department is following EPA's mandate by designating, as Class II ground water, all existing sources and potential sources of potable ground water.

14. COMMENT: NAIOP-NJ Chapter applauds the Department's recognition, both in the Ground Water Quality Standards and the proposed cleanup standards, that natural attenuation processes are an appropriate method for restoration of ground water quality.

RESPONSE: The Department appreciates the recognition by all interested parties of the open process of rulemaking which has been adopted to ensure input from all sides and the effort made to include a comprehensive, workable and effective set of ground water quality standards in these regulations.

Impact on the Use of On-Site Disposal Systems

15. COMMENT: New Jersey Manufactured Housing Association asserted that no existing subsurface sewage disposal system will be able to meet the requirements which will be imposed under the proposed Ground Water Quality Standards without costly modification and upgrades.

16. COMMENT: New Jersey Builders Association requested that the Department provide specific language exempting individual septic systems from the proposed Ground Water Quality Standards because as currently written the regulations are unclear and one could also assume that the requirements do apply to individual septic systems.

17. COMMENT: New Jersey Business and Industry Association said that the proposed Ground Water Quality Standards could effectively preclude development and continued business operation in those areas of the State where communities utilize a waste water treatment plant that discharges to ground water. New Jersey Business and Industry Association said that the use of septic systems is also effectively precluded.

18. COMMENT: New Jersey Manufactured Housing Association said that the proposed Ground Water Quality Standards do not provide a technique and economically realistic alternatives for manufactured housing communities that will continue to utilize septic systems. New Jersey Manufactured Housing Association requested that the Department provide economically and technically realistic alternatives in order not to eliminate manufactured housing communities as an affordable housing alternative in New Jersey.

19. COMMENT: New Jersey Builders Association said that the term "but are not limited to" as used in proposed N.J.A.C. 7:9-6.1 should be replaced with a more specific scope of application. In particular New Jersey Builders Association asked how the Department plans to apply these rules to the septic program administered under the Realty Improvement Act since this statute was purposely referenced.

20. COMMENT: Applied Wastewater Technology said the Department should provide specific language exempting individual septic systems from these regulations.

RESPONSE: The Ground Water Quality Standards are not self-executing but rather will be applied to discharge control decisions through regulations such as the New Jersey Pollutant Discharge Elimination System (NJPDES). NJPDES specifically exempts discharges from single family septage tank systems or other single family subsurface sewage disposal systems which are installed and operating in conformance with the "Realty Improvement Sewerage and Facilities Act" (N.J.S.A 58:11-23 through 42). Therefore, no specific exemptions for single family septic system need be included in the Ground Water Quality Standards.

In the case of Domestic Treatment Works discharging conventional pollutants to ground water the Ground Water Quality Standards do not result in NJPDES DGW permit limits which are impossible limits. In fact for most areas of the State the limits for conventional pollutants will be similar to those resulting from the previous Ground Water Quality Standards. The antidegradation policies, once applied through the Realty Improvement Act, will result in a lower overall density of development than the earlier Ground Water Quality Standards, but the Department firmly believes that degradation of ground water quality to the criteria, with no safety buffer, is not in the public interest.

In the Class I-PL (Protection Areas) where the greatest concern regarding the impact on the use of subsurface sewage disposal systems arises, a specific provision has been included in the Ground Water Quality Standards which assures that septic systems approvable under the Pinelands Protection Act will not be prohibited by application of the Ground Water Quality Standards.

Impact on Aquifer Storage and Water Supply

21. COMMENT: CH3M Hill questioned how the proposed Ground Water Quality Standards would affect the use of aquifers for the storage of treated waters for later recovery.

RESPONSE: The injection of treated water into an aquifer for storage requires an NJPDES DGW permit. Through such a permit the boundaries of a classification exception area would be established along with discharge limits on treatment chemicals associated with an aquifer storage scheme. The classification exception area (CEA) boundaries and the discharge limits will be based on the Ground Water Quality Stan-

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dards. The CEA would continue for the life of the permit. The Department intends to work with water purveyors in developing workable permit conditions that assure the protection of ground water quality and that make aquifer storage a viable alternative. Certainly, the storage of potable water in a Class II-A ground water area intrinsically makes sense.

22. COMMENT: PPG Industries said that the proposed Ground Water Quality Standards address ground water quality issues to the exclusion of water quantity concerns and that in fact ground water quality is often directly related to quantity. PPG Industries gave as an example an aquifer adjacent to the coast, where the extent of salt water intrusion is a direct function of extraction rates.

RESPONSE: The Department regulates ground water extraction and controls salt water intrusion under its Water Allocation Program pursuant to the Water Supply Management Act. To the extent allowed under law the Department may apply the Ground Water Quality Standards through the Water Allocation Program to control migration of other types of ground water contamination as well.

Phasing In the Proposed Ground Water Quality Standards, Grandfathering Completed Cleanups

23. COMMENT: Dupont-Chambers Works said that the proposed Ground Water Quality Standards could be interpreted to place many parties in violation immediately upon the date of promulgation.

24. COMMENT: Dupont-Chambers Works said that remedial actions in progress as of the date of promulgation must be recognized for having established legitimately derived standards.

25. COMMENT: Merck Manufacturing Division recommended that a third scope should be added as proposed N.J.A.C. 7:9-6.1(c) which would state: "If there is any pending reclassification petition or classification exception area application, the less stringent aquifer classification of the petition will be applicable and its promulgated classification is stayed for all cases except in emergency situations until a decision on the petition or application is reached."

26. COMMENT: PSE&G said that it would be inappropriate for the Department to apply new standards retroactively to ground water which has already been remediated (whether under the Department's programs, RCRA, Superfund, etc.), unless an imminent, substantial threat to public health could be demonstrated.

27. COMMENT: Atlantic Electric said the proposed regulations may be interpreted as creating automatic violations as of the regulation's effective date and recommended that the Department give a discharger a reasonable period of time (for example, 180 days) to notify the Department of a good faith belief that a facility lies in an area that should be reclassified. The notice should be accompanied by a stay of penalty assessments for violation of the new standards and protection against retroactive penalty assessment if the reclassification is not approved by the Department.

RESPONSE: Since the Ground Water Quality Standards are not self-executing there is no possibility of automatic or immediate violations being imposed upon adoption of the Ground Water Quality Standards. The Ground Water Quality Standards will be applied through regulatory programs that have enforcement responsibilities regarding various conditions such as NJPDES permit conditions or cleanup limits arrived at under the terms of an Administrative Consent Order or other oversight document. These programs may develop compliance schedules or other methods to assure an orderly, non-disruptive phase in of any necessary permit modifications or changes to cleanup conditions resulting from the adoption of the Ground Water Quality Standards. It is not the Department's intent at this time to reopen cleanup cases where all required actions have been completed to the satisfaction of the Department.

Effectiveness of the Proposed Ground Water Quality Standards for the Protection of Ground Water Quality

28. COMMENT: NJ PIRG said that the proposed Ground Water Quality Standards place an emphasis on cleanup rather than protection and that this is a shortsighted policy that will result in millions of dollars in cleanup costs and the loss of a resource that is critical to the environmental and economic health of New Jersey.

29. COMMENT: NJ PIRG urged the Department to reexamine the proposed Ground Water Quality Standards and take steps to more fully protect New Jersey's ground water since it is a vulnerable resource which is difficult and expensive to clean up once it has become contaminated.

30. COMMENT: Rutgers Environmental Law Clinic said that although it is commendable that the Department has seen fit to update the currently existing ground water standards, there are several critical problems with the standards as proposed. Rutgers Environmental Law Clinic added that unless these deficiencies are corrected, ground water quality will deteriorate and New Jersey citizens will be needlessly exposed to dangerous quantities of hazardous substances.

31. COMMENT: Rutgers Environmental Law Clinic said that one of the Department's most important missions is the protection of our ground water resources and that the proposed Ground Water Quality Standards are inconsistent with that mission and are contrary to the statutory mandate given to the Department to provide adequate ground water protection. Rutgers Environmental Law Clinic strongly urged the Department to reevaluate the proposed regulations.

32. COMMENT: Musconetcong Watershed Association expressed agreement with the nature and scope of the proposal but feels we need a more comprehensive set of water quality standards because the proposed Ground Water Quality Standards are not stringent enough to protect the untreated ground water for domestic wells. Musconetcong Watershed Association said that if this step is not taken, the cost of infrastructure to supply potable water to those residents with wells polluted because of discharges sanctioned under the proposed Ground Water Quality Standards will be staggering to local governments and in some rural settings such infrastructure may be physically impossible to install. Musconetcong Watershed Association recommends that the Department reconsider the broad scope of Class II-A designation and that the Department reclassify areas where domestic wells users depend on untreated ground water as Class I-A.

RESPONSE: The Department recognizes that prevention is the surest and most cost effective means to protect the State's ground water resources. This is reflected in the antidegradation policy in the Ground Water Quality Standards and the large areas of the State where background ground water quality is the criteria under the Ground Water Quality Standards. The Class II-A classification protects ground water for potable use **and** for conversion through treatment to potable water. Untreated domestic wells will not be adversely impacted since the Class II-A ground water quality criteria are essentially equivalent to the drinking water quality standards for both primary and secondary criteria. It must be recognized that treatment for some contaminants (for example, bacteria, iron, manganese) has always been a responsibility of the well owner because the causes may be natural. Through the Ground Water Quality Standards, the Department establishes standards that would prevent any intentional or degradation of Class II ground waters beyond potable levels. Class I-A, where no degradation is allowed, is only appropriate for exceptional ecological areas. The reclassification of any areas with domestic wells to Class I-A would prohibit the use of septic systems, lawn management chemicals, stormwater recharge basins and many other point and nonpoint discharges that are associated with residential development. The Ground Water Quality Standards provide a reasonable policy regarding the protection of ground water quality for designated uses of water.

Impact on Agriculture

33. COMMENT: Browning-Ferris Ind. urged the Department to promptly develop as a part of the proposed Ground Water Quality Standards comprehensive regulations that address discharges to ground water from agricultural activities since appliers of herbicides and insecticides to crops contribute substantially to ground water contamination.

34. COMMENT: The New Jersey Department of Agriculture said that in view of the generally accepted policies of this State which encourage and support the continuation of a viable agricultural industry it is essential that the proposed Ground Water Quality Standards include some clear statement to assure that the proposed Ground Water Quality Standards will not apply to agricultural activities which are conforming to approved management practices.

35. COMMENT: The New Jersey Department of Agriculture requested that some statement be included in the subject proposal to assure the agricultural industry that it will not be subject to the proposed constituent limits which may be impossible to meet because of uncontrollable seasonal, meteorological or climatic events.

36. COMMENT: The New Jersey Department of Agriculture said that there does not appear to be a consistent approach to the applicability of the proposed Ground Water Quality Standards to agriculture throughout the State.

RESPONSE: The Ground Water Quality Standards contain criteria for many of the chemicals used in agriculture including herbicides, pesticides and nitrates. The Ground Water Quality Standards are applicable to diffuse and other nonpoint sources of pollution such as agricul-

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ture, as authorized by the New Jersey Water Pollution Control Act, the Pesticide Control Act and other laws. However, the standards are not self-executing and the application of the Ground Water Quality Standards to agricultural activities, to the extent that such activities are not already regulated through Best Management Practices of the New Jersey Department of Agriculture or through the Pesticide Control Act, will require new regulations governing such sources, and will occur over time as these regulations and programs are developed. In accordance with the Administrative Procedure Act, new regulations will be publicly noticed for comment. Futhermore, the Ground Water Quality Standards explicitly recognize the applicability of the Pinelands Protection Act in Class I-PL areas. This Act allows for agricultural activities in Class I-PL areas. On the other hand where ground water pollution has occurred from agricultural sources, the existing authorities of the Department can be applied to effect remedies.

Consistency With Other Regulatory Programs

37. COMMENT: Atlantic Electric suggested that in light of the close connection among the proposed amendments to the NJPDES regulations, the proposed ground water quality standards and the proposed clean up standards, the Department should extend the comment period for the proposed Ground Water Quality Standards by 30 days.

38. COMMENT: Dupont-Chambers Works said the Department's recently proposed regulations have been published in a fragmented, disjointed manner, such that the public has been denied a reasonable opportunity to consider the regulatory scheme as a whole. Dupont-Chambers Works said that three sets of regulations, including the proposed Cleanup Standards, Ground Water Quality Standards and NJPDES amendments should be reproposed in one, unified, rulemaking action.

39. COMMENT: Sherwin Williams Co. said regarding the ground water cleanup standards proposed in N.J.A.C. 7:26D-4.1 et seq. "It should also be recognized that while the Department has proposed one set of regulations governing site remediation standards with regard to ground water conditions, these standards can only be applied in concert with separate DEPE proposed rulemaking concerning ground water quality standards. The DEPE's individual, piecemeal approach of regulatory development in this instance results in a situation whereby the regulated community is forced to comment upon proposed cleanup standards for ground water in particular situations, while the DEPE has yet to formally adopt the regulatory structure which will determine what ground water cleanup requirements would be imposed for that facility."

40. COMMENT: Chevron USA said it is unclear how the NJPDES regulations, proposed Cleanup Standards and the proposed Ground Water Quality Standards interrelate since they appear to overlap in scope yet there are significant differences between them.

41. COMMENT: PSE&G said regarding the ground water cleanup standards proposed in N.J.A.C. 7:26D-4.1 et seq. that subchapter 4 does not clarify how these standards relate to the "Ground Water Quality Standards."

42. COMMENT: USEPA said that the Cleanup Standards for ground water are higher than the proposed Ground Water Quality Standards for the following list of compounds:

Acrylonitrile	Dieldrin
Alachor	2,4-Dinitrophenol
Aldrin	2,4-Dinitrotoluene
Antimony	2,6-Dinitrotoluene
Arsenic(total)	Ethylene dibromide
Benzene	Heptachlor
Benzidine	Heptachlor epoxide
Benz(a)anthracene	Hexachloroethane
Benzo(a)fluoranthene	Nitrobenzen
Beryllium	N-Nitrosodiphenylamine
alpha-BHC	N-Nitrosodimethylamine
Bis(2-chloroethyl) ether	N-Nitrosodi-n-propylamine
Bis(2-ethylhexyl)phthalate	PCBs
Carbon tetrachloride	Pentachlorophenol
Chlordane	TCDD
Chrysene	Tetrachloroethylene
Dibenz(a,h) anthracene	Thallium
3,3'-Dichlorobenzidine	Toxaphene
1,2-Dichloroethane	2,4,6-Trichlorophenol
1,1-Dichloroethylene	Vinyl chloride
1,2-Dichloropropane	

43. COMMENT: New Jersey Manufactured Housing Association requested that regulations implementing the proposed Ground Water Quality Standards in programs such as the NJPDES program be published for comment before final adoption of the proposed Ground Water Quality Standards.

44. COMMENT: New Jersey Builders Association said that since the proposed standards will admittedly affect State citizens through several regulatory programs, New Jersey Builders Association requests that regulations implementing the use of these standards and programs such as the NJPDES program be published for comment before final adoption of the ground water rules.

RESPONSE: The Department recognizes that several regulations with overlapping effects have been developed and proposed, or are being developed. The Ground Water Quality Standards, being a fundamental regulation for ground water quality, were proposed first, followed by the Cleanup Standards, Technical Regulations and Oversight Regulations. This sequence provided interested parties an opportunity to review the regulations with broadest impact first, followed by the more detailed regulations. Many of the regulations implementing the Site Remediation programs have been made available for public comment. A proposal for amendments to the NJPDES regulations is also being prepared and will be made available for public comment. Until amendments to the NJPDES regulations are adopted, however, the Ground Water Quality Standards are not inconsistent with existing NJPDES regulation and will applicable to the current N.J.A.C. 7:14-6.15 as the basis for setting numerical criteria for discharge limits and cleanup standards. All other regulations and programs through which the Ground Water Quality Standards will be implemented will be similarly made available for public comment. Before final adoption of either the Ground Water Quality Standards or the Cleanup Standards, all discrepancies between numerical values given in the Ground Water Cleanup section of the Cleanup Standards and the Ground Water Quality Standards will be corrected. (It should be noted that many of the differences between the Numerical Ground Water Cleanup Standards and Table 1 of the Ground Water Quality Standards reflect the use of Practical Quantitation Levels (PQLs) in the Cleanup Standards. In the final adoption of the Ground Water Quality Standards, Ground Water Quality Criteria and PQLs have been consolidated in Table 1 for easy reference. The Department further intends to incorporate the Ground Water Quality Standards into the Cleanup Standards by reference. Given the broad scope of the Ground Water Quality Standards, it is virtually impossible and certainly impracticable for every applicable regulation to be proposed simultaneously. The need for new Ground Water Quality Standards is very strong, mitigating against the holding of these regulations until others are proposed. The Department will provide public comment opportunities for any new regulations as they are proposed.

45. COMMENT: USEPA said that the point of compliance in the proposed N.J.A.C. 7:9-6.1(b) ("boundaries of a contaminated site") conflicts with that given in the proposed Cleanup Standards which indicate that cleanup standards are to be met between a remediation site and a potential receptor. USEPA said that the definition of site boundary should be consistent between the regulations and should not extend to the receptor as is called for in the proposed Cleanup Standards.

RESPONSE: The Department is making every effort to provide a clear and consistent process for complementary use of the Cleanup Standards and the Ground Water Quality Standards. For instance, the proposed Cleanup Standards establish ground water cleanup levels that must be met in the site by the end of the cleanup. The Classification Exception Area (CEA) applies to the area within which the Ground Water Quality Standards are not met, during the time of cleanup. Thus, the contaminated site includes the full area that violates the Ground Water Quality Standards, which is equivalent to the CEA. The actual boundaries of the CEA will be defined by the applicable regulatory programs through the appropriate oversight document.

46. COMMENT: ENSR Consulting and Engineering said "The proposed regulations may have a major impact on the proposed soil cleanup standards. The Department should discuss the intent of the classification on the soil standards, especially in the case of an exception area."

RESPONSE: The Department's requirements concerning soil cleanup and their relationship with the Ground Water Quality Standards will be addressed in the Cleanup Standards and associated responses to public comments.

47. COMMENT: PSE&G said that in the proposed Cleanup Standards (N.J.A.C. 7:26D-3.3) a methodology for averaging soil concentrations and allowing outliers is given and that no such methodology is given for ground water in either of the proposed standards. PSE&G recom-

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mended that unless contamination were to be found in a well actually used as a potable water source, averaging concentrations and dealing with outliers should be allowed if it can be demonstrated that this does not lead to significant risks.

RESPONSE: The Ground Water Quality Standards will be implemented through applicable regulatory programs, such as NJPDES and the hazardous site remediation program. Both the NJPDES regulations and the proposed Cleanup Standards include a process for statistical analysis of ground water quality monitoring results.

48. COMMENT: Texas Eastern Gas Pipeline Co. requested clarification as to how ground water investigation and remediation programs subject to the Cleanup Standards for Contaminated Sites (proposed N.J.AC. 7:26D) will integrate with the proposed Ground Water Quality Standards (proposed N.J.A.C. 7:9-6).

49. COMMENT: NAIOP-NJ Chapter said that the Ground Water Quality Standards should be incorporated into and harmonized with the ground water aspects of the Cleanup Standards but that it is unclear how the Ground Water Quality Standards and the ground water aspects of the Cleanup Standards will be enforced in relationship to one another. Since the Cleanup Standards are not as stringent as the Ground Water Quality Standards, the property owner cannot be certain at what point the Department will consider the property to be in compliance.

50. COMMENT: New Jersey Manufactured Housing Association asked that the Department specify the method by which the proposed Ground Water Quality Standards will be used in the NJPDES program including specifications of the permitting process.

RESPONSE: All compliance determinations are made by the applicable regulatory program. This includes the methods of monitoring and measuring compliance, the limits of classification exception areas, the limits of contaminated site boundaries, ground water cleanup standards, and ground water protection standards. The Ground Water Quality Standards provide the classifications, designated uses, numerical criteria and PQLs for the ambient ground waters of New Jersey. Thus the Ground Water Quality Standards work in concert with the regulatory programs by providing a consistent basis for site by site determinations concerning: ground water protection standards pursuant to the New Jersey Pollutant Discharge Elimination System (NJPDES; N.J.A.C. 7:14A); ground water cleanup standards and compliance levels beyond the boundaries of a contaminated site pursuant to applicable regulatory programs; and other requirements and regulatory actions applicable to discharges that cause or may cause pollutants to enter the ground waters of the State, including nonpoint and diffuse sources regulated by the Department. Other relevant laws through which the Ground Water Quality Standards may be applied include, but are not limited to, the Spill Compensation and Control Act (N.J.S.A. 58:10-23.11 et seq.), the Solid Waste Management Act (N.J.S.A. 13:1E-1 et seq.), the Environmental Cleanup Responsibility Act (N.J.S.A. 13:1K-6 et seq.), the Storage of Hazardous Substances Act (N.J.S.A. 58:10A-21 et seq.), the Realty Improvement Sewerage and Facilities Act (N.J.S.A. 58:11-23 et seq.), and the Pesticide Control Act of 1971 (N.J.S.A. 13:1F-1 et seq.).

51. COMMENT: ENSR Consulting and Engineering said that the proposed Ground Water Quality Standards "should discuss any potential or intended impacts on Superfund Sites which have already completed the Feasibility Study. The regulations should establish if the intent of the regulations is to require all Superfund Sites which have not entered the Remedial Action Phase to be revised to satisfy the new regulations. Such an effort is extremely costly and can set a project months behind schedule. In some cases the new regulations will require a new Feasibility Study to be conducted."

52. COMMENT: Porzio, Bromberg & Newman said that many of the standards and procedures in the proposed Ground Water Quality Standards are not consistent with the National Contingency Plan (NCP). Porzio, Bromberg & Newman gave as an example that the use of the word "site" is not consistent with the NCP and the procedures and basis for developing alternative concentration levels are different than those in CERCLA. Porzio, Bromberg & Newman said that consistency with the NCP is essential in order to assure consistency in Federal and State response actions and to prevent inconsistent, contradictory, or untimely regulatory efforts by the State and Federal Government.

53. COMMENT: American Cyanamid said that if the Department plans to use the proposed Ground Water Quality Standards through other regulatory programs such as CERCLA and RCRA, then the Department needs to present a clearly defined mechanism for intra- and inter-agency coordination regarding CERCLA and RCRA cleanups to prevent inconsistent or conflicting regulatory management under these programs. The commenter suggested that procedures established toward this end should include maximum review periods for each agency involved.

RESPONSE: New Jersey administers portions of the RCRA and CERCLA programs under agreements with the United States Environmental Protection Agency (USEPA) which specify arrangements for inter-agency coordination. These Federal programs set minimum standards for cleanup of hazardous chemicals in New Jersey but in no way prohibit New Jersey from adopting more stringent standards pursuant to the State's environmental statutes. The phasing in of criteria based on the Ground Water Quality Standards for existing permits will be left to the applicable regulatory programs along with any decisions concerning reviewing cleanups completed under previous ground water quality standards. In accordance with the proposed Cleanup Standards, it is the Department intention (see proposed N.J.A.C. 7:26D-1.6) to have the Cleanup Standards used as applicable or relevant and appropriate requirements (ARARs) for the purposes of CERCLA. The implementation of these Ground Water Quality Standards will be accomplished by the applicable regulatory program.

54. COMMENT: New Jersey Manufactured Housing Association found that there are inconsistencies between thet NJPDES regulations and the proposed Ground Water Quality Standards.

55. COMMENT: American Cyanamid said that proposed N.J.A.C. 7:9-6.1(b) should indicate whether the Ground Water Quality Standards will be incorporated into existing NJPDES DGW permits and if these standards will be considered enforceable discharge limitations once incorporated into permits.

56. COMMENT: American Cyanamid said the proposed Ground Water Quality Standards should clarify their use by the NJPDES program especially in light of the mandatory penalties which may be imposed under the Clean Water Enforcement Act. American Cyanamid commented that mandatory penalties are inappropriate where compliance with standards cannot possibly be achieved.

57. COMMENT: American Cyanamid said that if standards are to become permit discharge limitations then the Department should state how it plans to enforce the limitations and whether or not penalties will be assessed for noncompliance.

RESPONSE: The Ground Water Quality Standards shall serve as the basis for setting numerical ground water discharge limits for the NJPDES program. The NJPDES program will phase in ground water protection standards based on the new Ground Water Quality Standards. Whether or not this is accomplished through reopening existing permits or at the time permits are renewed has yet to be determined. In any case it will be done with the full public comment as is called for pursuant to the NJPDES regulations. Once incorporated into a permit the ground water protection standards will be fully enforceable pursuant the Water Pollution Control Act as amended. It is important to note that the Ground Water Quality Standards do not equate to **discharge limitations.** They are more fully equivalent to ground water protection standards. Where compliance is not possible, the Department may accept a petition for an Alternative Concentration Limit, or it may deny the requested permit. The Department does not see any serious conflicts with NJPDES regulations at this time.

Questions of How the Proposed Ground Water Quality Standards Will Be Implemented

58. COMMENT: Chevron USA said that the proposed Ground Water Quality Standards result in direct regulation of facilities or sites, although the Department may not have intended this. For example, Chevron USA said that the requirement to meet constituent standards at the boundary of a regulated site in actuality imposes more stringent standards on a facility undertaking ground water cleanup in a Class II-A area than in other areas.

59. COMMENT: Chevron USA said that the proposed Ground Water Quality Standards should provide goals for statewide ground water resource management and planning while clearly deferring implementation of facility specific requirements to existing regulatory programs.

60. COMMENT: Chemical Industry Council/NJ said that it believes that the existing ground water quality standards are not, and were never applied as, self-executing regulations, but were always implemented through other regulatory programs and so the proposed Ground Water Quality Standards are not different in this way.

RESPONSE: The Ground Water Quality Standards provide the classifications, designated uses, numerical criteria and PQLS that shall serve as the basis for the protection of our State's ground water while relying entirely on the applicable cleanup standards, discharge limitations,

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certifications or other criteria. The Department has used the prior Ground Water Quality Standards as directly-enforceable limits in the past, but is now applying the Ground Water Quality Standards through its regulatory programs. The Ground Water Quality Standards allow the regulatory programs appropriate flexibility for site by site decision making through the use of Classification Exception Areas, Constituent Standard Modifications and recognition of Alternate Concentrations Limits. However, they are not merely goals, but rather are legal requirements with provisions for flexibility through the regulatory programs.

61. COMMENT: GE Corporate Environmental Programs said "Throughout the proposed Ground Water Quality Standards, the Department states that standards or procedures will be 'established' or 'developed.' However, the proposed regulations are silent as to the administrative procedures to be employed when establishing or developing these standards. The proposed regulations are also silent as to when the Department must have these standards or procedures in place. The regulations should set forth how the Department intends to develop these standards and procedures, as well as a schedule by which the Department is to have them in place."

RESPONSE: The Department agrees that clarifying procedures for establishing various conditions called for in the Ground Water Quality Standards may be helpful. For example, Classification Exception Areas shall be established by the applicable regulatory programs when site conditions are appropriate. Language has been added to N.J.A.C. 7:9-6.6 to clarify the procedure for establishing Classification Exception Areas. Regarding new specific criteria or reclassification actions, the Department intends to propose and adopt these changes as amendments to the Ground Water Quality Standards. Thus, the adoption of new specific criteria and the reclassification of any ground water classification area will be accomplished through rulemaking in accordance with the Administrative Procedure Act.

62. COMMENT: Chemical Industry Council/NJ recommended that proposed N.J.A.C. 7:9-6.1(b) be changed from "... shall provide the basis for protection ..." to "shall set goals for the protection ..."

63. COMMENT: Exxon Company recommended that in N.J.A.C. 7:9-6.1(b), the first sentence be changed from "... shall provide the basis for protection ..." to "... shall set goals for the protection ..." to be consistent with the philosophy of the existing Ground Water Quality Standards, which are an institutional framework from which specific implementing regulatory programs (for example, NJPDES, Cleanup Standards) set actual guidelines.

64. COMMENT: New Jersey Petroleum Council recommended that proposed N.J.A.C. 7:9-6.1(b) be re-focused to aim these rules toward a goal oriented tool for the Department rather than setting the "basis for protection" ends which are ultimately set by specific regulatory programs.

65. COMMENT: Chevron USA recommended adding the following sentence to proposed N.J.A.C. 7:9-6.1(b): "Nothing in this subchapter shall prevent the appropriate regulatory programs from issuing less stringent site specific standards in either regulations or regulatory decisions for a specific ground water discharge or cleanup. These regulations are not intended to be applicable or relevant and appropriate requirements (ARARs) as defined in the National Contingency Plan (40 CFR Part 300)."

RESPONSE: The Ground Water Quality Standards are not merely goals but are indeed standards, as is called for in the New Jersey Water Pollution Control Act, and provide the classifications, numerical criteria, antidegradation policies and PQLs which are to be implemented by the applicable regulatory programs. As set forth in the proposed Cleanup Standards, they are indeed meant to be applicable, relevant and appropriate regulations (ARARs) under the National Contingency Plan. The Ground Water Quality Standards do, however, include sufficient flexibility through criteria modifications, alternative concentration limits and Classification Exception Areas to address site-specific regulatory concerns. Therefore, the suggested amendments are not necessary.

Regulation of Off Site Discharges

66. COMMENT: Browning-Ferris Ind. said that a discharger should not be required to achieve cleanup standards or satisfy criteria beyond its property boundaries unless the offsite contamination can be demonstrated to have originated from the entity's property. The standards to be met in such a case should be measured at the tap, the point of human exposure.

67. COMMENT: CITGO Asphalt Refining said since proposed Ground Water Quality Standards apply to "ground water cleanup standards and compliance levels beyond the boundaries of the contaminated site", as stated in proposed N.J.A.C. 7:9-6.1(b), a better definition of "beyond the boundaries" should be provided.

RESPONSE: Generally, the boundaries of a contaminated site are defined by the actual scope of contamination; however, the boundaries of a specific cleanup site and the determination of whether or not a particular discharger is responsible for an off site discharge will be made by the applicable regulatory programs after due consideration of background conditions. The application of the Ground Water Quality Standards shall not be differentiated on the basis of whether the contamination is on-site or off-site.

Enhancement of Ground Waters

68. COMMENT: Chemical Land Holdings said that since the Department does not require the regulated community to take measures to improve upon the quality of natural background, the policy statement should be modified to reflect that. Where ground water has a natural and acceptable quality for domestic, municipal, recreational, industrial, or other uses, it would seem unnecessary to enhance its quality.

RESPONSE: The commenter is correct concerning requirements on the regulated community. However, enhancement of ground water quality clearly refers to areas where ground water quality has been degraded by the discharge of pollutants. The Department disagrees that any clarification of this statement is needed, as it is derived directly from the NJ Water Pollution Control Act.

Surface Water Interface

69. COMMENT: Merck Manufacturing Division recommended that attenuation and degradation should be considered when determining if ground water causes a contravention of the applicable surface water quality standards and that requiring ground water to meet surface water quality standards as called for in proposed N.J.A.C. 7:9-6.2(b) is not appropriate.

70. COMMENT: Chemical Industry Council/NJ recommended that dilution, attenuation and degradation should be considered when determining if ground water causes a contravention of the applicable surface water quality standards.

71. COMMENT: Exxon Company recommended that in N.J.A.C. 7:9-6.2(b), the determination of discharge limits should allow for the use of dilution modeling.

72. COMMENT: NJ Business & Industry Association wants clarification on which rules apply in areas where ground water discharges to surface water or vice versa.

73. COMMENT: Chemical Industry Council/NJ recommended that the second sentence of proposed N.J.A.C. 7:9-6.2(b) should be deleted saying that it contradicts the first sentence of that section.

74. COMMENT: Middlesex County Planning Board said in regard to proposed N.J.A.C. 7:9-6.2(b) that should a question of applicability or conflict arise between surface and ground water quality standards, a method for determining priority would help to avoid confusion and inconsistent application.

75. COMMENT: GE Corporate Environmental Programs said that the Department's stated intention to regulate discharges to ground waters that subsequently flow to surface waters so as not to exceed the Surface Water Quality Standards appears to be unworkable because procedures for locating and measuring the contribution from ground water to surface water may be difficult to implement. Additionally, the Department has not proposed any criteria such as point of compliance, usage of dilution models, or corrections for other factors that may affect surface water quality to assist the regulated community in meeting the requirements of this provision.

76. COMMENT: New Jersey Petroleum Council said that since proposed N.J.A.C. 7:9-6.2(b) deals with ground water which subsequently discharges to surface water and therefore must meet both Ground Water Quality Standards **and** SWQS standards that the use of dilution modeling be added for this requirement. New Jersey Petroleum Council recommended that the determination of loading rates should be delineated in this rule to clarify whether this is a point or non-point discharge.

77. COMMENT: New Jersey Health Products Council requested clarification regarding proposed N.J.A.C. 7:9-6.2(b) since it appears to contradict the conventional "mixing zone" concept.

78. COMMENT: Chevron USA said that the first sentence of proposed N.J.A.C. 7:9-6.2(b) should be changed to read: "Discharges to ground water that subsequently discharge into surface water should not cause a long term or significant contravention of surface water quality standards applicable to those surface waters." Chevron USA recom-

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mended that a method to determine loading rates of pollutants from ground water surface water must be provided. Chevron USA said that it is unclear as to exactly how base flow will be regulated. Chevron USA asked will ground water discharges to surface water be considered non-point source discharges or point source discharges. Chevron USA said that if a method to determine loading rates is not provided then this requirement cannot be effectively implemented.

RESPONSE: The Department agrees that a change to N.J.A.C. 7:9-6.2(b) is needed to clarify its intent. The subsection has been clarified to state the Department's intention to regulate discharges to ground water to prevent degradation of surface water quality as well as meet ground water quality standards. The specific method of calculating the impact of a discharge to ground water on surface water quality, resolving possible conflicts between regulations and prioritizing impacts will be determined by the applicable regulatory programs. The programs will be guided by the surface water quality standards (N.J.A.C. 7:9-4) in applying such concepts as loading rates, point versus non-point sources, and mixing zones. The selection of monitoring locations, parameters and methods will be made by the applicable regulatory programs on a site by site basis.

Economic Impact as a Part of Policy Considerations

79. COMMENT: New Jersey Business and Industry Association proposed that the stated policy objectives contained in the proposed Ground Water Quality Standards should include explicit reference to the economic goals the State of New Jersey seeks to realize through the adoption of the proposed Ground Water Quality Standards.

80. COMMENT: Chemical Industry Council/NJ recommended revising the first sentence of N.J.A.C. 7:9-6.2(c) to read "... after a review of the relevant and available scientific, technical, economic and social data ..."

81. COMMENT: Exxon Company recommended that in N.J.A.C. 7:9-6.2(c), the first sentence should be revised to read "... after a review of relevant and available scientific, technical, economic and social data ..." to be consistent with the existing Ground Water Quality Standards (citations—N.J.A.C. 7:9-6.9(a)1(i)(1) and N.J.A.C. 7:9-6.10(e)) which address economic and social costs of achieving limits versus benefits to be obtained.

82. COMMENT: Chevron USA proposed that the following revised language for proposed N.J.A.C. 7:9-6.2(c): "... after a review of a relevant and available scientific and technical data **and socioeconomic factors,** determined in the context ..."

83. COMMENT: Dupont-Chambers Works recommended that economic considerations be specifically included in the text of the regulations.

84. COMMENT: New Jersey Business and Industry Association said that an expression of DEPE's acknowledgment of concern for basic economic considerations appears to be missing in the policy statement.

85. COMMENT: NAIOP-NJ Chapter said that the Ground Water Quality Standards ignore the existing equitable considerations concerning the relationship between the economic and social costs of achieving compliance and the benefits to be obtained in meeting the water quality criteria. NAIOP-NJ Chapter recommended that the Ground Water Quality Standards should strive for a proper balance between the economic interests of the regulated community and the environmental interests of the public.

86. COMMENT: New Jersey Manufactured Housing Association suggested that the economic impact of implementing the proposed Ground Water Quality Standards, including the costs of cleanup and monitoring should be addressed especially with regard to their impact on the availability of affordable housing such as mobile home parks.

RESPONSE: The policy statements contained in N.J.A.C. 7:9-6.2 reflect the policy of the authorizing legislation, primarily the New Jersey Water Pollution Control Act (N.J.S.A. 58:10A-2). Because the legislation does not expressly mandate consideration of the economics in protecting New Jersey's ground water resources such considerations are not included in the policy statements of the Ground Water Quality Standards. The Department has, however, taken care throughout the Ground Water Quality Standards to fulfill the legislative mandate to restore, enhance and maintain ground water quality while not imposing unnecessary restriction or overly stringent requirements.

87. COMMENT: Porzio, Bromberg & Newman asked that a more thorough economic impact statement be included in the final adoption of the proposed Ground Water Quality Standards.

88. COMMENT: Browning-Ferris Ind. suggested that more attention should be placed upon the tradeoffs between the costs of more extensive regulation and the benefits, if any, those additional expenditures generate.

89. COMMENT: Chemical Land Holdings said that the Economic Impact analysis failed to adequately address the realistic economic implications of capital, operating and monitoring costs, the time-frame over which such costs are likely to be experienced as well as the timelag before the benefits of improved ground water quality are realized.

90. COMMENT: Dupont-Chambers Works said that the stringency of the proposed standards will most certainly require many more ground water cleanups and the additional economic cost should be recognized by the Department. Dupont-Chambers Works calculated a gross economic impact of the proposed Ground Water Quality Standards by employing figures for the number of potentially affected sites provided in the Regulatory Flexibility Statement of the proposed Ground Water Quality Standards. Dupont-Chambers Works estimates that the potential economic magnitude of the proposed Ground Water Quality Standards at over $2,200,000,000. Dupont-Chambers Works recognizes that this estimate is crude and some of the calculated activities would be required by existing regulations, but said that the proposed Ground Water Quality Standards have a heavy economic impact on the State of New Jersey which should not be ignored.

91. COMMENT: Dupont-Chambers Works said that the Department's statement in the Economic Impact section that the proposed Ground Water Quality Standards "distribute costs to control pollution on a more cost effective, equitable basis" and that "marginal increases or decreases in costs may result due to the proposal" was unsubstantiated. Dupont-Chambers Works said that it is imperative that the Department perform a viable economic analysis so that such issues can be properly evaluated.

RESPONSE: The Ground Water Quality Standards can be viewed as a refocusing of existing ground water protection efforts without a substantial increase in overall costs. This is because many of the requirements that are being imposed with the adoption of the Ground Water Quality Standards are already being imposed pursuant to either the existing Standards or in the context of specific regulatory programs. The refocusing allows protection efforts to be applied where they will do the most good in terms of protecting the usable ground water resources and places less attention on areas where cleanup efforts will not improve resources. The Department believes that the Economic Impact statement is a fair assessment of the overall economic impact of adopting the Ground Water Quality Standards, relative to the economic impact of existing regulations and regulatory programs. Although the commenters would like the statement to focus on the costs to dischargers such considerations must be balanced with concurrent consideration of the benefits to ground water users.

92. COMMENT: Chemical Industry Council/NJ recommended adding the word "designated" after "... other" in the last line of N.J.A.C. 7:9-6.2(a).

93. COMMENT: ENSR Consulting and Engineering recommended that in N.J.A.C. 7:9-6.2(a), the word "designated" be added after "... other" on the last line. This will make it consistent with other applicable statutes.

94. COMMENT: New Jersey Petroleum Council suggested adding "designated" to line 5 of proposed N.J.A.C. 7:9-6.2(a) making it reflect other rules "... other **designated** uses of water."

RESPONSE: The language used in N.J.A.C. 7:9-6.2(a) is derived directly from the New Jersey Water Pollution Control Act. It is not the Department intent in the referenced policy statement to limit the protected uses of ground water to "designated" uses. Designated uses are, however, established for specific classification areas in N.J.A.C. 7:9-6.5.

Recommended Class II-B Policy Statements

95. COMMENT: Chemical Industry Council/NJ recommended that an additional policy statement be added stating that "the Department shall develop a delineation of Class II-B and Class III-B aquifers in those areas where ground water is not being used for potable uses and where the regional ground water quality does not meet potable standards."

96. COMMENT: Merck Manufacturing Division recommended that an additional policy statement should be added stating that "the Department shall develop a delineation of Class II-B and Class III aquifers in those areas where ground water is not being used for potable uses and where the regional ground water quality does not meet potable standards."

RESPONSE: The Department is not in a position to commit to developing II-B classification areas at this time. This is because there

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are severe constraints upon staff time in the Department. However, interested persons may petition the Department for the reclassification of any ground water classification area in accordance with N.J.A.C. 7:9-6.10. Most of the benefits of a Class II-B area classification will accrue to the regulated dischargers. The Department recognizes the costs of petition development, but also recognizes that such costs are a fraction of the cost of the financial benefits from the designation of a Class II-B classification area.

97. COMMENT: NJ Health Products Council said that the Department should add a paragraph (e) to proposed N.J.A.C. 7:9-6.2 which states that Class II-B and Class III ground water not being used for potable water in a regional area do not have to meet the criteria for Class II-A.

RESPONSE: The Class II-A criteria are entirely appropriate for Class II-B areas, in accordance with the policy of the New Jersey Water Pollution Control Act, which requires restoration of the waters of the State. Where the criteria are exceeded, the Cleanup Standards will determine the scope of active cleanups, and the remaining pollution will await new technology and natural attenuation processes. Where the criteria are not exceeded, no ongoing discharge should be allowed to cause criteria violations that might extend the period in which the water is not potentially potable. Using the Class II-A criteria, coupled with site-by-site consideration of background water quality and technological feasibility, provides a flexible yet protective standard for Class II-B. Class III-A areas need to protect Class II-A ground water where those waters are downgradient and potentially affected.

98. COMMENT: Merck Manufacturing Division said regarding the ground water cleanup standards proposed in N.J.A.C. 7:26D-4. "The Department frequently identified situations in which "ground water has migrated or has the potential to migrate.... The word "potential" is vague, overly broad and inconsistent with the Department's stated intent to "ensure consistent procedures for the identification of cleanup standards. "This language strips the proposed standards of any predictability and consistency and should, therefore, be omitted from all provisions of N.J.A.C. 7:26D-4.2(a). We suggest instead that "potential to migrate" be substituted by "reasonable likelihood of migrating within a five-year period."

RESPONSE: The Department's concern is with migration of contaminants above the applicable standards, based upon a comparison to the background water quality and constituent standards in such downgradient areas. The Department does not agree with the specific suggestion since it provides no flexibility. Instead the Department will, on a case-by-case basis, review a combination of ground water flow vectors and gradients, attenuation possibilities, flow barriers and potential for induced movement regarding migration of ground water pollution in determining whether ground water pollution has the potential to migrate. Language has been included in N.J.A.C. 7:9-6.10 to clarify the Department's method of evaluating the potential for pollutant migration.

Definition of "Ground water"

99. COMMENT: New Jersey Business and Industry Association said that the definition of the term "ground water" should be consistent with definitions set forth in the Cleanup Standards.

RESPONSE: The definition of "ground water" is identical in the Ground Water Quality Standards and the proposed Cleanup Standards.

100. COMMENT: PPG Industries said the definition of "ground water" and "unsaturated zone" reflect an incomplete description of the subsurface since three distinct subsurface zones can be defined: the capillary fringe, the vadose zone and the aquifer. PPG Industries said the capillary fringe can be several tens of feet in thickness at some sites and is an important area in which contaminants can be concentrated. PPG Industries recommended that site specific consideration such as the impacts of the capillary fringe on chemical migration in the subsurface be taken into account.

RESPONSE: The Department's concern is with subsurface water that is within the saturated zone, which includes a portion of the capillary fringe. The Department has revised the definition of "ground water" and included a definition of "saturated zone" to clarify this point. The Ground Water Quality Standards apply to all subsurface water within the saturated zone.

Definition of "Discharger"

101. COMMENT: New Jersey Business and Industry Association said regarding the definition of the term "discharger" that the word "induces" should be removed.

RESPONSE: The Department agrees to remove the word "induces" from this definition. The word "discharger" appears in the Ground Water Quality Standards only within other definitions in N.J.A.C. 7:9-6.4 and in N.J.A.C. 7:9-6.7(g) which will be implemented through the applicable regulatory programs. Accordingly, the definition has been revised in the Ground Water Quality Standards to maintain consistency with these programs.

Definition of "Discharge"

102. COMMENT: Porzio, Bromberg & Newman commented that the inclusion of discharges to publicly owned treatment works to the definition of the term "discharge" was inconsistent with the definition of this term under the Spill Act regulations.

103. COMMENT: CFM Environmental Services said that since releases to municipal treatment works are a surface water discharge it is inappropriate to include it in the definition of "discharge" under the proposed Ground Water Quality Standards.

104. COMMENT: GE Corporate Environmental Programs said that the definition of "discharge" in the proposed Ground Water Quality Standards includes, without limitation, the release of any pollutants into a municipal treatment works. The water quality of such discharges is already regulated by the State of New Jersey, pursuant to the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and should not be further regulated by these standards. GE Corporate Environmental Programs believes that this concept should be deleted from this proposed rule.

105. COMMENT: New Jersey Health Products Council said that the definition for "discharge" should be consistent with other DEPE regulations such as the Spill Act regulations and the proposed Cleanup Standards. New Jersey Health Products Council added that discharges impacting ground water should be covered and not discharges to a POTW.

106. COMMENT: New Jersey-American Water Company commented as follows: "The definition of 'discharge' includes the release of any pollutant into a municipal treatment works. We feel that this element of the definition should be deleted. Discharges to municipal treatment works are covered under a host of other regulatory programs already in existence in New Jersey. The inclusion of this limitation in the definition of discharge does not clarify these other existing regulatory programs and may lead to conflict and confusion. We also do not see that this specific criteria adds anything to the proposed regulations."

107. COMMENT: New Jersey Business and Industry Association said that the definition of the term "discharge" should be consistent with definitions set forth in the proposed Cleanup Standards and the Spill Compensation and Control Act. Furthermore, "release to muncipal treatment works" must be deleted.

RESPONSE: Release to municipal treatment works is included in the definition of "discharge" as used in the Water Pollution Control Act and thus is appropriately included in the definition of that term used in the Ground Water Quality Standards.

108. COMMENT: Chemical Industry Council/NJ recommended that the Department consider deminimus (insignificant) concentrations or quantities of materials in the definition of the term "discharge."

109. COMMENT: Merck Manufacturing Division said that the Department must consider deminimus concentrations or quantities of materials in the definition of the term "discharge."

RESPONSE: The significance of the quantity of a discharge cannot be predetermined in the definition of "discharge" but needs to be evaluated on a case by case basis; therefore, no threshold quantities are included in the definition. Regulatory programs such as NJPDES have the authority to develop "permits by rule" and general permits that would allow deminimus discharges.

110. COMMENT: Middlesex County Planning Board recommended that a modification of the definition of the term "discharge" to include "repositioning" of a pollutant which might result from pumping induced movement of ground water contamination.

111. COMMENT: Union Carbide recommended the bracketed text be removed from the definition of "discharge" as follows: "means an intentional or unintentional ... without limitation, the release of any pollutant into a municipal treatment works. The flow of pollutants to ground water includes, without limitation, flow through the unsaturated zone[, and the movement of pollutants in ground water] as a result of an intentional or unintentional action, as listed above, by a facility into new volumes of the unsaturated and saturated zones."

112. COMMENT: PPG Industries recommended that the definition of "discharge" be revised by deleting the last sentence to reflect the

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fact that chemicals acknowledged to be present in aquifers cannot be considered new discharges simply as a result of additional evidence of migration.

113. COMMENT: NAIOP-NJ Chapter said in regard to the definition of "discharge": "The Ground Water Quality Standards expand the definition of a discharge beyond the scope and authority of the Department under the existing statutory framework binding the Department, by including within the flow of pollutants, the 'flow through the unsaturated zone and the movement of pollutants in ground water into new volumes of the saturated zone.' The current wording of the definition of discharge would include as a discharge the expansion of a plume from a previously contaminated area, which is contrary to current case law and statute."

114. COMMENT: Chevron USA said that the last sentence of the proposed definition of "discharge" should be omitted because it exceeds the Department's statutory authority for regulation of a discharge under the New Jersey Water Pollution Control Act.

115. COMMENT: Chemical Land Holdings said that the phrase "new volumes of the saturated zone" which is used in the definition of the term "discharge" need to be clarified and asked if this is intended to mean discretely different aquifers or the portion of an existing aquifer which has not yet been contaminated by migrating pollutants or both?

116. COMMENT: Exxon Company recommended that regarding the definition of the term "discharge" removing the last sentence, "The flow of pollutants to ground water includes, without limitation, flow through the unsaturated zone, and the movement of pollutants in ground water into new volumes of the saturated zone." The Water Pollution Control Act is one of the bases for promulgating this rule on ground water quality standards, and its definition of discharge (N.J.S.A. 58:10A-3(e)) does not include this sentence. Furthermore, "the movement of pollutants in ground water" implies a plume. The Department is including this in the definition of "discharge" which implies that all plumes will require a NJPDES permit action.

117. COMMENT: New Jersey Petroleum Council suggested deleting the last sentence of the definition of the term "discharge" as it may exceed the Department's statutory authority under N.J.S.A. 58:10A-3e, the NJWPCA, by adding flow through the unsaturated zone and plume movement to the statutory definition, thus implying that all plumes will require a NJPDES permit action.

RESPONSE: The Department has removed the last sentence from the definition of "discharge" since it appears to have caused some confusion to the regulated community. By including this sentence in the proposal, the Department was attempting to make it clear that responsibility for discharges extends beyond property lines, and ground water units, and includes the entire area contaminated by the discharge. Applicable case law does in fact confirm that this concept is already embodied in the definition of "discharge" as set forth in the Water Pollution Control Act, which is restated in these regulations. Accordingly, the proposed language was not essential for the Department to accomplish its goal and has been dropped from the adoption to eliminate the confusion that was generated by its inclusion in the proposed Ground Water Quality Standards.

118. COMMENT: New Jersey Builders Association asked the Department to specify whether nonpoint source pollutants (for example, septic systems) are included within the definition of "discharge."

RESPONSE: Non-point sources of pollution may be discharges as the term is defined in the Ground Water Quality Standards; however, broad application of the Ground Water Quality Standards to many non-point and diffuse sources often will require new regulations governing such sources, and will occur over time as these regulations and programs are developed.

119. COMMENT: Fuel Merchants Association of New Jersey recommended that the definition of "discharge" should be modified to match the definition of that term which has recently been promulgated in N.J.A.C. 7:1E, the regulations concerning the "Discharges of Petroleum and Other Hazardous Substances."

120. COMMENT: Princeton University said that the definition of "discharge" should conform to the proposed cleanup standards and existing standards found in the Spill Act or NJPDES program, so consistency is maintained.

121. COMMENT: PSE&G commented as follows: "All words and terms which are the same as those used in other regulations, e.g., "discharge", "pollutant" and "aquifer", should be defined precisely as they are in those other regulations, or the reference to the original regulation should be recited. In this way, inconsistent and confusing applications will be avoided, and several rules will be updated when the original regulation's definition is amended. If the concept embodied in the word or term must be different for this set of regulations, it would be a better practice to choose a different word or term, or add the words "ground water quality" to the defined term to distinguish it clearly."

122. COMMENT: CITGO Asphalt Refining said that the definition of "discharge" is inconsistent with the definition provided in the Spill Act regulation (N.J.A.C. 7:1E-1.6) and does not specifically exclude permitted discharges. To provide consistency between these regulations, CITGO Asphalt Refining suggested adopting the Spill Act definition.

123. COMMENT: Dupont-Chambers Works said that the definition of "discharge" needs to be consistent with the same term in the NJPDES regulations.

124. COMMENT: Porzio, Bromberg & Newman recommended that the definition for the term "pollutant" in the proposed Ground Water Quality Standards be the same as the definition used in the NJPDES program and the term "discharge" be defined as it is under the Spill Act.

125. COMMENT: Newport said that the definition of "discharge" should match the definition contained in the Water Pollution Control Act.

RESPONSE: The Department has removed the last sentence of the proposed definition of "discharge." With this modification, the adopted definition of "discharge" is identical to the definition of "discharge" set forth in the Water Pollution Control Act, as amended by the Clean Water Enforcement Act. With regard to the terms "aquifer" and "pollutant," see the response that follow under those headings below.

Suggestions for Definitions to be Added to the Regulations

126. COMMENT: New Jersey Health Products Council said that the term "extensive exceedance" should be defined as it is used in proposed N.J.A.C. 7:9-6.5(e)2i.

127. COMMENT: Chevron USA said that the term "conventional water supply treatment" should be defined as it is used in proposed N.J.A.C. 7:9-6.5(e) or a cross reference to the Act or regulation containing the definition should be provided.

128. COMMENT: Dupont-Chambers Works said that the Department should define "evidence of carcinogenicity" and "lacking evidence of carcinogenicity" as these terms are used in Table 2 of the proposed Ground Water Quality Standards.

129. COMMENT: New Jersey Petroleum Council recommended that definition of "conventional water supply treatment" as used in proposed N.J.A.C. 7:9-6.5(e) be made consistent with Safe Drinking Water Act (N.J.S.A. 58:12A).

130. COMMENT: Atlantic Electric asked that definition be given for the term "extensive exceedance."

131. COMMENT: New Jersey-American Water Company commented as follows: "A definition for 'conventional water supply treatment' should be provided. This term of art is utilized in several areas of the proposed text. In particular, paragraph 7:9-6.5(e) indicates that Class II ground waters have a designated use of the provision of potable ground waters with conventional water supply treatment for Class II-A and Class II-B ground waters. The state of the art in water treatment is advancing daily. As a result, techniques which were once considered exotic are now commonplace. Conventional water treatment could include GAC filtration, aeration and a number of membrane techniques. Since Class II ground waters are essentially defined as those which can be used for potable water supply purposes, given some degree of treatment, it is important that the term of art 'conventional water supply treatment' be established in the proposed rules."

132. COMMENT: Merck Manufacturing Division said that a number of terms used in the proposed Ground Water Quality Standards which are not defined need definition including: "conventional water supply treatment" and "extensive exceedance."

133. COMMENT: Dupont-Chambers Works said that definitions should be provided for the terms: "extensive exceedance", "conventional water supply treatment."

134. COMMENT: Chemical Industry Council/NJ recommended that definitions be provided for the following terms "conventional water supply treatment," "extensive exceedance."

135. COMMENT: Porzio, Bromberg & Newman recommended that the term "extensive exceedance" used in the proposed Ground Water Quality Standards at N.J.A.C. 7:9-6.5(e)2i be defined.

RESPONSE: The following is the Department's response to each of the suggested additional definitions:

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"Extensive exceedance": The Department agrees that a definition of extensive exceedance would be helpful and has added a definition N.J.A.C. 7:9-6.4.

"Conventional water supply treatment": The Department agrees that a definition of "convention water supply treatment" would be helpful and has provided one in N.J.A.C. 7:9-6.4.

"Natural areas": A definition is provided in N.J.A.C. 7:9-6.4.

"Evidence of carcinogenicity" and "lacking evidence of carcinogenicity": These terms appear in Table 2 and are explained in a footnote to that table. The Department agrees that the following further explanation should be added to the footnote. "Chemicals are classified as carcinogens or non carcinogens for the purposes of risk assessment according to the weight of evidence approach proposed by USEPA in the national Primary Drinking Water Regulations (FR 50(219):46880-46901)."

136. COMMENT: Merck Manufacturing Division said that a number of terms used in the proposed Ground Water Quality Standards which are not defined need definition including: "indigenous agricultural activity" and "overall area."

137. COMMENT: Chemical Industry Council/NJ recommended that definitions be provided for the following terms "indigenous agricultural activity" and "overall area."

138. COMMENT: Porzio, Bromberg & Newman recommended that the term "overall area" used in the proposed Ground Water Quality Standards at N.J.A.C. 7:9-6.5(e)2iii(2) be defined.

RESPONSE: The following is the Department's response to each of the suggested additional definitions:

"Overall area": The Department agrees that the passage in which this term occurs (N.J.A.C. 7:9-6.5(e)2iii(2)) needs to be clarified and has provided language to do so; in doing so, the term itself has been eliminated.

"Indigenous agricultural activity": The Department agrees that this term as it occurs N.J.A.C. 7:9-6.5(d)2i needs clarification and has provided language to do so. In providing the clarifying language, the term has been eliminated from that passage.

139. COMMENT: New Jersey Builders Association asked for definition of the term "biotic communities," "natural areas" and "exceptional ecological values" as those terms are used in N.J.A.C. 7:9-6.5(d).

140. COMMENT: Frank Markewicz requested that a definition for the term "sole source aquifer" be included in the proposed Ground Water Quality Standards.

141. COMMENT: Merck Manufacturing Division said that a number of terms used in the proposed Ground Water Quality Standards which are not defined need definition including: "pollution" and "significant risk to ecological system."

142. COMMENT: ENSR Consulting and Engineering said the proposed Ground Water Quality Standards "makes reference to the following terms: "Ecological Significance," "ecological values," and "ecological systems," but does not define the term. The Random House College Dictionary (1984) definition of ecology is: "the branch of biology dealing with the relations between organisms and their environment." Since this broad definition can be interpreted in many different ways, the Department's definitions need to be provided.

143. COMMENT: Dupont-Chambers Works said that although the term "pollutant" is defined the term "pollution" is used the proposed Ground Water Quality Standards and is not defined. Dupont-Chambers Works said that because the term "pollution" can connote a certain minimum quantity of a "pollutant," "pollution" must be defined in order to interpret certain provisions of the proposed Ground Water Quality Standards.

144. COMMENT: Chemical Industry Council/NJ recommended that definitions be provided for the following term "Significant Risk to Ecological System."

145. COMMENT: Atlantic Electric suggested that a definition be given for the term "significant concentration of water supply wells" as it is used in the proposed N.J.A.C. 7:9-6.5(e)2iii4.

RESPONSE: The following is the Department's response to each of the suggested additional definitions:

"Significant concentration of water supply wells": The Department has determined that this important criterion described in N.J.A.C. 7:9-6.5(e)2iii(4) must be decided by professional judgment based on the circumstances of each reclassification petition. Widely varying circumstances may occur under which this criterion will be judged and so no attempt will be made to define its parameters generally. Therefore, no predetermined parameters will be given for this criterion.

"Pollution": The Department disagrees that this term needs further definition since in the context it is used it has no specialized meaning outside of its common usage.

"Ecological values," "ecological significance," "ecological systems," "significant risk," "biotic communities," "exceptional ecological values": These terms are sufficiently defined in the contexts in which they appear; accordingly, no further definition is required.

"Sole source aquifer": This term is not used in Ground Water Quality Standards.

Definition of "Hazardous Pollutant"

146. COMMENT: Porzio, Bromberg & Newman commented that the definitions of the terms "hazardous pollutant" and "toxic pollutant" included in the proposed Ground Water Quality Standards were not the same as those terms as they are used under the NJPDES program or under the federal program.

147. COMMENT: New Jersey Business and Industry Association said that the definition of the term "hazardous pollutant" should be consistent with definitions set forth in the Cleanup Standards.

RESPONSE: The definitions of "hazardous pollutant" and "toxic pollutant" are definitions from the Clean Water Enforcement Act, which amended the New Jersey Water Pollution Control Act. These definition are consistent with the NJPDES program and Federal programs. The term "hazardous pollutant" is not defined in the proposed Cleanup Standards.

148. COMMENT: New Jersey Health Products Council said that the definition of "hazardous pollutant" appears to be too broad and that the universe of toxic/hazardous pollutants complicates compliance. New Jersey Health Products Council recommended that the definition should be narrowed.

149. COMMENT: Schering Laboratories said that the definition of "toxic pollutant" and the "toxic" reference in the "hazardous pollutant" definition should be removed because the "toxic" in the definition allows for open regulation of unlisted contaminants. Schering Laboratories said that if the Department is concerned with contaminants not otherwise listed in Tables 1 and 3 of this subchapter then these contaminants should be added to Table 1 through the regulatory process prior to enforcement.

150. COMMENT: Merck Manufacturing Division said that the relationship of these terms "constituent," "hazardous pollutant," "pollutant," "synthetic organic chemicals" and "toxic pollutant" must be clarified so the regulated community knows specifically what compounds are regulated. Merck Manufacturing Division recommended that the proposed Ground Water Quality Standards include a master list of these compounds as an appendix.

RESPONSE: The definitions of the terms "pollutants," "hazardous pollutant," and "toxic pollutant" are intended to be broad and include all substances that may become ground water contaminants. These definitions are derived from the Water Pollution Control Act as amended by the Clean Water Enforcement Act. "Constituent" and "SOC" are also defined in N.J.A.C. 7:9-6.4 of the Ground Water Quality Standards. The Department agrees that specific contaminants of concern should be added to the ground water quality criteria via the rulemaking process as they are identified. However, the Ground Water Quality Standards also allow the Department to adopt interim specific criteria pending formal rulemaking (see N.J.A.C. 7:9-6.7(c)2). This is done to assure that public health and the environment are protected in the most expeditious fashion once a concern is identified.

Definition of "Toxic Pollutant"

151. COMMENT: New Jersey Health Products Council said that the definition for "toxic pollutant" is too broad and that there are many factors that can cause a "behavioral abnormality" and the inclusion of "disease causing agents" which could include "natural" agents, would unduly impose economic hardships on a regulated entity that must implement remedial measures.

RESPONSE: The definition of "toxic pollutant" comes directly out of the Water Pollution Control Act as amended by the Clean Water Enforcement Act. The definition of "toxic pollutant" is by design broad enough to include all factors which adversely impact human health. "Disease causing agents" and pollutants that cause "behavioral abnormality" are included in the definition since such pollutants can be among the most severely damaging to human health. Whether "natural" agents or from anthropogenic sources is not specified in the definition since the source is unimportant in terms of whether the ground water is fit for a given designated use.

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Definition of "Pollutant"

152. COMMENT: Atlantic Electric said the definition of pollutant should include a measure for the severity or quantity of a discharge.

RESPONSE: The definition of "pollutant" is derived from the Water Pollution Control Act. Because the environmental impact of a given quantity pollutant cannot be predetermined but requires a case by case evaluation, no threshold quantities are included in the definition.

153. COMMENT: Chemical Industry Council/NJ recommended that a master list of all compounds considered to fit the definition of "pollutant" be added as an appendix to the proposed Ground Water Quality Standards.

RESPONSE: Lists have been developed for "hazardous pollutants" and "toxic pollutants" as required by State laws, including the Clean Water Enforcement Act. Although a comprehensive list would be useful, because of the vast array of substances that make up the universe of possible pollutants it is impractical for the Department to develop such a comprehensive list of those substances in these rules. The Department, in these rules, has used the definitions of "hazardous pollutants" and "toxic pollutant" proscribed by the Water Pollution Control Act.

154. COMMENT: CITGO Asphalt Refining suggested the definition of "pollutant" should not include dredged spoil.

RESPONSE: Dredged spoils when improperly handled can have a significant adverse impact on water quality and therefore are properly included in the definition of pollutant. The New Jersey Water Pollution Control Act (N.J.S.A. 58:10A-1 et seq.) includes dredged spoils in the definition of a pollutant.

155. COMMENT: Princeton University asked the following questions in regard to the definition of "pollutant": Are biological materials considered a pollutant or should this be written as biological **waste**? Are wrecked and discarded equipment, rock, sand, cellar dirt considered within the definition of a "pollutant"?

156. COMMENT: PPG Industries recommended the definition of "pollutant" be clarified in terms of the inclusion of rock and sand as pollutants.

RESPONSE: Biological materials which may not be considered wastes prior to discharge but which are discharged and may or do degrade water quality are considered pollutants. Similarly wrecked or discarded equipment, rock, sand, and cellar dirt discharged into the water of the State are considered with the definition of pollutant.

Definition of "Classification Area"

157. COMMENT: American Cyanamid suggested that the definition for "classification area" was inconsistent with the proposed N.J.A.C. 7:9-6.5(a) which states that "Ground water shall be classified according to the hydrogeologic characteristics of the ground water resource and the designated use(s)." The commenter suggested that the proposed Ground Water Quality Standards should explain the distinction between a "ground water classification area" and "ground water classified within an area."

RESPONSE: The definition of "classification area" makes clear that ground waters classified pursuant to N.J.A.C. 7:9-6.5 are designated by defining the vertical and horizontal extent of the formations containing a particular class of ground water. The quality and yield of ground water determine its classification while the vertical and horizontal extent of similarly classified ground water determine the configuration of the "classification area."

Definition of "Synthetic Organic Chemical"

158. COMMENT: Atlantic Electric suggested that the definition of the term "synthetic organic chemicals" be limited to only those compounds that are harmful to human health and the environment.

159. COMMENT: Dupont-Chambers Works said that the term "synthetic organic chemicals" should be defined to include only those that are harmful to human health and the environment.

160. COMMENT: New Jersey Business and Industry Association said that the definition of the term "synthetic organic chemicals" should be limited to "synthetic organic chemicals" that are environmentally harmful.

RESPONSE: The category of "synthetic organic chemicals" was formulated in recognition of the lack of analytical and toxicological information concerning myriad organic chemicals which are in common use and have the potential for becoming ground water contaminants. The Department has, however, differentiated between SOC with evidence of carcinogenicity and those lacking such evidence in its Interim Generic Ground Water Quality Criteria found in Table 2 of the Ground Water Quality Standards, and in the derivation of ground water quality criteria in Table 1.

161. COMMENT: Union Carbide recommended the following boldfaced text be added to the definition of "synthetic organic chemicals" (SOCs): "means any chemical . . . synthesized, it shall be considered an SOC only to the extent or in the proportion produced or isolated by human activity. Naturally occurring organic chemicals in their natural location are not considered a pollutant pursuant to the Ground Water Quality Criteria. **An SOC may be considered to be in its natural location, if, by background sampling and modeling, it is shown that such SOC has migrated to that point from the place it naturally occurred."**

RESPONSE: The Department agrees that the suggested clarification of the definition of "synthetic organic chemical" makes the meaning less ambiguous regarding naturally occurring SOCs and has included the proposed language in the final rule.

Definition of "Waters of the State"

162. COMMENT: Atlantic Electric said the definition of "waters of the State" should not include artificial waters.

163. COMMENT: Dupont-Chambers Works said that the term "waters of the State" should be clarified to exclude "artificial" waters to avoid illogical applications.

164. COMMENT: New Jersey Business and Industry Association said regarding the definition of the term "Waters of the State" that the term "artificial" must be removed from this definition because the regulations would then cover all bodies of water including swimming pools, toilet bowls, settling ponds, etc.

165. COMMENT: Porzio, Bromberg & Newman said that the definition of "waters of the State" must be narrowed since otherwise would apply to all bodies of water in the State whether natural or artificial so as to include swimming pools, toilet bowls, settling ponds, etc.

RESPONSE: The definition of "waters of the State" is consistent with the New Jersey Water Pollution Control Act (N.J.S.A. 58:10A-1 et seq.).

Definition of "Aquifer"

166. COMMENT: Chemical Land Holdings suggested that the definition for "aquifer" should be clarified by providing specific criteria on how to distinguish among the various aquifers at a given geographic location or within a hydrologic unit.

RESPONSE: The Department believes that the given definition of "aquifer" enables the regulated community to distinguish between the distinct aquifers at a given site. However, professional judgment is needed to distinguish between distinct aquifers on a given site based on site by site characteristics.

167. COMMENT: Chemical Industry Council/NJ recommended replacing the "sufficiently permeable" with "greater than 3 gpm" in the definition of the term "aquifer."

168. COMMENT: Exxon Company recommended that regarding the definition of the term "aquifer" replacing "sufficiently permeable" with "greater than 3 gpm."

169. COMMENT: New Jersey Petroleum Council said in regard to the definition of the term "aquifer" that a gallon per minute rate would make this definition more specific. New Jersey Petroleum Council suggested "greater than 3 gpm" as a valid number.

RESPONSE: Specifying a sustainable pumping rate for the purposes of defining "aquifer" may result in eliminating aquifers which are presently being used at rates below those suggested. There are residences with domestic wells that flow at two gpm, for instance. It is not the Department's intent to eliminate such areas from the definition of "aquifer" and therefore the narrative description of "usable and economic quantities" will be retained.

170. COMMENT: New Jersey Business and Industry Association said that the definition of the term "aquifer" should be consistent with definition set forth in the Cleanup Standards and include "seasonal high elevation of saturated zone."

RESPONSE: "Aquifer" is not a defined term in the proposed Cleanup Standards; there is, therefore, no inconsistency. The Department does not include the "seasonal high elevation of a saturated zone" in the definition of the term "aquifer" as suggested by the commenter since seasonal high elevation can be difficult to measure. Instead, the Department's definition recognizes that "aquifer" applies to the full saturated zone at any time and that the upper level of an unconfined aquifer may vary over time.

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Definition of "Constituent"

171. COMMENT: Chemical Land Holdings suggested that the definition for "constituent" should be changed either deleting the word "waste" from the definition or clarifying which element or compound contained within a waste is to be part of the constituent definition.

172. COMMENT: New Jersey Business and Industry Association said regarding the definition of the term "constituent" that the term "waste" should be removed.

RESPONSE: The Department agrees the term waste should be removed from the definition of constituent and has done so. The word "waste" was eliminated upon adoption because it was found to be redundant and lacked the specificity needed to convey the intended meaning of specific chemical substance.

Definition of "Constituent Standard"

173. COMMENT: Chemical Land Holdings recommended that the definition of "constituent standard" be clarified by indicating in Table 1 whether the criteria are minimums or maximums for each of the constituents.

RESPONSE: The Department agrees that a footnote is needed clarifying that Table 1 criteria are all maximum values unless clearly indicated as a range, at which point the minimum value is to the left and the maximum value is to the right. However, it must be clarified that the Table 1 criteria are not constituent standards, but are ground water quality criteria. Ground water quality criteria are one input to the derivation of constituent standards.

174. COMMENT: Chemical Industry Council/NJ recommended that the definition of "constituent standard" be modified from "means the required minimum or maximum level or concentration" to "provides a goal for the minimum or maximum level or concentration."

175. COMMENT: Exxon Company recommended that the definition of the term "constituent standard" be modified from "means the required minimum or maximum level or concentration ..." and "The constituent standards shall be the basis ..." to "provides a goal for the minimum or maximum level or concentration ..." and "The constituent standards shall be a basis ..." in order to be consistent with the scope of the existing Ground Water Quality Standards and the recommended revised Scope of these Draft Ground Water Quality Standards, as an institutional framework from which specific implementing regulatory programs set guidelines.

176. COMMENT: New Jersey Petroleum Council recommended modifying the definition of "constituent standard" from "means the required minimum or maximum concentration ..." to " provides a goal for the minimum or maximum concentration ..." in order to be consistent with the Scope of the existing Ground Water Quality Standards and the recommended revised Scope of these Draft Standards.

177. COMMENT: Chevron USA said the definition of "constituent standard" should be changed to read "provides the goal for the required minimum ... and (b). The constituent standards shall provide a goal for the ...". Chevron USA said this change will reflect the fact that in many instances existing ground water quality will not meet the constituent standards due to natural or anthropogenic causes.

RESPONSE: The constituent standards represent regulatory requirements that are used by and must be met by the applicable regulatory programs in making site specific decisions. Although the programs are allowed considerable flexibility in applying the Ground Water Quality Standards on a site specific basis, the Ground Water Quality Standards do provide direction and constraints upon the decisions developed through the regulatory programs. To categorize the Ground Water Quality Department's mandate under the Water Pollution Control Act to adopt standards.

Definition of "Natural Quality"

178. COMMENT: Chemical Industry Council/NJ recommended that the definition of the term "natural quality" should also include the effects from other regional human impacts such as indigenous agricultural activities, application of pesticides, herbicides and fertilizers to lawns, forests, and application of road deicing materials.

179. COMMENT: National Agricultural Chemical Association said the definition of the term "natural quality" which defines SOC levels as zero is excessive. National Agricultural Chemical Association said that this standard will most likely have a very detrimental effect on future agricultural production in New Jersey.

180. COMMENT: American Industrial Health Council said regarding the ground water cleanup standards proposed in N.J.A.C. 7:26D-4, "The Natural background ground water concentration for organics has been set at zero and that this standard is unrealistic."

181. COMMENT: New Jersey Health Products Council said that in the definition of "natural quality" the Department takes the approach that they will accept the affects of acid precipitation on ground water quality. Following this line of reasoning, New Jersey Health Products Council suggested that the affects of road deicing and the use of pesticides which are indigenous to agricultural activities also be accepted.

RESPONSE: The term "natural quality" is defined to assist in the protection of ecologically sensitive (Class I) ground waters. The natural quality of Synthetic Organic Chemical (SOC) is defined as zero, because substances of human manufacture are not expected to be found in such ecologically sensitive waters. If such substances are present in Class I ground waters, whether from agricultural or other human activities, it indicates that some sort of response is needed to protect the Class I waters, to the extent that such activities are regulated by the Department. This does not apply to pollutants from regional precipitation since no effective response is available other than through air pollution control authorities of the Federal government. The discharges from agriculture and road deicing, on the other hand, are from identifiable sources within the area and are not truly "regional" as suggested.

182. COMMENT: New Jersey Business and Industry Association said regarding the definition of the term "natural quality" that the procedures for setting natural water quality are too stringent.

183. COMMENT: NAIOP-NJ Chapter said in regard to the definition of "natural quality": "The definition of natural quality does not reference a time period for measuring natural quality. Consequently, the standard does not account for changing quality of water over time, thus the regulated community will lack the ability to determine an appropriate baseline for measuring natural quality. In addition, the Department should set forth the elements the Department will evaluate to determine natural quality in a particular area."

184. COMMENT: Chemical Land Holdings said that the definition of the term "natural quality" lacks explanation of how numerical values for certain parameters can be established as natural background ground water quality. Chemical Land Holdings asked what are the criteria for determining that a hydrologic unit is similar to another hydrologic unit as this comparison is used in the definition of "natural quality."

RESPONSE: The term "natural quality" is defined to assist in the protection of ecologically sensitive (Class I) ground waters. The "natural quality" definition provides recognition that natural quality may vary over large areas, and so the best estimate of natural quality will be from the same or a similar hydrologic unit. The specific numerical standards and specific methodology to arrive at those standards will be specified by the applicable regulatory program for any particular cleanup or discharge. "Natural quality" may change over time due to air precipitation effects, in either a decline or increase in certain constituents.

Definition of "Alternative Concentration Limit"

185. COMMENT: USEPA said that the definition for the term alternative concentration limit (ACL) given in the proposed Ground Water Quality Standards does not include a provision to adopt a more stringent standard than that which is prescribed in the regulation whereas the definition of ACS given in the proposed Cleanup Standards does allow for more stringent standards. USEPA recommended that the definition of the ACL in the proposed Ground Water Quality Standards be expanded to include standards which are more stringent.

RESPONSE: The Department has sufficient provisions under the antidegradation policy, the reclassification procedures, its ability to regulate ground water quality for the protection of surface waters and downgradient classification areas, and the use of natural and background quality criteria so that sufficiently stringent criteria are imposed as needed. The ACL is specifically the mechanism to allow for less stringent standards under the very limited circumstances described in the Ground Water Quality Standards.

186. COMMENT: Chemical Industry Council/NJ recommended deleting the last sentence of the proposed definition for the term "alternative concentration limit."

187. COMMENT: Chevron USA said the ACL definition provided in the proposed Ground Water Quality Standards is significantly different and institutes more stringent requirements than that promulgated in NJPDES (N.J.A.C. 7:14A-6.15).

188. COMMENT: Exxon Company recommended that regarding the definition of the term "alternative concentration limit" deleting the last sentence, "In order to approve an ACL, the Department must find that the relevant constituent standard(s) cannot be achieved through techno-

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logically practicable means." By doing so, this will make the definition consistent with the referenced NJPDES definition (N.J.A.C. 7:14A-6.15(e)2) which allows an "alternative to the limit ... for a hazardous constituent if it finds that the constituent will not pose a substantial present or potential hazard to human health or the environment ..." NJPDES, along with RCRA (40 CFR part 264) and CERCLA guidance also (40 CFR part 300, Federal Register 3/8/90), contain this definition for alternative concentration limit. These are State and Federal site-specific cleanup programs which operate in New Jersey and the Ground Water Quality Standards definition should be consistent with them.

189. COMMENT: Mobil Oil Corporation said that for the definition of "alternative concentration limit," the reference to NJPDES (N.J.A.C. 7:14-6.15(e)2), should read as NJPDES (N.J.A.C. 7:14A-6.15(e)2).

190. COMMENT: Chevron USA recommended that the last sentence of the proposed ACL definition should be deleted. Chevron USA said that the ACL definition provided in the proposed Ground Water Quality Standards is significantly different from the definition in N.J.A.C. 7:14A-6.15 where ACLs and the ACL process are specifically defined by the implementing program. Chevron USA said the proposed Ground Water Quality Standards should not restrict the flexibility of the existing implementing state and Federal programs and that if the recommended deletion does not take place it will have significant impact on cleanups regulated under NJPDES as well as RCRA Subtitle C and CERCLA cleanups in New Jersey.

191. COMMENT: Porzio, Bromberg & Newman recommended that the ACLS should include the following factors: background quality, natural attenuation, assimilative capacity of the aquifer, implementability and relative risk reduction.

192. COMMENT: New Jersey Petroleum Council said in regard to the definition of the term "alternative concentration limit" that since NJPDES, RCRA and CERCLA cleanup programs all use a consistent definition which includes the phrase "alternative to the limit ... for a hazardous constituent, if it finds that the constituent will not pose a substantial present or potential hazard to human health of the environment ..." such language should replace the last sentence in this definition. The last sentence is not in the current rule. If "technologically practical means" has to be employed then a cost/benefit analysis should be considered to limit the potential cost of the technology vs. the health and/or environmental benefits derived by adding the following ... "and/or the Department finds that the relevant constituent standard(s) cannot be achieved due to a cost/benefit analysis showing that available technology is not cost effective." Also, the reference to NJPDES (N.J.A.C. 7:14) should read as NJPDES (N.J.A.C. 7:14A ...).

RESPONSE: The reference to the NJPDES regulations in the definition of "alternate concentration limit" has been corrected. The Department's experience with developing NJPDES permit conditions indicates that feasible discharge controls generally exist for ongoing and future discharges to meet limits resulting from the Ground Water Quality Standards. The ACL provision allows the Department flexibility to work with those NJPDES permitted discharges for which such discharge controls are not available. Thus it is appropriate to use technological practicability (see discussion provided below under the heading **Definition of "Technologically Practicable Means"**) as a threshold criteria for consideration of granting an ACL. Ongoing and future discharges will very seldom receive ACLs because of the wide availability of effective treatment technology. While this provision may be more stringent than current NJPDES regulations, it is not inconsistent with NJPDES regulations.

193. COMMENT: New Jersey Business and Industry Association said that the definition of the term "alternative concentration limit" should be consistent with definition for "alternate cleanup standard" set for in the Cleanup Standards.

194. COMMENT: Union Carbide said that to provide consistency between the process for obtaining an ACL in N.J.A.C. 7:26D and these proposed rules, the last sentence of the definition of an ACL should read: "In order to approve an ACL, the Department must find that the relevant constituent standard(s) cannot be achieved through technologically practicable means **or it is demonstrated to the satisfaction of the Department that the standard(s) will cause no significant harm to human health and the environment pursuant to the requirements of the Cleanup Standards (N.J.A.C. 7:26D)."**

195. COMMENT: Dupont-Chambers Works said that "alternative concentration limit" needs to be defined consistently in these regulations and the Cleanup Standards.

RESPONSE: The ACL, which must be established through NJPDES permit action, should not be confused with the Alternative Cleanup Standard (ACS), proposed under the Cleanup Standards, which governs alternative standard setting for sites undergoing remedial actions. The ACL is applicable to ongoing or future discharges whereas the ACS is applied to the cleanup of past discharges. It is consistent with the Department's policy of antidegradation to hold ongoing and new discharges to both human health and technology based standards where practicable.

Definition of "NJPDES Permit Action"

196. COMMENT: Chemical Industry Council/NJ recommended that the definition of the term "NJPDES pemit action" be introduced by the following "In this rule, references to a "NJPDES permit" means a "NJPDES Permit Action."

197. COMMENT: Exxon Company recommended that regarding the definition of the term "NJPDES permit action," adding "In this rule, references to a 'NJPDES permit' mean a 'NJPDES permit action'."

198. COMMENT: New Jersey Petroleum Council recommended adding a sentence to the definition of the term "NJPDES Permit Action" as follows: "In this rule a NJPDES permit means a NJPDES permit action."

199. COMMENT: Chevron USA recommend the term "NJPDES permit action" should be the term used throughout the proposed Ground Water Quality Standards in place of "NJPDES permit" since once a decision has been made not to regulate under NJPDES the facility will be considered in compliance with the proposed Ground Water Quality Standards even if there are slight exceedances of ground water constituents standards as a result of the discharge.

RESPONSE: The term "NJPDES permit action" is used consistently throughout the Ground Water Quality Standards. The term "NJPDES permit" is included as part of the definition of "NJPDES permit action".

Definition of "Practical Quantitation Levels"

200. COMMENT: Chemical Industry Council/NJ recommended adding the words "in a specific sample" after "means the lowest concentration of a constituent that can be reliably achieved to the definition of the term "practical quantification level."

201. COMMENT: Exxon Company recommended that regarding the definition of the term "practical quantification level" adding the words "in a specific sample" after "means the lowest concentration of a constituent that can be reliably achieved ..." to be consistent with other language in this rule.

202. COMMENT: New Jersey Petroleum Council said that since PQLS are sample and matrix specific this fact should be made clear in this definition of the term "practical quantification level" by adding "... concentration of a constituent **in a specific sample** that can be reliably achieved ..."

203. COMMENT: New Jersey Business and Industry Association said that the definition of the term "practical quantitation level" is incomplete and inconsistent for the following reasons: Laboratories are charged with reducing the concentration of a constituent; and PQL is linked to specific limits of precision and accuracy.

204. COMMENT: NAIOP-NJ Chapter said in regard to the definition of "practical quantitation level": "The Ground Water Quality Standards define Practical Quantitation Level (PQL), and identify specific PQL criteria based on applicable regulations, listed calibration specifications, and/or methodology quality control specifications. This differs greatly from the laboratory definition of PQL, which is the minimum concentration of an analyte that can be measured, qualified and reported reliably **for a specific matrix.** The PQL is a direct function of the sample matrix, the presence of any interferences, and any dilution which is necessary to bring the sample within the linear range of the instrument."

205. COMMENT: Chevron USA recommended that the following sentence should be added after the first sentence of the definition of "PQL": "PQLs are not only matrix specific but sample specific as well." Chevron USA said that this is acknowledged in the proposed Ground Water Quality Standards under proposed N.J.A.C. 7:9-6.9(c)3iii which allows for site specific PQLs to be proposed. Chevron USA recommended that the fact that the PQLs are matrix and sample specific should be included in the definition.

RESPONSE: Monitoring for compliance with the Ground Water Quality Standards most often will involve a specific sample type, that is a relatively clean ground water matrix. There is, therefore, no need to qualify the definition of PQL by saying that it is sample or matrix specific. Where more significant matrix interferences do exist, the De-

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partment has decided to allow dischargers to prove that the listed PQL is invalid and that an alternative PQL is valid (see N.J.A.C. 7:9-6.9(c)iii). The term "sample specific" could also be misconstrued to infer that a PQL could be identified for each and every sample taken, which is not contemplated by this rule.

206. COMMENT: New Jersey Health Products Council said that in the definition of "PQL," wording should be included to state that the laboratories performing these tests should be "state certified" laboratories.

RESPONSE: It is not appropriate to limit the data for determining PQLs to state certified laboratories when a larger pool of information is available nationwide. For example, PQLs adopted by the USEPA in support of the Safe Drinking Water Program are not necessarily derived using New Jersey State certified laboratories since USEPA has information from qualified laboratories around the country.

Definition of "Background water quality"

207. COMMENT: Chemical Industry Council/NJ recommended deleting the words "... as required by the Department" from the definition of the term "background water quality."

208. COMMENT: Chevron USA said that term "as required by the Department" should be omitted from the proposed definition of "background ground water quality" because data used to determine background water quality need not necessarily be required by the Department but may be collected by the facility not subject to a Department requirement.

209. COMMENT: Exxon Company recommended that regarding the definition of the term "background water quality" deleting "... as required by the Department" to allow the use of applicable data collected by an owner or discharger to be submitted in a petition to the Department.

210. COMMENT: New Jersey Petroleum Council recommended deleting from the definition of "background water quality" the phrase "... as required by the Department" to allow the use of applicable data collected by an owner or discharger to be submitted in a petition to the Department.

RESPONSE: The Department has modified the definition in accordance with the comments specifying more clearly acceptable methodology for establishing background water quality.

211. COMMENT: New Jersey Business and Industry Association said that the definition of the term "background water quality" should be consistent with definitions set forth in the Cleanup Standards and take into consideration regional contamination.

RESPONSE: "Background water quality" is not a defined term in the proposed Cleanup Standards. However, the proposed Cleanup Standards defines the term "background ground water concentration" in manner consistent with the Ground Water Quality Standards.

212. COMMENT: Middlesex County Planning Board said the definition of the term "background water quality" suggests ambient conditions exist just beyond or upgradient of a known discharge which may lead to an uneven application of the proposed Ground Water Quality Standards where industries downgradient from discharging industries are judged against a higher "background water quality" concentration than an industry whose "background water quality" is not affected by other discharges. Middlesex County Planning Board recommends that "background water quality" be defined in terms of ground water quality upgradient of all regional discharges.

213. COMMENT: Institute for Responsible Environmental Policy said that the definition of the term "background water quality" should include a listing of the ranges of background levels that occur in New Jersey's ground water for all inorganics and those organics which occur naturally.

214. COMMENT: CITGO Asphalt Refining said that in the definition of "background water quality," the phrase "directly upgradient of a discharge" is used and that this seems to imply that a discharge is a place and not an event. CITGO Asphalt Refining recommended that this definition be clarified.

RESPONSE: "Background water quality" is simply a measure of the quality of ground water upgradient of where it is affected by a specific discharge. Regulated discharges are assumed to have defined positions in time and space whether they be single event or ongoing discharges. In view of the potential for variation in natural quality or for localized pollution caused by human activity, background water quality must be a site specific determination. However, the regulatory programs have sufficient flexibility to allow the use of regional indicators of background water quality in cases where conditions make it difficult or impossible to measure background water quality directly upstream of a discharge. Because of this process, no purpose is served by a listing of background water quality ranges.

215. COMMENT: Union Carbide recommended the following underlined text be added to the definition of "background water quality": "means the existing concentrations in ground water which is determined to exist directly upgradient of a discharge but not influenced by the discharge **or ground water withdrawal by surrounding facilities,** as determined using monitoring data as required by the Department." Union Carbide said that this is important due to the highly industrialized nature of New Jersey, activities involving ground water (withdrawal for process water, withdrawal for irrigation, etc.) at a facility can have a great impact on a neighboring facility event at low water usage rates. Activities such as ground water pumping can cause background to be artificially low or high on neighboring properties.

RESPONSE: The determination of background water quality hinges on the fact that it is measured upgradient of and unaffected by the discharge, the hydraulic factors determining where (and when) the background water quality is measured can only be determined on a site by site basis using relevant data and best professional judgment.

Definition of "Zone of Contribution"

216. COMMENT: New Jersey Health Products Council said that the definition for "zone of contribution" is too broad and that the upper boundary for zone of contribution should be defined.

217. COMMENT: PPG Industries recommended that the NJDEPE define "zone of contribution" using the maximum sustainable yield of the pumping well.

RESPONSE: The definition of zone of contribution is intentionally broad. Many different mathematical models for determining the extent of the zone of contribution are available. The selection of the appropriate model depends largely on the geologic setting and design of the well for which the zone is being determined. The Department is presently preparing Well Head Protection Area Delineation regulations which will provide more specific guidance on the determination of zones of contribution. The regulations have been released for interested party review and comment. A formal proposal will be published in 1993. These regulations will make use of the pumping capacity of a well.

Definition of "Designated Use"

218. COMMENT: New Jersey Business and Industry Association said regarding the definition of the term "designated use" that terms within this definition must be defined.

RESPONSE: Although the commenter did not specify which terms within the definition need to be defined, the Department finds the key terms within the definition such as classification area, potable water, agricultural water, and industrial water are defined terms within the Ground Water Quality Standards.

Definition of "Soils"

219. COMMENT: New Jersey Business and Industry Association said that the definition of the term "soils" should be consistent with definition of soils in the proposed Cleanup Standards.

RESPONSE: The definition of "soils" in the two sets of regulations are consistent and are in fact essentially the same.

Definition of "Aquitard"

220. COMMENT: Porzio, Bromberg & Newman recommended that the definition of "aquitard" be revised to address site-specific considerations of hydrologic confining units by deleting the dimensional aspect in proposed N.J.A.C. 7:9-6.5(f)1.

RESPONSE: The dimensional criteria for an aquitard (50 feet thickness and 100 acres in area) are considered the minimum dimensions for an effective hydrogeologic confining unit. Although areas of limited permeability of smaller dimension may be significant to a local ground water flow regime, they cannot be considered regional influences that warrant status as a classification area. The 50 foot thickness is proposed to eliminate thinner units that are more likely to be discontinuous or to have significant variations in hydraulic conductivity. The areal extent of the aquitards was chosen as 100 acres to eliminate minor units that do not significantly affect ground water flow.

Definition of "Technologically Practicable Means"

221. COMMENT: Chemical Industry Council/NJ recommended that definitions be provided for "best available demonstrated technology."

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222. COMMENT: Dupont-Chambers Works said that definitions should be provided for the terms: "extensive exceedance" and "technologically impracticable."

223. COMMENT: Merck Manufacturing Division said that a number of terms used in the proposed Ground Water Quality Standards which are not defined need definition including: "conventional water supply treatment" and "best available demonstrated technology."

224. COMMENT: New Jersey Business and Industry Association said that a definition of the term "technologically practicable" should be included and defined as a reasonably available engineering solution that is an economically viable solution.

225. COMMENT: Ruetgers-Nease objected that many terms are used in the text but are not included in the definitions section, and gave as an example, "best available demonstrated technology."

226. COMMENT: Chevron USA said that the term "technologically practicable means" is vague and not defined in the proposed Ground Water Quality Standards and will likely result in arbitrary decisions.

227. COMMENT: Atlantic Electric asked that definition be given for the terms "extensive exceedance" and "technologically impracticable" as used in N.J.A.C. 7:9-6.5(e)2.

228. COMMENT: Porzio, Bromberg & Newman said that the definition of "ACLs" should be based upon demonstrated, commercially-available technology and not on technological practicability.

229. COMMENT: The term "best available remedial technology" should be defined in order to provide the regulated community with certainty and foreseeability in its application.

RESPONSE: The Department agrees to provide a definition of "technologically practicable means" and has done so. This definition incorporates the concept of "best available technology" accordingly this specific language was removed from N.J.A.C. 7:9-6.5(e)2ii. As set forth in the Summary which accompanied the proposed Ground Water Quality Standards, the Department acknowledges that the restoration of certain ground water areas may be beyond the abilities of currently available technology. Accordingly, provisions are included in these regulations to provide limited, temporary exceptions (ACLs and Class II-B). While costs may be reduced through the application of these exceptions, the Department's intent is to allow the exceptions only where the desired environmental benefits cannot be attained through the application of currently available technology and not to allow for a weighing of the costs of the technology against the environmental benefit. Accordingly, the concept of "economic viability" has not been incorporated into the adopted definition.

Site Specific Classifications versus Regional Classifications

230. COMMENT: Browning-Ferris Industries said that in general ground water classifications should be more site specific. Factors such as the nature of any existing contamination, current use of the resource, site-specific hydrogeological characteristics, and the level of exposure and risk should be considered. Only through a detailed examination of the hydrogeologic environment in a limited area can ground waters truly be appropriately classified.

231. COMMENT: PPG Industries disagrees with the provision in proposed N.J.A.C. 7:9-6.5 that classifications shall be "regional in nature and shall not reflect localized infringements on designated uses due to natural quality or pollution incidents." PPG Industries recommended that in order to ensure that all relevant factors are considered, site specific issues should be incorporated into the site investigation and mitigation process and should be central to all decision making regarding mitigation measures.

232. COMMENT: NAIOP-NJ Chapter said that classifications should not be made entirely on a regional basis and should take into account local characteristics.

RESPONSE: The Department has consistently received comments from widely different points of view on this issue. Some commenters want classifications to be site-specific, reflecting risk assessments and individualized standards. Historically, most regulated interests have requested the certainty of a mapped classification system based upon regional characteristics of the ground water systems and upon designated uses. The Department has chosen this approach, to add stability and consistency to the regulatory process. Site-specific systems are very hard to predict in advance, and often require extensive site analysis. Site-specific classifications are complex, administratively difficult, and may vary over time as receptors and well pumping effects change. However, the Department has included several key provisions in the Ground Water Quality Standards that provide for site-specific flexibility, such as the Classification Exception Areas, site-specific verification of Class III boundaries, and Constituent Standard Modifications. The NJPDES Alternate Concentration Limit provisions and the proposed Cleanup Standard's Alternate Cleanup Standards and deferral provisions are closely linked to the site-specific provisions of these Ground Water Quality Standards. It is the Department's intent to more thoroughly map classification areas over time as improved geologic and hydrogeologic data are published and digitized on the Department's Geographic Information System.

233. COMMENT: Chemical Land Holdings asked, in regard to proposed N.J.A.C. 7:9-6.5(a), how does one distinguish between variations in natural quality versus localized pollution caused by human activity.

RESPONSE: The Department differentiates natural quality and localized pollution by evaluating the background water quality, the geochemistry of the area, and monitoring information from sites in the same hydrogeologic regime that are assumed to be unaffected by pollution, together with known sources of pollution, downgradient water quality and the history of chemical use on the site and nearby sites.

234. COMMENT: Chemical Industry Council/NJ said that since the delineation of aquifer areas is predicated on municipal boundaries it should be recognized that continual refinement of the boundaries will be required as additional ground water data and analysis become available.

RESPONSE: The Department's classification system relies on the characteristics of ground water formations and the existing and potential uses of water. None of the classifications are based upon municipal boundaries. Perhaps the confusion results from prior drafts of the Ground Water Quality Standards, which included maps showing the municipalities in which Class III-A ground waters were likely to occur, and a list of municipalities that might include areas eligible for Class II-B status because of the lack of ground water use. It is, as the commenter has suggested, the Department's intent to more thoroughly map classification areas as improved geologic and hydrologic data become available.

235. COMMENT: Chemical Industry Council/NJ recommended that when ground water is flowing from a more restrictive classification to a less restrictive classification the less restrictive ground water quality standard should be effective for the upgradient part of a site.

236. COMMENT: Exxon Company said that delineation of Class II-B areas at the boundaries with II-A areas (as an example) will require additional site-specific analysis. In this regard, Exxon Company recommended that when ground water is flowing from a more restrictive classification to a less restrictive classification, the less restrictive ground water quality standard should be effective for the upgradient part of a site. Formal review procedures and protocols should be adopted by the Department to facilitate the site specific analysis in these cases.

RESPONSE: Because of the potential for ground water flow changes, the Department decided that a less restrictive standard should not be automatically applied to the upgradient portion of a site that flows to a lower classification. Such a circumstance may qualify for a site-specific variance, however, as approved by an applicable regulatory program such as the NJPDES Alternate Concentration Limit provisions and the proposed Cleanup Standard's Alternate Cleanup Standards.

Comments on Classification Maps

237. COMMENT: TTI Environmental said regarding the ground water cleanup standards proposed in N.J.A.C. 7:26D-4, "In order to further aid consultants, real estate industry, lawyers, municipalities, etc., we think it may be advisable to create a map of New Jersey preferably per county."

238. COMMENT: Exxon Company said that depiction of aquifer classification areas on maps of New Jersey (Figures 1 through 5) should be implemented on larger maps to allow for clear depiction of the boundaries.

239. COMMENT: NAIOP-NJ Chapter said that the initial figure in the Appendix is confusing because the Ground Water Quality Standards do not define surficial ground water, nor is the term surficial ground water used in the Ground Water Quality Standards. NAIOP-NJ Chapter recommended that the Department should define and set forth how surficial ground water differs from ground water and how the Ground Water Quality Standards will be applied when waters are categorized as surficial ground water as opposed to ground water.

240. COMMENT: Frank Markewicz commented that the proposed Ground Water Quality Standards did not adequately address the "hard rock country" of the State especially in regard to Triassic rock areas where naturally occurring sulfate content can be very high, Martinburg

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shale areas where hydrogen sulfide is present and granite gneiss areas where pH can vary greatly and naturally occurring radon, zinc and lead can be found.

241. COMMENT: Princeton University said that it would be beneficial to the central and northern New Jersey community if the NJDEPE produced maps, diagrams, information, etc., that created a better definition of geologic formations and varying water qualities for these areas. It appears that this has already been accomplished for the south New Jersey region (that is, coastal plain areas).

RESPONSE: The map showing surficial ground water units was a composite of Figures 1 through 5, was illustrative only, and was not referenced anywhere within the Ground Water Quality Standards themselves. The intent was to show the classification of ground water with the highest elevation under the land area ("first water"), because most regulated parties are only affected by that classification (that is, most discharges are to shallow ground water). However, since the map may have been somewhat confusing the Department has removed it from the final adoption; all information contained on that composite map is available on one of the other adopted maps (Figures 1 through 5). In general, Class III areas are "delineated" by the narrative descriptions in the Ground Water Quality Standards, and are **indicated** on the maps in Figures 2, 3, 4 and 5, subject to field verification wherever necessary. Areas not indicated on the maps may also qualify, subject to Department concurrence through an applicable regulatory program. Larger scale maps would not provide better data resolution; the same amount of verification would be necessary. The Department intends to use new information, soon to be published, to update and improve the maps for northern New Jersey in future adoptions of these Ground Water Quality Standards. Ground water units that may qualify as Class III have been more thoroughly studied in the Coastal Plain, with its relatively simple geology, than in northern New Jersey.

Comments on Class I-A

242. COMMENT: Browning-Ferris Industries recommended that Class I-A designation only be applied to those areas that currently meet the criteria for that class.

243. COMMENT: NJ PIRG supported the Department's effort at recognition of "ground water of special ecological significance" in proposed N.J.A.C. 7:9-6.5.

244. COMMENT: Middlesex County Planning Board said that the requirement for Class I-A classification areas listed at proposed N.J.A.C. 7:9-6.5(d)1ii(4) is a virtually impossible test to meet and recommended that "maintenance of existing ground water quality" as an alternative requirement.

245. COMMENT: Dupont-Chambers Works said that Class I-A areas should be presented on maps in the proposed Ground Water Quality Standards to facilitate identification.

246. COMMENT: Exxon Company recommended N.J.A.C. 7:9-6.5(d)1i, 6.5(d)1ii, and 6.5(d)1iii(1) be deleted and a map of Class I-A ground waters be provided. The classified areas cannot adequately be delineated on maps using these descriptions. Also, wording exists in this regulation that ground water discharges cannot contravene surface water quality criteria; therefore, there is no need to restate this in the sections specified above.

247. COMMENT: New Jersey Petroleum Council recommended that proposed N.J.A.C. 7:9-6.5(d)1i, 6.5(d)1ii, and 6.5(d)1iii1 should be deleted and a map of Class I-A waters be provided. New Jersey Petroleum Council said that the classified areas cannot adequately be delineated on maps using these descriptions and that wording exists in this regulation that ground water discharges cannot contravene surface water quality criteria; therefore, the need to designate other areas should not exist.

248. COMMENT: New Jersey Builders Association requested that the Department narrow the scope of Class I Classification Area so that it does not include all properties in which an endangered species exists.

249. COMMENT: New Jersey Builders Association asked if there is a minimum sized parcel for which a private entity may petition the Department for reclassification of the property of Class I-A pursuant to N.J.A.C. 7:9-6.5(d)1ii5.

RESPONSE: Adequate descriptions for all named Class I-A areas are contained in N.J.A.C. 7:2-11. Maps will be developed for new Class I-A classifications. The areas involved in FW-1, on the other hand, are much too small to show appreciably on a map of small enough scale to be published with the Ground Water Quality Standards. A critical component of the Class I-A concept is that ground water flow supports an ecosystem which depends upon the inflow of ground water of natural quality. Accordingly, the language concerning the transmittal of ground water to surface water contained in N.J.A.C. 7:9-6.5(d)1ii is crucial to this Section of the Ground Water Quality Standards. However, the regulations require that the species or habitat so protected must be ground water dependent. (N.J.A.C. 7:9-6.5(d)1ii(4)). As such, many endangered species and habitats are not subject to Class I-A protection. Perhaps not all ground water in Class I-A areas is currently of natural quality due to past discharges, but protection and restoration of natural quality is deemed important. There is no stated minimum size for new Class I-A areas, but the area must be of sufficient size to provide meaningful control of ground water quality to protect the target resource, based upon the biotic resource and local hydrogeology. Language has been added to clarify this point.

Comment on Ownership Requirements for Class I-A

250. COMMENT: Porzio, Bromberg & Newman suggested that proposed N.J.A.C. 7:9-6.5(d)1ii5 needed clarification as to why governmental entities and private entities were treated differently under this provision.

251. COMMENT: Middlesex County Planning Board recommended that some type of classification banking system should be established to promote expansion of Class I-A areas that obviates the need for only government or donor ownership.

252. COMMENT: Association of New Jersey Environmental Commissions recommended that more comprehensive protection of the Class I-A ground water be provided by removing the ownership requirements under proposed N.J.A.C. 7:9-6.5(d)1i(2) and (d)1ii(5).

253. COMMENT: NJ PIRG said that all ecologically significant waters, whether in private or public ownership, should be included in the Class I-A waters listed at N.J.A.C. 7:9-6.5(d)1iii. NJ PIRG suggested that private entities wishing to reclassify ground waters of special ecological significance from Class I-A should petition the Department.

254. COMMENT: Rutgers Environmental Law Clinic said in regard to proposed N.J.A.C. 7:9-6.5(d) that ground water protection should not vary with the owner of the property. Rutgers Environmental Law Clinic suggested that rather than setting up the petition mechanism, the Department should designate those areas worthy of Class I-A status, so that protection of the lands in question is not dependent upon whether the landowner is willing to encumber the uses of land which would be incidental to a Class I-A designation.

RESPONSE: The Department used the FW-1 watershed classification, from the Surface Water Quality Standards, as a precedent for Class I-A. The standards for Class I-A are very stringent. The Department believes that public ownership is necessary to implement the stringent controls needed to assure the maintenance or restoration of natural quality ground water. Accordingly, N.J.A.C. 7:9-6.5(d) requires Class I-A areas to be under government ownership or owned by a private entity that petitions the Department for reclassification. Such ownership also helps ensure that the protected ecosystems remain viable, so that the Ground Water Quality Standards do not protect an ecosystem that has already been removed.

Comments on Exceptional Ecological Areas in Class I-A

255. COMMENT: With regard to the "exceptional ecological areas," Porzio, Bromberg & Newman felt that there may be some confusion created by citing criteria from other programs to define these areas. In particular, the commenter felt that referencing the U.S. Department of Interior's Program under the Federal Endangered Species Act and the Department's program under the New Jersey's Endangered and Nongame Species Conservation Act may lead to overly broad application of the I-A Classification.

256. COMMENT: Porzio, Bromberg & Newman recommended the proposed N.J.A.C. 7:9-6.5(d)1ii4 be reworked to emphasize the actual role of ground water quality on the endangered species or other exceptional ecological area before a Class I-A classification area is approved by the Department.

257. COMMENT: New Jersey Builders Association asked what criteria does the Department use to make the determination that the "quality and transmittal of ground water is essential to the survival or maintenance of the exceptional ecological resource", a criterion specified at proposed N.J.A.C. 7:9-6.5(d)1ii4.

258. COMMENT: Princeton University commented as follows: in proposed N.J.A.C. 7:9-6.5(d)1ii, "areas of exceptional ecological values" needs to be better defined.

259. COMMENT: Chevron USA said that proposed N.J.A.C. 7:9-6.5(d)1i and (d)1iii(1) which make broad statements concerning the transmittal of ground water to surface water in FW1 watersheds should

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be omitted along with proposed N.J.A.C. 7:9-6.5(d)1ii and (d)1iii(2) for exceptional ecological value areas. Chevron USA recommended that specific delineation of these areas should be provided on a figure in the Appendix.

260. COMMENT: ENSR Consulting and Engineering said that New Jersey regulations refer to wetlands as a "special aquatic site" and that a discussion of wetlands and their classification is needed. ENSR Consulting and Engineering recommended that if it is the Department's intention to review wetland areas on a case by case basis, reference to this fact, and the criteria which will determine a wetland classification are needed to clarify the proposed Ground Water Quality Standards and the Department's definition of a wetland should be included.

RESPONSE: Class I-A does not apply to all habitat areas for Federal and State endangered species, but rather applies to areas that support such species only where they are dependent upon ground water or ground water-supported ecosystems. (See N.J.A.C. 7:9-6.5(d)1ii(4)).

FW-1 watersheds and the Natural Areas are defined by Department regulation (N.J.A.C. 7:9-4 et seq. and 7:2-11, respectively). The areas involved are much too small to show appreciably on a map of small enough scale to be published with the Ground Water Quality Standards, so the Department is relying upon the descriptions of the sites produced pursuant to N.J.A.C. 7:2-11. Such areas have been set aside by the Department in an essentially undisturbed state with the intent of preventing discharges to them, and as such should have no current discharges. Application of Class I-A status supports and acknowledges the special status of these areas.

Wetlands are only eligible for Class I-A if they meet all of the descriptive criteria for Class I-A. Otherwise the ground water flowing to those wetlands is the same class as surrounding ground waters.

261. COMMENT: New Jersey Builders Association asked for the following information in regard to "exceptional ecological areas" as that term is used in N.J.A.C. 7:9-6.5(b)1: 1) The criteria by which the animal species that are listed as indigenous non-game wildlife species are assigned a "species status." 2) How the Department determines the extent of a habitat for an endangered species as well as the nature of the habitat that still remains. 3) The background data and factors that went into the decision-making process to classify each of the forty-one species in N.J.A.C. 7:25-4.13 as "endangered," particularly those species that are so classified due to the destruction, drastic modification or severe curtailment of its habitat.

RESPONSE: In order to assign a species status, the Division of Fish, Game and Wildlife evaluates the following for each species considered: the number of individual and/or nesting sites; the trends in those numbers; the distribution of the population; the reproductive success; and any threats the species may be facing. To determine the extent of a habitat the Division of Fish, Game and Wildlife conducts surveys to determine distribution of the various species under review. The Division compiles maps and descriptions of these habitats. However maps compiled by the Division are not considered to be the full extent of the distribution of a given species, some site by site surveys may be called for. Endangered species are identified using the criteria identified above for determining species status. A species status of "Endangered" (E) means a species whose prospects for survival within the State are in immediate danger due to one or many factors such as: a loss of or change in habitat, overexploitation, predation, competition, and disease. The Division submits its findings to the Non-Game Advisory Committee which conducts a public evaluation of the Division's findings. The recommendations of the Committee are returned to the Division prior to adding a species to the listing contained in N.J.A.C. 7:25-4.12(b).

Comments on Class I-PL Areas

262. COMMENT: Pinelands Preservation Alliance indicated strong support for the proposed changes which expand the area designated class I-PL to include the Pinelands Protection Area as well as the Pinelands Preservation Area. Pinelands Preservation Alliance noted that the nondegradation policy associated with this designation is in compliance with the Pinelands Protection Act of 1979.

263. COMMENT: Jackson Township Environmental Commission complimented the Department for recognizing the importance of protecting the ground water in the protection areas in addition to the Preservation Areas of the New Jersey Pinelands.

RESPONSE: The Department appreciates support for this classification system for the reasons noted by the comments.

Comments on Class II-A Areas

264. COMMENT: Musconetcong Watershed Association disagreed with the classification of the Musconetcong watershed as a Class II-A which is defined as a potable water supply using conventional treatment. Musconetcong Watershed Association said that the majority of homes in this watershed are on individual private wells using untreated ground water, which are not monitored, regulated or tested. Musconetcong Watershed Association warned that Class II-A classification for this area is endangering the health of the residents in this area. Musconetcong Watershed Association recommends that the Musconetcong Watershed should either be reclassified as a Class I or the discharge standards and/or permitting procedure be revised to protect for the untreated use of ground water for drinking water.

265. COMMENT: Musconetcong Watershed Association said that Class II-A ground water quality criteria are not protective of existing uses where the **untreated** ground water is used for domestic water supply. Musconetcong Watershed Association said it is not appropriate to assume that users of potable water in Class II-A areas have treatment available to them. Musconetcong Watershed Association recommended that if the standards are not upgraded, Class II-A ground waters users who are subjected to "permitted levels of contamination requiring treatment be provided with guarantees similar to Class II-B domestic water supply users where the Department indicates it will protect existing domestic well users included in Class II-B areas through its remedial program or ensure alternative water supplies.

RESPONSE: The State and Federal Safe Drinking Water Acts provide for the regulation of public water supply systems. Nonpublic domestic well users, on the other hand, are responsible for the operation, monitoring and conventional treatment (comprising treatment for nitrate, bacteria, iron, manganese, hardness, where necessary) of their systems. Nevertheless, the Class II-A criteria and antidegradation policies provide protection for these ground water users. The specific ground water quality criteria for Class II-A do include the "secondary" drinking water standards. This prevents these conventionally treated constituents from being introduced to levels requiring treatment via permitted discharge. By defining the use of Class II-A as potable after conventional treatment, the Department broadened the scope of this classification and its protective ground water quality criteria to areas that have naturally occurring elevated levels of iron, manganese and hardness etc. Class I is not appropriate for such areas. Class I applies to the protection of exceptional ecological resources upon public (and some private) land that rely on ground water flow, and applies a stringent nondegradation standard. Such standards are not appropriate to the developed character of most of New Jersey, including the Musconetcong watershed, as they would eliminate the use of septic systems among other discharges.

266. COMMENT: Musconetcong Watershed Association said that since many of the areas of the Musconetcong Watershed involve trout production streams and trout maintenance waters and is presently designated as Category I watershed, the proposed Standard classification of Class II-A for ground water in this area is not protective of these ecologically sensitive surface waters and should therefore be considered Class I-A.

RESPONSE: The Ground Water Quality Standards contain a general requirement that discharges to ground water be regulated such that violations of the Surface Water Quality Standards do not occur. (N.J.A.C. 7:9-6.2(b)). The Department believes that this approach is suitable to rural and suburban areas near trout production and trout maintenance streams.

267. COMMENT: New Jersey Petroleum Council said the under proposed N.J.A.C. 7:9-6.5(c) the definition of "Class II" should include the additional phrase as follows: "Ground Water for **Actual or Potential** Potable Water supply."

268. COMMENT: Exxon Company recommended in regard to N.J.A.C. 7:9-6.5(c) adding "actual or potential" to Class II ground water title so that it reads, "Class II—Ground Water for actual or potential Potable Water Supply," to be more consistent with the ensuing designated use specifications.

269. COMMENT: Chevron USA said that the description of Class II ground water given in proposed N.J.A.C. 7:9-6.5(c) should be changed to "Class II Ground Water—Actual or Potential Potable Water Supply."

RESPONSE: The designated use for Class II is potable water supply which includes both actual and potential use. No further description is required in N.J.A.C. 7:9-6.5(c) since this is only a listing of the ground water classes while a detailed description is given in the text that follows.

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270. COMMENT: Association of New Jersey Environmental Commissions recommended that Class II ground water be expanded to include all non-saline ground waters that are not of special ecological significance.

RESPONSE: Aquitards are not available to direct potable use and therefore the Class II designation does not apply to aquitards. In addition, the methods for protecting ground water quality in aquitards and the level of such protection differ significantly from Class II because of their low permeability. The Department has, therefore, decided to place aquitards in Class III.

271. COMMENT: Atlantic Electric said that the wide application of the Class II-A designation fails to consider the salinity of surface aquifers in areas adjacent to the Atlantic Ocean and the saline regions of the Delaware River Estuary. Atlantic Electric recommended that the Class II-A designation should not be automatically applied to these areas without review of ground water quality data which is available to the Department. Atlantic Electric asked for an explanation of the text accompanying Figure 3 of the proposed Ground Water Quality Standards which indicates that surface aquifers, above the Class III-B Classification areas in southeastern New Jersey are "classified otherwise."

RESPONSE: The Department will assume that ground waters in areas not mapped otherwise are Class II-A unless proven otherwise. However, Class III areas may be verified administratively by the Department for any site of interest. Some language has been added to N.J.A.C. 7:9-6.5(f) to clarify the method of gaining Department concurrence. Regarding Figure 3, the saline ground water is usually located at a significant depth. Many layers of Class III-A and Class II-A ground water may exist above the Class III-B unit.

272. COMMENT: NJ PIRG opposes the basis for the Department's delineation of Class II and III ground waters. NJ PIRG said that the Department's proposal, not based on water quality but on intended use, is inappropriate since protecting an intended use does not necessarily protect water quality.

RESPONSE: The stated policy of the Water Pollution Control Act is to restore, enhance and maintain the integrity of the waters of the State, "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." Accordingly, the ground water quality standards are not independent of water use, but rather are directly derived for protection of those uses. Nevertheless, both use and quality considerations are incorporated into the Ground Water Quality Standards. For example, the antidegradation policy ensures that ground waters which surpass standards in quality are not degraded to the criterion. Furthermore, this scheme focuses protection and resources on areas with the most pristine ground waters.

273. COMMENT: PPG Industries recommended that the Department elaborate on the use of "conventional water supply treatment" especially on its relevance to site specific cleanup decision-making process.

274. COMMENT: Exxon Company recommended that in N.J.A.C. 7:9-6.5(e) the definition of "conventional water supply treatment" be made consistent with Safe Drinking Water Act (N.J.S.A. 58:12A) by referencing the Act.

RESPONSE: The Department agrees that the definition of "conventional water supply treatment" needs clarification and has added a definition, which is consistent with the Safe Drinking Water Act, to N.J.A.C. 7:9-6.4.

275. COMMENT: Texas Eastern Gas Pipeline Co. requested clarification of Aquifer Classifications II-A and II-B with respect to those very shallow, low yielding water bearing zones situated above deeper confined aquifers and gave as an example, weathered bedrock zones of the Brunswick Formation which are incapable of sustaining sufficient yield but exist above confined high yielding fracture zones of aquifer quality.

RESPONSE: Generally, ground water that overlies a named classification is classified with the underlying unit, unless an aquitard meeting the definition of Class III-A intervenes. The Ground Water Quality Standards classify **ground water**, not just aquifers. However, the example provided is not demonstrating a deeper confined aquifer, as the Brunswick Formation is often unconfined or semi-confined.

Comments in Support of Class II-B Aquifers

276. COMMENT: Chemical Industry Council/NJ said the ground water in many of the heavily industrialized areas of the state has become no longer suitable for potable uses due to discharges of previous years and that remediation of ground water in these areas to potable quality is not practicable from a technological, time or economic point of view.

277. COMMENT: Woodward-Clyde Consultants stated that the proposed Ground Water Quality Standards are opening a window which is attractive to industry, in particular the use of the Class II-B aquifer designation in older industrialized portions of the State. Woodward-Clyde Consultants stated that old industrial land, which usually does not meet soil cleanup standards nor ground water quality criteria, should be able to be recycled for industrial use. Woodward-Clyde Consultants encouraged the Department to apply the II-B designation in industrial areas in order to attract industry back to these areas.

278. COMMENT: Chevron USA made the following observations "In practice the implementing programs within NJDEPE have defined aquifer and non-aquifer use areas, and is currently making ground water remediation decisions based on these internal NJDEPE designations. The NJDEPE has used this internal process to determine if a site must implement active or passive remediation of contaminated ground water. There is currently no regulatory basis provided for these designations and decisions in existing rules. The NJDEPE should take this opportunity to formalize this framework and legitimize these and future decisions by proposing Class II-B areas."

279. COMMENT: PSE&G was encouraged that by creating a new classification system for ground water the New Jersey Department of Environmental Protection and Energy (NJDEPE) recognizes that there are urban areas where major ground water pollution problems exist and restoration to potable standards is not feasible or practical and that the NJDEPE has also acknowledged that passive cleanup actions may be adequate in certain urban areas that have ground water pollution throughout. PSE&G said it is also important that the Department has recognized saline impacted aquifers and aquitards as separate entities in these regulations.

280. COMMENT: Woodward-Clyde Consultants applauded the Department's proposed use of the Class II-B aquifer designation and stated that this designation will help cleanups proceed at a reasonable cost in the industrialized northeast section of New Jersey.

281. COMMENT: Eckenfelder, Inc. said that the provision for Class II-B aquifers in the proposed Ground Water Quality Standards is a very important recognition.

282. COMMENT: Chemical Industry Council/NJ said that the proposed designation of specific areas in the State as having the Class II-B aquifer classification is a sound approach.

283. COMMENT: New Jersey Builders Association supports the Department's proposed policy for designating aquifers in the Class II-B category. They believe that the criteria that are described in the basis and background document are adequately protective such that other uncontaminated aquifers will not be threatened. They applauded the Department's approach on this issue since it recognizes that clean-up of these ground waters to original natural conditions would not be cost-effective.

RESPONSE: The Department believes that the Class II-B concept, sparingly and carefully applied, provides an important recognition that past discharges have, in a small percentage of New Jersey ground water, resulted in pollution that is beyond the reach of current technology. Rather than applying cumbersome, site-by-site procedures within these areas, the Class II-B process should provide a method of making one consolidated decision with full public input.

The Department Should Define Class II-B Areas

284. COMMENT: Amoco Oil Company, Ashland Chemical, Chevron USA, Dock Resins Corp., Ecolab Corporation, Englehard Corporation, Exxon Chemical Company, GM Truck and Bus Group, ISP Environmental Services and Sherwin Williams Co. said that they take issue with classification of the aquifer underlying their properties in northeast New Jersey as Class II-A. The companies stated that the II-A designation was at odds with the Department's May, 1991 draft proposal which indicated that the aquifer was not suitable for drinking water, and that the II-A designation was not adequately justified in the Department's Basis and Background document.

285. COMMENT: Doug Hatler felt that the proposed Ground Water Quality Standards were incomplete because no Class II-B classification areas were identified. DEPE's failure to identify these areas places the burden on industry to demonstrate the criteria for II-B designation exist in a given area. Doug Hatler asked that areas that are known to meet II-B criteria, such as certain industrial areas in northern New Jersey, be designated II-B by the Department.

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286. COMMENT: New Jersey Business and Industry Association stated that the proposed Ground Water Quality Standards should include mapped Class II-B classification areas.

287. COMMENT: Porzio, Bromberg & Newman stated that with ground water monitoring data already available to the Department through various programs such as the ECRA, UST, and NJPDES Class II-B classification areas could be mapped by the Department.

288. COMMENT: American Cyanamid said regarding the ground water cleanup standards proposed in N.J.A.C. 7:26D-4, "The proposed regulations currently offer no mapping of Class II-B areas. Without such mapping within the regulations, the burden of identifying Class II-B areas will undoubtedly fall upon industrial concerns. The proposed regulations have attempted to map all other classified areas. The burden of proposing classification should be on the State of New Jersey, not on industrial concerns in New Jersey. Class II-B ground waters are identified as those ground waters that are in areas of general non potable usage and have broad ground water contamination. The previously proposed ground water quality standards stressed the intent of the NJDEPE to push the classification of Class II-B ground waters into a regional framework. If it is a regional prospective that the state desires, then the state should provide mapping of that regional prospective at this time. Identifying a "significant portion" of one or more geologic units or formations will create an ineffective and impractical process of reclassification to Class II-B. For example, one of the more likely locations in the State of New Jersey subject to a petition for reclassification to Class II-B would be the Arthur Kill Industrial Corridor. In this area we have general ground water degradation throughout the corridor and general non-usage as a potable water supply. Even so, much of the ground water degradation in the Arthur Kill corridor may be contained in the "Brunswick Formation", which constitutes approximately half of the bedrock aquifer formation in the northern portion of the State of New Jersey. Thus using the proposed guidelines, the Brunswick Formation in the Arthur Kill Industrial Corridor would not be suitable for reclassification to Class II-B. The previously proposed ground water quality standards, only identified areas of southern New Jersey on the maps for the proposed Class III-A areas. Class III-A areas are those areas that are considered to be 'aquitards' and as such would be subject to less stringent ground water discharge criteria. By not providing the necessary mapping, known aquitards in northern New Jersey (i.e. Class III-A areas), in affect, would require industries to again be burdened with demonstrating through the petition process that these conditions exist. The cleanup standards for the Class II-B and III-A areas should not be promulgated until all the necessary mapping has been performed and identified by the Department."

289. COMMENT: Chemical Land Holdings said that by leaving Class II-B Classification Areas in a reserved status, the Department appears to have left the regulated community in an untenable position. Chemical Land Holdings added that since the Department is the information repository and has ready access to our control of the essential and relevant information on water quality throughout the State, it should be the entity responsible for designating those areas which should be classified with Class II-B. Otherwise individuals would have to band together in order to support a petition for Class II-B status, because the proposed N.J.A.C. 7:9-6.10(d) prohibits reclassification for an area underlying a single property.

290. COMMENT: Chemical Land Holdings said that it appears that the Department has deliberately elected not to establish Class II-B Classification Areas. Rather, it has chosen to require the regulated community to petition for such classifications or request an alternative concentration limit (ACL) via a discharge permit application. Chemical Land Holdings said that it would be more appropriate for the Department to take the initiative in designating appropriate Classification Exception Area boundaries, designated uses and constituent levels.

291. COMMENT: Chemical Land Holdings said that the lack of designated Class II-B classification areas is no trivial matter and that individual landowners in areas where ground water has been deteriorated over an extended area are placed in the unmanageable situation of not being able to obtain relief from Class II-A status, unless a regional Classification Exception petition was to be submitted to and accepted by the Department.

292. COMMENT: Chemical Industry Council/NJ requested that Class II-B Classification Areas be identified and promulgated as soon as possible.

293. COMMENT: Institute for Responsible Environmental Policy requested that a description of Class II-B areas be included in the proposed Ground Water Quality Standards.

294. COMMENT: Dupont-Chambers Works said that the proposed Ground Water Quality Standards are incomplete, since an essential element, Class II-B areas are not fully described and are "reserved." Dupont-Chambers Works said that this classification is an integral part of the proposed regulations; failing to describe it in the proposal denies the public the opportunity to interpret the proposed regulatory scheme as whole.

295. COMMENT: Exxon Company said that the Department should include an Interim list of Class II-B areas in N.J.A.C. 7:9-6.5(e)3 for public comment. The Department presently has a de facto implementation of II-B aquifer classifications, called "non-aquifer use areas," based on a site-specific data, and this is recommended for incorporation into this regulation.

296. COMMENT: Mobil Oil Corporation recommends that the Department designate applicable ground waters within the State as Class II-B especially when the Department recognizes that much of the ground water in the metropolitan area of Northern New Jersey falls into this category. Mobil Oil Corporation said that failing to do so only shifts the burden of providing the supporting documentation of known Class II-B areas on to industry in order that more practical water quality standards may apply.

297. COMMENT: New Jersey Petroleum Council said that proposed N.J.A.C. 7:9-6.5(e)3 should include at least an interim listing of Class II-B areas.

298. COMMENT: Saul, Ewing, Remick, Saul Inc. recommended that an effort be made to develop a comprehensive list, containing all known potential Class II-B areas after input from interested parties.

299. COMMENT: Merck Manufacturing Division recommended that the proposed Ground Water Quality Standards list those aquifers that are to be classified as Class II-B.

300. COMMENT: PSE&G said that the Department should identify Class II-B areas prior to adopting the proposed Ground Water Quality Standards.

301. COMMENT: Chemical Industry Council/NJ recommended that the Department identify the Class II-B classification areas as soon as possible.

RESPONSE: The draft Ground Water Quality Standards of June, 1991, **did not** state that the ground water in certain municipalities "was not suitable for drinking water." Rather, the draft provided a list of municipalities in where, currently and for the projected future, an insignificant amount of ground water is withdrawn for potable water use. Under the Ground Water Quality Standards in force up to the date of adoption for these new Ground Water Quality Standards, these areas are almost entirely in the GW-2 classification, with a designated use of potable water. Almost all of the areas have a history of potable water use up to and in some cases beyond the turn of the century. A significant portion of the ground water is **not** contaminated, even now. Thus, the Department's new classification of Class II-A causes little change and is entirely appropriate. The draft further requested public input on which portions of those areas might have experienced such extensive contamination as to be eligible for Class II-B. Three proposals have been received to date with more being developed, all by private interests. All are under Department review. When such proposals are submitted as formal petitions (subsequent to adoption of the Ground Water Quality Standards) they will be proposed and made available for public comment.

Since most of the benefits of Class II-B classification will accrue to regulated industries, it is entirely appropriate for these regulated entities to develop the petitions for reclassification. The Department has decided to produce a guidance document to aid petitioners and the public in the preparation and review of Class II-B proposals. Only where appropriate for the publicly-funded cleanup program will the Department itself propose Class II-B classification areas. Interim listings of Class II-B areas cannot be produced at this time, because they would lack proper justification. Finally, it should be noted that the Department has not designated "non-aquifer use areas" and has no plans to do so. However, the Department did include two provisions in the Ground Water Quality Standards to address the major pollution areas, the Classification Exception Areas (site-specific) and the reclassification process for Class II-B (regional).

302. COMMENT: Chemical Land Holdings recommends that all areas where natural ground water quality exceeds secondary drinking water standards for iron, chloride, sulfate, and/or total dissolved solids, should

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be considered Class II-B. In addition all other areas exceeding a significant size (for example, 10 acres) where multiple sources, including urban contamination, and deposits from the atmosphere and stormwater bearing contaminants, have contributed to ground water condition exceeding the criteria, should be designated Class II-B.

RESPONSE: Class II-B is a response to anthropogenic pollution, not natural contaminants. Most of the cited constituents are subject to conventional treatment, and therefore such areas should not be within Class II-B. They are considered potable within the definition adopted. Constituents such as sulfate, however, could be high enough to render the ground water nonpotable, and therefore would qualify as Class III-B. While the existence of multiple pollution sources may, in fact, result in the extensive exceedance of ground water criteria in a given area, this condition alone does not qualify an area for Class II-B classification. Finally, the specific size of a Class II-B area will be a factor of the pollution problems, hydrogeology and petitioner interests.

Grace Period for Potential Class II-B Areas

303. COMMENT: Amoco Oil Company, Ashland Chemical, Chevron USA, Dock Resins Corp., Ecolab Corporation, Englehard Corporation, Exxon Chemical Company, GM Truck & Bus Group, ISP Environmental Services and Sherwin Williams Co. asked that the Department hold open the comment period for the Class II-A designations for a period of 120 days to enable the companies to complete a study of the aquifer in the area of their properties and to submit the results to the Department for review.

304. COMMENT: Amoco Oil Company, Ashland Chemical, Chevron USA, Dock Resins Corp., Ecolab Corporation, Englehard Corporation, Exxon Chemical Company, GM Truck and Bus Group, ISP Environmental Services and Sherwin Williams Co. stated that several major remediation projects currently underway will be negatively impacted by the imposition of a Class II-A aquifer designation in the area of their properties. The companies stated that standards applied to these projects should be considered on a case-by-case basis until any uncertainty regarding the designation of the area aquifer is resolved.

305. COMMENT: Chemical Industry Council/NJ recommended that provision be included in the final version of the Ground Water Quality Standards which would provide relief and protection for the regulated communities located in areas which should clearly be classified as Class II-B and that similar relief should be provided for permittees located in areas where a Classification Exception or reclassification petition has been submitted to the Department.

306. COMMENT: Chemical Industry Council/NJ said that N.J.A.C. 7:9-6.5(c) should be modified to define as Class II-B areas those areas where a reclassification for Class II-B petition has been submitted for review to the Department and a determination has not yet been made.

307. COMMENT: Chemical Industry Council/NJ recommended that the Department adopt a grace period during which no enforcement actions would be taken against the applicant until the application for a reclassification or classification exception area has been reviewed by the Department and a final decision is reached.

308. COMMENT: JCP&L said that areas of New Jersey that would have been classified as Class II-B and having background ground water quality meeting II-B criteria, in the future will have to meet the more stringent Class II-A criteria until the Department reclassifies that area or a party petitions for that change. JCP&L said that is a major problem with the rules as currently written.

309. COMMENT: New Jersey Health Products Council said that the Department should provide relief for those affected until the Department defines Class II-B areas.

310. COMMENT: Merck Manufacturing Division recommended that proposed N.J.A.C. 7:9-6.5(e) should be modified to define as Class II-B areas those areas where a reclassification for Class II-B petition has been submitted for review to NJDEPE and a determination has not yet been made. In addition, Merck Manufacturing Division said that the Department should consider a phase in or grace period where the regulated community can develop and submit (in good faith and not frivolously) a reclassification petition or classification exception area application.

311. COMMENT: Dupont-Chambers Works recommended that the Department consider adding clauses that provide a reasonable time period to notify the Department of the good-faith evaluation that a site lies in a Class II-B area, and stay application of penalties for violations of the new standards in such areas.

RESPONSE: The Department fully understands the issue raised by the commenters, and recognizes that the potential penalties for ground water pollution can be very high. There are several reasons why requests for extensions and grace periods were not granted. First, the Department wishes to clarify the difference between adoption of the Ground Water Quality Standards and their site-specific application. The Ground Water Quality Standards are not self-executing. They are applied through applicable regulatory programs. Provisions exist in NJPDES and the proposed Cleanup Standards for site-specific recognition of technological limitations while protecting downgradient receptors; such decisions then automatically trigger the Classification Exception Areas provided by these Ground Water Quality Standards. Class II-B essentially is an analogous but regional mechanism to defer impracticable cleanups. The commenters will have ample opportunity after the adoption of the Ground Water Quality Standards to present data for reclassification of the ground water area of interest. Therefore no extension of the comment is necessary. Second, the Department believes that holding Class II-A status in abeyance while considering Class II-B is not appropriate, as it would leave the area unclassified. Site-specific mechanisms are available to address legitimate concerns with application of Class II-A. Third, most cleanups are phased in nature. Most of the early phases (source control, removal of free product, cleanup of the worst pollution) will be required regardless of an area's classification as Class II-B. As these actions proceed, a petitioner may apply for Class II-B status for their area. If approved, the final cleanup requirements may change. Fourth, enforcement actions are based upon compliance with permits, ACOs, or mandated procedures (e.g., applications for permits and ACOs). Accordingly, enforcement will take place only after the Ground Water Quality Standards are incorporated into the applicable oversight document. Finally, the contested areas have been subject to GW-2 standards since January of 1981. Class II-A status is not a significant change and essentially the same standards apply, except that with the new Ground Water Quality Standards' consideration of factors such as PQLs and background water quality provide more reasonable regulation.

Comments on the Criteria for Establishing Class II-B Areas

312. COMMENT: American Cyanamid said that it has sufficient information to demonstrate that an area it calls the Somerset/Middlesex Raritan River Industrial Area (SMRRIA) satisfies the requirements outlined in N.J.A.C. 7:9-6.5(e)2 of the proposed Ground Water Quality Standards for Class II-B classification area designation. American Cyanamid indicates that it has already submitted a petition to the Department dated July 30, 1991 containing this information. American Cyanamid maintains that the establishment of Class II-B areas through the reclassification procedures set forth in the proposed N.J.A.C. 7:9-6.10 is unnecessarily cumbersome and time consuming. American Cyanamid requested that the Department approve its proposed SMRRIA Class II-B Area petition for inclusion in the final Ground Water Quality Standards.

RESPONSE: The SMRRIA proposal is being reviewed for completeness based upon the adopted regulations. A formal proposal and public hearing will be required prior to a Department decision, pursuant to N.J.A.C. 7:9-6.10.

313. COMMENT: Atlantic Electric said that the process for designating Class II-B classification areas in the proposed Ground Water Quality Standards presents the regulated community with vague standards and uncertainty with regard to regulatory requirements and precludes effective review of the entire regulatory program.

314. COMMENT: Porzio, Bromberg & Newman said that the procedures for establishing Class II-B areas are incomprehensible.

RESPONSE: The Department has clarified the language for Class II-B, and achieved a better fit between the language in N.J.A.C. 7:9-6.5 and the language in N.J.A.C. 7:9-6.10. In addition, a guidance document has been developed regarding Class II-B petition development and review. The modifications and guidance document help clarify the requirements.

315. COMMENT: Chemical Land Holdings said that conditions such as salinity in estuary settings, should be considered with Class II-B.

RESPONSE: The high salinity of estuarine waters makes them unsuitable for potable use and thus Class II-B is inappropriate for these waters. Class III-B would be the appropriate classification for such ground waters, where they exceed the TDS and chloride thresholds. Some proposed Class II-B areas may abut Class III-B areas along coastal and estuarine waters. Petitions to create Class II-B designations in such areas would then be evaluated for impacts on the designated uses of that Class III-B area.

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316. COMMENT: Chemical Industry Council/NJ recommended that the Department promulgate a procedure to modify the II-B boundaries to ensure that hydrogeologic boundaries ultimately define aquifer classification areas. This should ensure that such physical features as pumping center capture zones, no-flow boundaries, ground water recharge/discharge areas, and salt water intrusion boundaries are accurately reflected.

317. COMMENT: Exxon Company said that a procedure to modify the proposed Class II-B boundaries is also recommended to ensure that hydrogeologic boundaries ultimately define aquifer classification areas. This should ensure that such physical features as pumping center capture zones, no-flow boundaries, ground water recharge/discharge areas, and salt water intrusion boundaries are accurately reflected.

RESPONSE: It is the Department's general intent to classify most ground waters by hydrogeologic boundaries. The major exception is Class I, where the boundaries are more properly defined by the ecological resource being protected. The preference is to use hydrogeologic boundaries, such as geologic units and no-flow boundaries, rather than hydraulic boundaries caused by human action, such as capture zones for pumping wells. As understanding of the hydrogeology of the state improves, the Department intends to update the classification areas and maps.

318. COMMENT: Chemical Industry Council/NJ said that the proposed Ground Water Quality Standards should include a description of the technical rulemaking procedures which the Department plans to utilize in establishing Class II-B Classification areas; and a schedule for promulgation of Department guidance regarding the criteria the Department will utilize to assess petitions for reclassification.

319. COMMENT: Exxon Company recommended that N.J.A.C. 7:9-6.5(e)2 include: a description of the technical rulemaking procedures which the Department plans to utilize to establish Class II-B classification areas; and a schedule for promulgation of Department guidance regarding the criteria the Department will utilize to assess petitions for reclassification and establish Department rules to reclassify areas.

RESPONSE: The Department agrees that more guidance would be useful for those interested in proposing or reviewing Class II-B petitions. A guidance document has been written and is available to the public. Because the document does not include any policies not already in the Ground Water Quality Standards or the Administrative Procedure Act, the Department is releasing it as a non-regulatory document. The guidance also provides assistance on methods of data collection and analysis that are related to demonstrating the characteristics of Class II-B for an area.

Comments on N.J.A.C. 7:9-6.5(e)2

320. COMMENT: Dupont-Chambers Works said that, regarding Class II-B areas, clarification is needed regarding what constitutes exacerbating existing ground water pollution. Dupont-Chambers Works said that given the Department's recognition of the need for practical considerations and of the validity of passive remediation through natural attenuation processes where appropriate, "exacerbation" should involve a new pollutant source.

RESPONSE: Exacerbation of existing ground water pollution means that the scope or severity of contamination are increased, or that different or new receptors are affected. Causes may include without limitation new discharge sources, increased discharges from existing sources, and induced flow of pollutants due to ground water withdrawals or changes in withdrawals.

Comments on N.J.A.C.7:9-6.5(e)2i

321. COMMENT: Dupont-Chambers Works said that some closed and even capped sites may continue to release pollutants into the ground water; therefore, Dupont-Chambers Works suggests that the phrase "and formerly active sources" or other appropriate phrase be inserted in proposed N.J.A.C. 7:9-6.5(e)2i after the word, "discharges."

RESPONSE: Continuing discharges such as the ones described by the commenter are generally considered active and require NJPDES discharge permits. Class II-B areas are not intended for areas where contamination is due to such continuing sources.

322. COMMENT: Mobil Oil Corporation said that proposed N.J.A.C. 7:9-6.5(e)2i, the phrase "... exhibit extensive exceedance ..." is vague. Mobil Oil Corporation said that a definition and/or clarification of extensive exceedance is needed. Mobil Oil Corporation recommended that site specific language should be included that references N.J.A.C. 7:9-6.6 entitled "Exceptions to the classification system."

323. COMMENT: Princeton University said that proposed in N.J.A.C. 7:9-6.5(e)2i the use of the term "exhibit extensive exceedance" needs to be better defined, possibly showing ranges that would be considered extensive.

RESPONSE: The term "extensive" is construed to mean really extensive, and is not related to the severity of pollution. The Department agrees that this term should be clarified and has, therefore, provided a definition of "extensive exceedance" in N.J.A.C. 7:9-6.4. N.J.A.C. 7:9-6.5(e)2ii relates to the severity issue. The area may be affected by one constituent or many, in combination or in a "patchwork" of varying concentrations.

324. COMMENT: Exxon Company said that certain chemicals, particularly dense non-aqueous phase liquids (DNAPLs) may be untreatable to the proposed Class II-A criteria based on the nature of the contaminants. For example, they tend to sink in aquifers and form discontinuous pools of highly-concentrated contamination in fractured media; the contaminants may then continuously desorb from the soil after active remedial measures are no longer economically practicable. Additionally, natural attenuation of these contaminants is generally not predictable. Exxon Company recommended that the definitions of Class II-B ground waters and Classification Exception Areas should be expanded to include a mechanism for cases where: contamination has occurred and is not likely to be remediated by either economically feasible technological remedial measures, natural attenuation in a reasonable time frame, or a combination of both.

325. COMMENT: Chemical Industry Council/NJ recommended that the definitions of Class II-B ground waters and Classification Exception Areas should be expanded to include a mechanism for cases where: 1) contamination has occurred and is not likely to be remediated by either economically feasible technological remedial measures; 2) natural attenuation in a reasonable time frame; or 3) a combination of both.

RESPONSE: The Department is aware of the extreme difficulty of locating and mitigating the effects of DNAPLs. However, Class II-B is not appropriate for single sites, which instead may use the site-specific provisions of the applicable regulatory programs to gain Classification Exception Areas where appropriate. In a generally clean area, the Department may require containment of the plume even if the source cannot be remedied.

326. COMMENT: Exxon Company recommended reversing and renumbering N.J.A.C. 7:9-6.5(e)2i and 6.5(e)2ii to clarify logic.

RESPONSE: Given the clarification of "extensive exceedance," the current order is sufficient, referring to the area and then severity of contamination, in sequence.

Comments on N.J.A.C. 7:9-6.5(e)2ii

327. COMMENT: Chemical Land Holdings recommended that the phrase "best available remedial technology" used in proposed N.J.A.C. 7:9-6.5(e)2ii should be replaced with "technologically practicable means" as is stated under the definition of "alternative concentration limit."

328. COMMENT: Chemical Industry Council/NJ recommended adding the word "demonstrated commercially" before "... available remedial technology ..." in N.J.A.C. 7:9-6.5(e)2ii.

329. COMMENT: Chevron USA said that the term "technologically practicable means" which appears in several places in the proposed Ground Water Quality Standards implies facility specific regulation in contrast to the term "best demonstrated commercially available technology" terminology used in the Cleanup Standards.

330. COMMENT: Dupont-Chambers Works said the concept of economic feasibility needs to be inserted into the proposed N.J.A.C. 7:9-6.5(e)2ii to allow the Department to weigh economic considerations against environmental benefits.

331. COMMENT: Exxon Company recommended adding an "or" statement to N.J.A.C. 7:9-6.5(e)2ii "... available remedial technology;." If a potentially potable ground water cannot be restored, within the given constraints, it will then be classified II-B as per its non-potable designated use. Ground waters that can be restored, within the given constraints, must meet all four of the remaining criteria to be included in Class II-B.

332. COMMENT: Exxon Company recommended adding to N.J.A.C. 7:9-6.5(e)2ii, "or economically infeasible" after "... is technologically impracticable ..." to be consistent with the existing Ground Water Quality Standards (N.J.A.C. 7:9-6.9(a)1i(1)) which addresses economic costs of achieving limits and benefits to be obtained.

333. COMMENT: Exxon Company recommended adding "demonstrated commercially" to N.J.A.C. 7:9-6.5(e)2ii before "... available remedial technology ..." to be consistent with the proposed Cleanup Standards (Proposed N.J.A.C. 7:26D).

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334. COMMENT: Chemical Industry Council/NJ recommended that the words "or economically infeasible" be added to N.J.A.C. 7:9-6.5(e)2ii (after the word "technology").

335. COMMENT: Newport said that the feasibility of using best available remedial technology should take into account economic considerations.

336. COMMENT: New Jersey Builders Association asked how the Department determines that the restoration of ground water would be "technologically impractical" pursuant to proposed N.J.A.C. 7:9-6.5(e)2ii. New Jersey Builders Association recommended that some consideration should be given to the economic feasibility involved.

337. COMMENT: Merck Manufacturing Division recommended that the words "or economically infeasible" should be inserted at the end of proposed N.J.A.C. 7:9-6.5(e)2ii (after the word "technology").

338. COMMENT: Chevron USA said that the Class II-B determination described should consider economics as is currently provided in the existing Ground Water Quality Standards.

339. COMMENT: Chevron USA recommended that the term "best available remedial technology" used in proposed N.J.A.C. 7:9-6.5(e)2 be replaced with the term "best demonstrated commercially available technology" (BDCAT) as used and defined in the proposed Cleanup Standards.

340. COMMENT: New Jersey Petroleum Council said that N.J.A.C. 7:9-6.5(e)2 should be changed to read "... and/or the Department determines that restoration of the ground water is technologically impracticable or economically infeasible from an engineering perspective using the best demonstrated commercially available technology."

RESPONSE: The Department decided that a reference to "economic feasibility" was not appropriate in determining the benchmark technology used in defining Class II-B areas. This test is not appropriate for a classification system or general decisions on the remedy of pollution. In many cases, "economic" is misused to mean "fiscal" in that a technology is considered more costly than a responsible party can afford. Another meaning of "economic" is used by some commenters to compare financial costs and benefits. Many of the benefits of clean ground water are not financial in nature, but rather involve the restoration of a public resource that should not have been contaminated in the first place. The New Jersey Water Pollution Control Act and other legislation establish a clear mandate to restore the integrity of ground water resources. Accordingly, the Department has decided on a simpler test; whether or not a technology is available that is capable of substantially cleaning up the ground water. A definition of "technologically practicable means" has been included in the Ground Water Quality Standards to clarify this technology based standard.

Comments on N.J.A.C. 7:9-6.5(e)2iii

341. COMMENT: New Jersey Business and Industry Association said that clarification is needed on how to determine whether the "less than five (5) percent of potable water supply" criteria for identifying Class II-B classification areas is applicable to a given area.

342. COMMENT: Chemical Land Holdings requested the rationale for the "less than five percent of the potable water supply" criteria for establishing Class II-B classification areas. Chemical Land Holdings commented that wells located outside the area of concern are not at risk and should not be considered as part of the Class II-B category.

343. COMMENT: Middlesex County Planning Board said that the finding of "no significant concentration of domestic ... wells" called for in proposed N.J.A.C. 7:9-6.5(e)2iii(4) is highly subjective and allows application of Class II-B to be made on an unclear basis open to manipulation rather than merit. Middlesex County Planning Board recommended that instead of exposing those people living in less dense areas to lowered protection levels of Class II-B regulation this class should require in home water treatment if the source area exceeds health based limits.

344. COMMENT: New Jersey Builders Association asked how the Department will determine there is "a significant concentration" of domestic water supply wells pursuant to proposed N.J.A.C. 7:9-6.5(e)ii(4).

345. COMMENT: Dupont-Chambers Works suggested that the criteria for Class II-B classification should include consideration of the provision of an alternate water supply for public and domestic users in a proposed II-B area.

346. COMMENT: PSE&G said that the term "significant" as it is used in "significant concentration of ... wells" is not clear and requested clarification.

RESPONSE: Because of the combination of requirements, the language "no significant concentration of domestic wells" and the five percent threshold focus Class II-B petitions on highly urbanized areas that rely primarily on imported water or surface water. The Department expects that low density areas (for example, rural areas) will not and should not be able to meet the Class II-B requirements. The "significant concentration" language is needed because of the variability in municipal populations. Five percent of a populous municipality can be much larger than five percent of a small municipality. Thus, even five percent in highly urban areas can be a significant threat to public health. The "significant concentration" is a necessary point of professional judgment, based upon the potential for pollution sites to threaten public health. The five percent may be shown by using the 1980 census plus an analysis of recent domestic well permits. Petitioners may also analyze purveyor service records, access health department information, or conduct surveys.

It is entirely possible that domestic well users will have to connect to public water in Class II-B areas, reducing the health threat. The regulated parties may be required by the Department to pay for such connections through the applicable regulatory programs. This may affect Class II-B eligibility. However, it is not the proper role of the Ground Water Quality Standards to mandate such actions for Class II-B areas or any other classification.

Finally, the language in N.J.A.C. 7:9-6.5(e)2iii(2) is expressly aimed at the proposed Class II-B area, and the Department has clarified the language in that Section to make it clear that wells located outside the area of concern are not considered in making Class II-B determinations.

347. COMMENT: Middlesex County Planning Board said in regard to the 25 year projection of water supply areas called for in proposed N.J.A.C. 7:9-6.5(e)2iii(4) that the ability of the Department to accurately project demographic trends over this period is highly suspect. Middlesex County Planning Board recommended the selection of a less speculative indicator.

348. COMMENT: NJ Petroleum Council recommended changing 25 years to five years in proposed N.J.A.C. 7:9-6.5(e)2iii because projections of over five years are, at best, highly speculative and it is doubtful that any of the listed agencies have any projections beyond five years.

RESPONSE: The New Jersey Water Pollution Control Act mandates the protection of ground water quality for various uses, including potable use. The Department chose a 25 year planning horizon for ground water use projections. The Department's Statewide Water Supply Master Plan includes 50 year projections. While extended projections may be somewhat uncertain, they do not need to be completely accurate for these purposes. If a 25 year projection indicates no likelihood of a significant ground water use, then significant use in a shorter period is unlikely.

349. COMMENT: GE Corporate Environmental Programs said that the policy for Class II-B Areas is seriously undermined by the rigid and inflexible criteria which the Department has imposed upon the designation of Class II-B areas. In particular, by so narrowly defining these criteria, the Department has rendered the concept a practical nullity. GE Corporate Environmental Programs recommended that only four of the listed criteria proposed as N.J.A.C. 7:9-6.5(e)2i, ii, iv and v, are fundamental to designating Class II-B areas. They are: 1) ground water that exhibits extensive exceedance of one or more of the ground water criteria within the proposed Class II-B areas due to past discharges of ground water pollutants, 2) areas where restoration of polluted ground water is technologically impracticable from an engineering perspective using best [commercially] available remedial technology, 3) areas where no significant risk of pollution migration into Class I or Class II-A areas exists; and 4) areas where reliance on natural attenuation processes for the restoration of ground water does not pose a significant risk to public health or welfare or ecological systems. The other criteria listed in 7:9-6.5(e)2iii(1) to (4) should be deleted from the regulation because in their limiting scope, they likely will prohibit the Department from ever designating a Class II-B area.

RESPONSE: The commenter agrees with the inclusion of all but N.J.A.C. 7:9-6.5(e)2iii of the Class II-B criteria, which is designed to protect existing ground water users. The protection of existing ground water users is a paramount concern of the Department and State law. Such uses are also a clear indication that any pollution problems that may exist in the proposed Class II-B area are not so severe as to eliminate potable use. While Class II-B areas are not necessarily **entirely** polluted, they are expected to contain a high concentration of pollution sites. The Class II-B decision criteria minimize public risks by focusing the process on heavily industrialized areas in municipalities with very low reliance on ground water. The Department expects that no more than ten percent,

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and most likely less, of New Jersey will qualify for Class II-B, and that only a portion of that area will be the subject of petitions.

350. COMMENT: New Jersey Petroleum Council recommended adding to proposed N.J.A.C. 7:9-6.5(e)1 and 4 the phrase "within 2500 feet of a known ground water pollution site." New Jersey Petroleum Council said that 2,500 feet between a private and public well and a ground water pollution source is a sufficient zone of protection to ensure that pollutants will not migrate into the water supply. It is not reasonable to preclude designating an area as II-B if there is simply the mere existence of a public supply well or concentration of domestic water supply wells in the area. The 2,500 feet distance is and has been an "accepted standard" by most (if not all) state regulatory agencies (including NJ), EPA and industry.

RESPONSE: The Department recognizes that the 2,500 foot radius has been used commonly by regulatory agencies, for lack of more specific thresholds. However, the primary issue is that the Zone of Contribution (ZOC) for public water supply wells should not lie within Class II-B areas. Such zones may be larger or smaller than 2,500 feet, and rarely will they be circular. As stated in the New Jersey Well Head Protection Program Plan (December 1991) and draft Well Head Protection Area Delineation Regulations (6 July 1992), the Department has rejected the long-term use of arbitrary fixed radii (such as the 2,500 foot circle) in favor of more defensible delineations. Use of Analytical models is preferable for estimations of ZOCs.

Comments on N.J.A.C. 7:9-6.5(e)2iv

351. COMMENT: Chemical Industry Council/NJ requested that regarding N.J.A.C. 7:9-6.5(e)2iv the Department better define which hydrogeologic criteria define a restriction to contaminant migration.

352. COMMENT: Dupont-Chambers Works suggest the following modification to the language in the proposed N.J.A.C. 7:9-6.5(e)2iv: "significant risk of significant pollution migration into Class I or II-A areas." Dupont-Chambers Works said that as currently written, the proposed Ground Water Quality Standards could be interpreted so as to restrict the designation of a Class II-B area when **any** migration occurs, rather than only in instances where migration occurs that may adversely impact the receiving water quality and its use.

353. COMMENT: Exxon Company recommended the Department specify which hydrogeologic criteria define a restriction to contaminant migration (for example, hydraulic conductivity, thickness, leakage factors) which will be used to determine "no significant risk of pollution migration" as that term is used in N.J.A.C. 7:9-6.5(e)2iv.

354. COMMENT: PSE&G said that the term "significant" as it is used "**significant** risk of pollution migration into Class I or Class II-A areas . . ." is not clear and requested clarification.

RESPONSE: The Department agrees that the concern is with migration of contaminants above the applicable standards, based upon a comparison to the background water quality and constituent standards in such downgradient areas. In N.J.A.C. 7:9-6.10, the Department has clarified the methods for determining significant risk of pollution migration. The Department will review a combination of ground water flow vectors and gradients, attenuation possibilities, flow barriers and potential for induced movement in determining whether a petition for Class II-B reclassification complies with this paragraph.

Comments on N.J.A.C. 7:9-6.5(e)2v

355. COMMENT: Eckenfelder, Inc. said that the recognition and identification of aquifer segments as being unfit for potable uses as a consequence of widespread existing contamination from other than natural sources is an important and much needed regulatory step. Eckenfelder, Inc. recommended that the procedures and criteria for reclassification need to be clarified, especially the issue of surface water impacts and attendant ecological systems referred to in proposed N.J.A.C. 7:9-6.5(e)2v.

RESPONSE: The procedures for reclassification of ground water are set forth at N.J.A.C. 7:9-6.10, which specifically addresses the issue of surface water impacts. The language of N.J.A.C. 7:9-6.10(g)3 and 6.5(e)2 should be complementary. The language in both sections has been clarified to this end.

Definition of "Potential Potable Water Use"

356. COMMENT: NAIOP-NJ Chapter said that the term "potential potable water use" as used in proposed N.J.A.C. 7:9-6.5(e) should be defined since the term is so broad that it could include almost all waters of the State of New Jersey.

RESPONSE: Potable water use has been defined in N.J.A.C. 7:9-6.4. Over 80 percent of New Jersey is included in federally-designated sole source aquifers, and much of the remaining ground water is either used to some degree or could be used except where aquitards (Class III-A), saline (Class III-B) or highly polluted (Class II-B) waters exist. By the nature of New Jersey's ground water, most is in fact suitable for potential potable water use.

Comments on Extensive Exceedance in Class II-B Areas

357. COMMENT: Woodward-Clyde Consultants suggested that a standard be established for "extensive exceedance" which is used to describe the criteria for identifying Class II-B aquifers and that the standard be defined as some factor in exceedance of the II-A standard.

358. COMMENT: New Jersey Business and Industry Association recommended that a definition be given for the term "excessive (sic) exceedance" used in the criteria for identifying Class II-B areas.

359. COMMENT: CITGO Asphalt Refining said the term "extensive exceedances" as used in proposed N.J.A.C. 7:9-6.5(e)2i should be defined and the Department's method of making such a determination explained.

360. COMMENT: New Jersey Petroleum Council said that the phrase ". . . exhibit extensive exceedance . . ." as used in proposed N.J.A.C. 7:9-6.5(e)2i is vague and that a definition and/or clarification of extensive exceedance is needed. New Jersey Petroleum Council recommended that site specific language should be included that references proposed N.J.A.C. 7:9-6.6 entitled "Exceptions to the classification system."

361. COMMENT: Merck Manufacturing Division said that the term "extensive exceedance" as used in proposed N.J.A.C. 7:9-6.5(e)2i is vague. Merck Manufacturing Division said that the following questions must be answered to clarify the meaning of the term: Does extensive exceedance apply to the areal extent of the exceedance, or the number of constituents which exceed the standard, or the magnitude of the exceedance.

362. COMMENT: PSE&G said that the Department must clarify what is required for a successful petition in particular: "extensive exceedance" (N.J.A.C. 7:9-6.5(e)2i, 24 NJR 188) (A multiple of the relevant criterion, say two, might be an acceptable definition).

RESPONSE: The Department agrees that a definition for extensive exceedance would be useful to clarify its intent. A definition has been provided in N.J.A.C. 7:9-6.4. The intent of "extensive exceedance" is primarily oriented to the areal scope of the contamination, rather than the severity (for example, violation of the criteria by some multiple). The severity issue is addressed by the language in N.J.A.C. 7:9-6.5(e)2ii regarding the inability of current technology to remedy the contamination to Class II-A standards.

Class III-A Areas

363. COMMENT: Association of New Jersey Environmental Commissions recommended that Class III ground water be defined to include only saline ground water.

364. COMMENT: NJ PIRG recommends that the definition of Class III water be amended to include only saline ground waters and that the definition of Class II waters be expanded to include all non-saline waters that are not of special ecological significance. NJ PIRG said that this would have the effect of moving fresh water aquitards from Class III to Class II thus providing a higher level of protection for aquitards.

365. COMMENT: Dupont-Chambers Works suggested the following wording for N.J.A.C. 7:9-6.5(f)1: "Class III-A ground water consists of **ground water in** those aquitards . . ." since this wording avoids equating ground water with aquitards.

RESPONSE: The Department agrees to modify N.J.A.C. 7:9-6.5(f)1 as suggested to conform to the classification language in other paragraphs. The Department had previously considered dividing aquitards into saline and freshwater units, and placing them in Class III and Class II, respectively. The Department decided to place all of the major aquitards in one classification because no aquitards are used as significant, direct sources of potable water. Their protection is based primarily on secondary effects, such as contaminant flow to nearby ground and surface waters. The issues involve both quality and characteristics of ground water flow.

Comments on Aquitards

366. COMMENT: Woodward-Clyde consultants commented that the definition of aquitard limited this desigantion to areas of southern New Jersey and that formations in other areas of the State which act as aquitards should be included in this definition.

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367. COMMENT: Frank Markewicz said that aquitards in the Woodbury and the Merchantville aquifer systems are not uniform in their hydraulic conductivity throughout their extent in the coastal plain. Frank Markewicz reported that significant vertical leakage has been demonstrated due to the fracturing of the Woodbury and the Merchantville in the northern part of the State, in the Crosswicks areas and in the southern part of the State.

368. COMMENT: CITGO Asphalt Refining said that the proposed Ground Water Quality Standards should reflect that two aquifers separated by an aquitard may have unique differences and thus justify different classifications at proposed N.J.A.C. 7:9-6.5(f)1.

369. COMMENT: ENSR Consulting and Engineering said that the proposed Ground Water Quality Standards "discuss the criteria for the three ground water classifications, but does not discuss the process by which a classification is determined. For example, if a site/region meets the criteria of a Class III-A ground water, but is not within the specified formations listed, the Department should establish whether concurrence or formal approval is required to list the site as Class III-A."

370. COMMENT: ENSR Consulting and Engineering suggested that proposed N.J.A.C. 7:9-6.5(f)1 be modified to read the Class III-A ground water includes **but is not limited to** portions . . ." if the intent was not to limit the Class III-A to the specified formations.

371. COMMENT: PSE&G commented as follows: "In Class III-A, NJDEPE has only designated aquitards in the New Jersey Coastal Plain. Although few if any areas in the rest of the State meet the 50-feet thick and 100 acres criteria, there are geological units that function as aquitards. Thus, these numerical criteria are arbitrary as applied to those other geological units. Similarly, areas meeting the requirements of Class III-B may occur in parts of the State other than those designated. It is our belief that these areas should be identified in a rulemaking for those areas the state possesses data to make these delineations. Alternatively, is reclassification pursuant to N.J.A.C. 7:9-6.10 possible for both these circumstances?"

372. COMMENT: PSE&G recommended that the thickness requirements for an aquitard be reduced from 50 feet to 10 feet and the aerial extent be reduced from 100 acres to the extent of the classification exemption area.

RESPONSE: "Aquitards" has been defined such that only the larger aquitard units are included; the rest can be reasonably addressed as part of the surrounding classification area. The Basis and Background document for the Ground Water Quality Standards recognized that any thresholds are by nature somewhat arbitrary, because hydrologic parameters are a continuum with no discreet indisputable boundaries. However, the Department reviewed data regarding the major aquitards and chose descriptive criteria that will ensure that the major aquitards are included in Class III-A. The values of 100 acres and 50 foot thickness were chosen to ensure a significant lateral and vertical extent. The Department recognizes that some formations or units that are commonly accepted as "aquitards," because they inhibit the flow of water toward wells, may not be included because they pose an insufficient barrier to pollution flow. The 50 foot thickness is proposed to eliminate thinner units that are more likely to be discontinuous or to have significant variations in hydraulic conductivity. The areal extent of the aquitards was chosen as 100 acres to eliminate minor units that do not significantly affect ground water flow. Any Class III-A area would definitely be considered an aquitard; however, not all commonly accepted aquitards are in Class III-A. In a given situation, for instance, a 10 foot thickness would comprise a minimal impediment to the flow of industrial solvents.

Such major units are more common and larger in the Coastal Plain than in northern New Jersey. However, the named Coastal Plain formations do not comprise an exclusive list. The narrative definition of Class III-A also applies to other areas, such as in northern New Jersey. Any interested party may demonstrate to the Department that their area meets the descriptive criteria of Class III-A and receive confirmation that the Class III-A area applies. (The same is true of Class III-B). Language has been added to the Ground Water Quality Standards to clarify the process for Department acknowledgment of Class III status. It is the Department's hope and intent to make increasing use of new geologic information as it is developed to more fully and accurately map the Class III-A areas in time for the 1966 revision of the Ground Water Quality Standards.

Finally, the Classification Exception Area process is separate and distinct from the main classification system. It is not appropriate to tie the areal extent of Class III-A areas with the exception area process.

373. COMMENT: Browning-Ferris Industries took issue with the inclusion of aquitards with Class III ground water because: 1) these units are not in fact aquifers and are not designated for use as a water supply source; 2) no natural attenuation or retardation effects are considered as water passes through these units; 3) in certain geologic settings, there will be no potential for transmission of water from the aquitard into an aquifer; and 4) there is currently no available monitoring technique that can routinely provide sufficient water for the purpose of analytical testing of the units to determine compliance with the proposed Ground Water Quality Standards.

374. COMMENT: Dupont-Chambers Works said that the designated use of aquitards in the proposed Ground Water Quality Standards is technically unfounded and, consequently, unsound from a regulatory standpoint.

375. COMMENT: Dupont-Chambers Works said that the proposed Ground Water Quality Standards should not require that ground water in aquitards be restored to meet stringent standards.

RESPONSE: The Ground Water Quality Standards classify ground waters, not just aquifers, and this distinction is extremely important to the regulations. The New Jersey Water Pollution Control Act does not use the term "aquifers" and the Ground Water Quality Standards follow suit. The ground waters in major aquitards are classified separately because they have a significantly different hydrogeology than other ground water units. There are relatively few intentional discharges to these units, because of their relatively slow transmittal of ground water. However, they are sometimes favored as waste management sites due to their purported ability to contain contaminants. In the context of geologic and site management investigations, however, the Department has found that minor confining beds often provide little barrier to the flow of contaminants, and that even major confining beds often have significant fractures, joints and other channels through which contaminants may flow. In addition, while some contaminants are slowed by the clays in aquitards, others migrate readily through the same clays. Analyses for the Department by the U.S. Geological Survey indicate a major flux of ground water across the largest Coastal Plain aquitards due to ground water withdrawals from lower aquifers. Therefore, the application of the Ground Water Quality Standards to aquitards is important for the protection of ground water quality in adjoining ground waters, and also for the protection of surface water quality.

The specific mechanics of monitoring for compliance with the Ground Water Quality Standards are the responsibility of the individual regulatory programs. It is true that normal monitoring wells may not be appropriate, but there are techniques for monitoring seepage, fracture zones, interbedded sands, etc., to aid the compliance process. Regarding attenuation processes, the Department applies the standards of the downgradient classification area unless there is no "significant potential" for migration of contaminants to that area, which may take into account attenuation factors.

Comments on Class III-B Areas

376. COMMENT: Dupont-Chambers Works said that the proposed Ground Water Quality Standards are far too stringent in designating Class III-B areas as 3000 mg/l chlorides and 5000 mg/l TDS. Dupont-Chambers Works suggests that a value of twice the respective secondary Maximum Contaminant Levels (MCLs) or chlorides at 500 mg/l and TDS at 1,000 mg/l would be more appropriate.

377. COMMENT: Merck Manufacturing Division recommended that a value of twice the respective secondary MCLs, or chlorides at 500 mg/l and TDS at 1,000 mg/l, would be more appropriate as a criteria for designating Class III-B aquifers.

378. COMMENT: PPG Industries recommended that the Department develop health-based standards for TDS and chloride for determination of all Class III-B Classification Areas and that such standards be consistent with other geographically proximate and coastal state regulatory agencies for these standards.

RESPONSE: The 1981 Ground Water Quality Standards including a GW-4 classification that had a threshold of 10,000 mg/l Total Dissolved Solids, which conforms to the threshold for "non-potability" that many other states use. While the GW-4 threshold did not cause any particular prolems, the Department reviewed water use data that indicated a lower threshold would be more appropriate. Because not all ground water of high TDS is also of high salinity, a double threshold of 3,000 mg/l chloride or 5,000 mg/l TDS was used. Regarding lower thresholds, the potential for mixing and conventional treatment of water must be considered. Such technologies actually allow use of ground water with TDS levels that are significantly higher than the criterion. The Class III-B criteria are

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designed to describe ground waters that are not potable with conventional treatment. The thresholds used are therefore unique to New Jersey, but reflect an analysis of potable water use specific to this State.

379. COMMENT: Exxon Company recommended that regarding N.J.A.C. 7:9-6.5(f)2, for the determination of "... precise borders of class III-B areas ... using site specific data ..." adding an additional paragraph as follows:

"Any facility may design and obtain data that will adequately demonstrate existing levels of naturally occurring TDS or chlorides at their site. The facility may then request that the Department approve a submission requesting designation as Class III-B for that ground water zone. The Department may grant approval through the applicable regulatory program. These approvals will be: i. maintained in a list for public review; and ii. published every 5 years when rule is revised. Designation of these areas shall not constitute a revision to this rule."

380. COMMENT: New Jersey Petroleum Council recommended that for the determination of "... precise borders of Class III-B areas ... using site specific data ..." as described in proposed N.J.A.C. 7:9-6.5(f)2 adding an additional paragraph using such language as follows: "Any facility may design and obtain data that will adequately demonstrate existing levels of naturally occurring TDS or chlorides at their site. The facility may then request that the Department approve a submission requesting designation as Class III-B for that ground water zone. The Department may grant approval through the applicable regulatory program. These approvals will be: i. maintained in a list for public review; ii. published every 5 years when rule is revised. Designation of these areas shall not constitute a revision to this rule."

381. COMMENT: NAIOP-NJ Chapter said with respect to proposed N.J.A.C. 7:9-6.5(f)2, the proposed Ground Water Quality Standards should clarify the meaning and application of the phrase "site specific data in the context of applicable regulatory programs."

382. COMMENT: Chemical Industry Council/NJ found that the proposed Ground Water Quality Standards do not provide a procedure for petitioning to create Class III-B classification areas.

383. COMMENT: Chevron USA recommended that a paragraph be added to proposed N.J.A.C. 7:9-6.5(f)2 such as: "A person, party or facility may characterize the levels of naturally occurring chlorides or TDS with actual ground water data from their site and may request that the Department review the data approve the Class III-B confirmation for the zone(s) to which the data applies."

384. COMMENT: Chevron USA recommended that a procedure should be included detailing how Class III-B areas will be confirmed and mapped since no discussion is provided in the proposed Ground Water Quality Standards. Chevron USA recommended that the confirmation of Class III-B areas should be a factual determination based on analytical data.

RESPONSE: The Department is in general agreement with these comments, as they reflect the original intent of the proposed language. Interested parties may present data to the Department (as for Class III-A areas) proving that a specific area meets the descriptive criteria for Class III-B ground water. The Department will review the data and provide acknowledgment that Class III-B standards apply where appropriate. This process is administrative, not rulemaking, in nature. Language has been added to N.J.A.C. 7:9-6.5(f) to clarify the Department's intent.

385. COMMENT: Middlesex County Planning Board said that the line of Section A'-A of Figure 4 does not conform with the cross section shown beneath. As such the information displayed is technically inaccurate. Cretaceous beds dip a maximum of 60 feet/mile to the southeast. The dip direction, angle of dip and formation designation all need correction.

RESPONSE: It was not the intention of the USGS designers of this cross section to portray a technically accurate depiction of the New Jersey Coastal Plain Aquifers. This cross section is very generalized and intended only to portray the stratigraphic nature and terminology associated with the system. The formation name is based upon NJGS designation. For classification purposes, geologic areas should be field verified.

Proposals for Additional Classes of Ground Water

386. COMMENT: Browning-Ferris Industries recommended the creation of a fourth class of ground water that would consist of ground water that remains uncharacteristic because it has little, if any, potential use as a resource.

387. COMMENT: Browning-Ferris Industries said that the classification process should reflect realistic assessments of use, by examining related factors such as legal or practical constraints that might obviate the potential future use of certain waters as drinking water sources.

RESPONSE: The New Jersey Water Pollution Control Act requires that the Department protect the integrity of water for a variety of uses. Class III includes ground waters that are not directly used for potable purposes, and for which discharges are regulated in a somewhat different manner than Class I or II. Class II-B ground waters are recognized as having significant constraints on potable use due to past discharges. However, in all cases there are other possible designated uses, including base flow to surface waters and ecological resources, or direct industrial and agricultural use, that may be significant. The Department concludes that the Ground Water Quality Standards do recognize the legal and practical constraints on ground water use, within the intent of the law.

388. COMMENT: Dupont-Chambers Works recommended that the following language be added to proposed N.J.A.C. 7:9-6.5: "Where contaminated ground water is contained by physical or hydraulic barriers that will remain in operation, and modeling and or monitoring indicate such contamination precludes risks to public health, the ground water so contained will be classified non-use."

389. COMMENT: Dupont-Chambers Works made the following point: "In some circumstances, the ground water under sites is part of a larger urban area where everyone is on public water. Unless such ground water is significantly impacting an aquifer that is needed elsewhere for potable water, it seems that any classification that calls for investment in remediation is wasteful. The rules should clearly recognize this situation."

RESPONSE: Site-specific concerns are most efficiently addressed through the Classification Exception Area process using applicable regulatory programs. The exception areas are tailored to individual cases and specified constituents which allows a flexibility not easily applied through statewide standards. Where the burden of past discharges exceeds the capacity of current cleanup technology, the Department has taken the concept one step further in Class II-B. Investment in remediation is still necessary, however. The NJ Water Pollution Control Act clearly requires a consideration of uses other than potable water. Further, there is absolutely no provision that allows the Department to "write-off" ground waters. Downgradient impacts on structures (from off-gassing), surface waters, industrial supply wells and the like are legitimate concerns regardless of potable use. The Ground Water Quality Standards and the cleanup Standards are planned to work together to protect those uses and to ensure that the degraded ground water has a reasonable opportunity for restoration to its former potable quality.

390. COMMENT: Morris County MUA suggested that the proposed Ground Water Quality Standards include provisions for the classification of well head protection areas which are delineated under New Jersey's Well Head Protection Program. Morris County MUA recommended that well head protection areas be made Class I Classification Areas so that a non-degradation policy would be in effect for these areas. Morris County MUA also suggested that an interim classification between Class I and Class II should be considered for ground water in delineated well head protection areas.

RESPONSE: The Department has taken this suggestion under consideration. Draft regulations for the delineation of Well Head Protection Areas were released for public comment on July 6, 1992. This issue was specifically asked of the public. A formal proposal of these regulations is anticipated in 1993, and will include the Department's response to this comment.

Duration of Exception Areas

391. COMMENT: Merck Manufacturing Division said that the last sentence of proposed N.J.A.C. 7:9-6.6(d) which discusses the longevity of the exception area appears to conflict with proposed N.J.A.C. 7:9-6.6(c) which limits the life of the exception area to the life of the NJPDES permit.

392. COMMENT: Chemical Industry Council/NJ said that the last sentence of N.J.A.C. 7:9-6.6(d) which discusses the longevity of the exception area appears to conflict with N.J.A.C. 7:9-6.6(c) which limits the life of the exception area to the life of the NJPDES permit. Chemical Industry Council/NJ said that it is unclear that once the exception area expires whether or not a renewal may be issued.

393. COMMENT: Exxon Company recommended deleting the last sentence of N.J.A.C. 7:9-6.6(d). "The regulatory action creating the Classification Exception Area shall specify the longevity of the exception, after which the original classification, designated uses and constituent standards shall be applicable."

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RESPONSE: The Department agrees that clarification to N.J.A.C. 7:9-6.6(c) and (d) is warranted and has added language to subsection (d) similar to the last sentence of (c) to do so.

394. COMMENT: Union Carbide said that proposed N.J.A.C. 7:9-6.6(d) should read: "Where a discharge has resulted ... suspended during the life of the Classification Exception Area. Constituent standards of the surrounding classification area **or surrounding Classification Exception Area** shall apply at the perimeter of the Classification Exception Area for the specified constituents. All other constituent ... Quality Standards (in N.J.A.C. 7:10). The regulatory action creating the Classification Exception Area shall specify [the] **an interim** longevity of the exception. **At the end of the interim period, a final longevity, based on efficacy of cleanup technology, will be established. T**[t] he original classification, designated uses, and constituent standards shall be applicable **at the end of the final duration of the Classification Exception Area.**"

RESPONSE: The presence of an adjacent Classification Exception Area (CEA) should not result in different constituent standards for a given CEA. Since each CEA is designated for a given cleanup or discharge it should not result in changes in constituent standards for unrelated discharges. The introduction of interim and final longevities is unnecessary since the permit or regulatory action will establish CEA for the length of time necessary to control or cleanup a discharge.

Procedures for Establishing Classification Exception Areas

395. COMMENT: ENSR Consulting and Engineering asked if a site with Class II-A ground water is granted exception status under N.J.A.C. 7:9-6.6, can a petition for Class II-B status still be filed?

RESPONSE: Single site classification areas are excluded by the criteria for Class II-B classification areas. However the existence of Classification Exception Areas within a proposed Class II-B classification area would pose no impediment to the filing of a petition for reclassification.

396. COMMENT: New Jersey Petroleum Council recommended adding "(For example, Cleanup Standards, Administrative Consent Orders, Department Directive Letters, etc.)" following "... in the context of an applicable regulatory program ..." in proposed N.J.A.C. 7:9-6.6 to indicate the regulatory mechanisms by which classification exemption are to be approved.

397. COMMENT: Exxon Company recommended that regarding the N.J.A.C. 7:9-6.6(a) adding "Cleanup Standards, Administrative Consent Orders, or other applicable regulatory programs" following "... pursuant to NJPDES."

398. COMMENT: Exxon Company recommended that regarding the N.J.A.C. 7:9-6.6(a), adding, "(For example, Administrative Consent Orders, Department Directive Letters, etc.)" following "... in the context of an applicable regulatory program ..." to indicate the regulatory mechanisms by which classification exemption areas are to be approved.

399. COMMENT: Chevron USA recommended that the first sentence of proposed N.J.A.C. 7:9-6.6(a) should be expanded to read "... pursuant to NJPDES through a NJPDES permit action, ACO and/or other Department Directive."

RESPONSE: The Department agrees that the addition of the suggested language regarding Administrative Consent Orders, Administrative Orders and Directives will clarify the Ground Water Quality Standards. Clarification has been added to N.J.A.C. 7:9-6.6(a).

400. COMMENT: Dupont-Chambers Works said that discharges currently permitted under NJPDES or other remediation regulations should be automatically granted a Classification Exception Area as of the effective date of the proposed regulations.

401. COMMENT: Applied Wastewater Technology said that the proposed Ground Water Quality Standards are too vague concerning exceptions to the classification system (N.J.A.C. 7:9-6.6) and asked the following questions: 1) Do existing permitted facilities have to reapply to the Department to obtain an exception to the classification system? 2) Do proposed discharges have to apply for a classification system exception from the Department prior to applying for a NJPDES-DGW permit? 3) How will the Department determine which specific constituents will be granted the exception from the classification area.

402. COMMENT: Dupont-Chambers Works said that although the Department has implied an intent to "grandfather" discharges into the "Classification Exception Area" category through the existence of a NJPDES permit, this is not specifically stated in the proposed regulations.

RESPONSE: Classification exception areas (CEAs) are established by the Department through the permitting process and are not directly applied for by dischargers. The Department establishes CEAs for the purpose of providing public notice that ground water quality standards in a given area are exceeded and that designated uses in that area are suspended. CEAs for existing discharges will be established by the Department at the time of permit renewal. The specific constituents for a CEA will be designated by the Department after review of a permit application which should identify the constituents of concern.

403. COMMENT: ENSR Consulting and Engineering said "The **Exceptions to the Classification System** in proposed N.J.A.C. 7:9-6.6 discusses the criteria for an 'exception area,' but does not review the process for obtaining this status."

404. COMMENT: New Jersey Business and Industry Association inquired how and by whom the establishment of a classification exception area was initiated.

405. COMMENT: American Cyanamid recommended that the proposed Ground Water Quality Standards include a description of the procedure for petitioning the Department to establish a classification exception area.

406. COMMENT: Atlantic Electric said that the proposed Ground Water Quality Standards should specify a mechanism for establishing classification exception areas and their boundaries.

407. COMMENT: Chemical Industry Council/NJ said that specific language is needed detailing what information and criteria would be used and how they would establish the limits of a classification exception area. Chemical Industry Council/NJ asked that a procedure be given for the regulated community to request an exception to the classification system.

408. COMMENT: Chemical Industry Council/NJ said that the period of time required to obtain a classification exception area designation has not been defined and may actually require an extended period of time to receive. Therefore Chemical Industry Council/NJ recommends that the classification exception area designation be effective retroactively to the date of discovery.

409. COMMENT: GE Corporate Environmental Programs recommended that the Department provide procedures for requesting and obtaining an exception area.

410. COMMENT: New Jersey Builders Association said that the Department should specify both the data needed to establish an exception and the method by which the Department will obtain that data.

411. COMMENT: New Jersey Health Products Council said that specific language should be provided to the regulated community within these regulations stating how one is to ask for and obtain a classification exception and how it will be regulated.

412. COMMENT: Merck Manufacturing Division said that specific language should be included in proposed N.J.A.C. 7:9-6.6 on what information and criteria would be used and how the Department would establish the exception area and on how the regulated community can request an exception to the classification system.

413. COMMENT: New Jersey Business and Industry Association said that the Department should specify the information needed to establish a classification exception area by specifying the following information: A) The data needed to establish an exception. B) The method by which the data will be obtained. C) The manner in which an exception will be incorporated into a New Jersey Pollutant Discharge Elimination System (NJPDES) Permit. D) Whether this exception classification will be included in the permit process or will be a separate procedure. E) The manner in which identified constituents will be defined.

414. COMMENT: New Jersey Manufactured Housing Association recommended that the Department specify the method by which exception areas will be defined including: the method for requesting and receiving this exception; the data needed to establish an exception and the method by which the Department will obtain that data; the manner in which an exception will be incorporated into a NJPDES permit; and the manner in which identified standards will be arrived at.

415. COMMENT: NAIOP-NJ Chapter said that the proposed Ground Water Quality Standards do not establish an application procedure for, nor the elements of proof required, to obtain a classification exception area designation nor do the proposed Ground Water Quality Standards establish a procedure for obtaining an alternative concentration limit. NAIOP-NJ Chapter recommended that the proposed Ground Water Quality Standards should provide that upon proof of the requisite elements, the Department **must** issue such classification exemption area designation.

416. COMMENT: NAIOP-NJ Chapter asked whether the classification exception area will be included in the permit process or as seems to be contemplated by the proposed regulations, will the classification process be a separate procedure?

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417. COMMENT: Porzio, Bromberg & Newman said the procedures for obtaining exceptions to classification system need to be established and made available to property owners so that they can evaluate the adequacy or appropriateness of the procedure.

418. COMMENT: New Jersey Petroleum Council said that proposed N.J.A.C. 7:9-6.6(a) indicates "The Department may establish a Classification Exemption Area where ... constituent standards ... are not being met ... due to ... an ACL as approved by the Department pursuant to, NJPDES." But it is unclear as to how the Department will grant ACL's under this provision.

419. COMMENT: Applied Wastewater Technology asked by what means does a discharger obtain an approved ACL from the Department.

RESPONSE: A classification exemption area is a departmental designation which serves to provide public notice that ground water quality standards in a given area are not being met and that designated uses in such areas are suspended. As such the establishment of a CEA has no direct regulatory effect on a discharger, but does indicate Department approval of an exception from the Ground Water Quality Standards. Regulation of a discharge or the cleanup of a discharge is based on the monitoring of compliance points designated in the permit or other regulatory document. A CEA therefore is not applied for by a discharger but is designated by the Department based on the nature of the discharge limits imposed under a permit or conditions resulting from a Departmentally approved cleanup of a previous discharge, simultaneously with the site-specific decision. An alternate concentration limit granted by the Department pursuant to N.J.A.C. 7:14A-6.15(e)2 will result in the Department defining a classification exception area for the area affected by such a higher-than-normal constituent standard. There are no special data, application or monitoring requirements for classification exception areas other than data already required pursuant to NJPDES or other applicable regulatory program.

Relationship Between Alternative Concentration Limits and Classification Exception Areas

420. COMMENT: American Cyanamid found that based on its review of the definitions and N.J.A.C. 7:9-6.6 of the proposed Ground Water Quality Standards that ACLs may only be applied in Classification Exception Areas or Class II-B areas. American Cyanamid recommended that the proposed Ground Water Quality Standards provide a mechanism whereby ACLs may be applied in other classification areas where it has been determined that compliance with the ACLs rather than the otherwise applicable standards will not adversely impact potential human or environmental receptors based on current uses of ground water in the area.

RESPONSE: ACLs are granted by the Department through the process specified in N.J.A.C. 7:14A-6.15(e)2 and may be obtained in **any** classification area. Pursuant to the Ground Water Quality Standards, the granting of an ACL will result in the Department defining a Classification Exemption Area for the area affected by such a higher-than-normal constituent standard.

421. COMMENT: Union Carbide said that to provide consistency between the relevant statutes, proposed N.J.A.C. 7:9-6.6(a) should read: "The Department may ... as defined by the department in the context of an applicable regulatory program; or an ACL as approved by the Department pursuant to NJPDES **or the Cleanup Standards.** The Department shall ... constitute a valid purpose for a Classification Exception."

RESPONSE: There are no provisions under the proposed Cleanup Standards to grant ACLs for ground water cleanups; rather, the proposed Cleanup Standards use Alternative Cleanup Standards or deferrals.

Constituent Limits Within a Classification Exception Area

422. COMMENT: American Cyanamid commented that proposed N.J.A.C. 7:9-6.6(a) should specify what limitations, if any, apply to constituents not currently meeting standards within a classification exception area.

423. COMMENT: New Jersey Builders Association asked whether classification exception areas will except only the constituents which are regulated by a NJPDES permit, or will others also be included.

RESPONSE: A classification exception area excepts the regulated area of a discharge or cleanup from application of particular constituent standards which will be specified in the permit or other regulatory document. All other constituents must be in conformance with the Ground Water Quality Standards for the ground water classification that would otherwise apply. The alternate limits for the constituents of concern will be established through the applicable regulatory program.

424. COMMENT: Hoffman-La Roche commented as follows regarding proposed N.J.A.C. 7:9-6.6(d): "... infers the establishment of 'mixing zones,' or areas near pockets of contamination where contaminants in excess of the standards are allowed to migrate and 'dilute.' If this is DEPE's intent, it should say so and should eliminate or narrowly limit the wholesale exception now included in the standard. We oppose the creation of 'mixing zones,' particularly where their creation will result in exceedances of these ground water standards or the primary drinking water standards. In conversations with some Department personnel, we have learned that the Department contends that home septic systems would be outlawed if our position were adopted. If that is actually the Department's position, then it should be articulated as such, and environmental groups could be sensitive to a special provision for household septic systems. The exception provisions should be used to cover those situations alone. This proposed subsection goes much further and permits wholesale aquifer contamination. The subsection should be eliminated."

RESPONSE: The classification exception areas meet a critical need for the Department's regulatory programs. When ground water in the immediate vicinity of a discharge is not expected to meet Ground Water Quality Standards due to a discharge permitted by an NJPDES permit or a pollution remedy selected pursuant to the Cleanup Standard, a Classification Exception Area is adopted that excepts the regulated area from strict application of particular constituent standards. In this way the localized and temporary effects of a discharge are recognized and public notice is provided that ground water quality standards are exceeded and designated uses are suspended. As the commenter points out, precedent for this policy is contained in the "mixing zone" concept contained in the Surface Water Quality Standard at N.J.A.C. 7:9-4. N.J.A.C. 7:9-6.6(a) of the Ground Water Quality Standards specifies that CEAs cannot be created merely for the purpose of correcting violations. Given the limited circumstances under which CEAs will be created there is no likelihood that the availability of the CEA mechanism will result in wholesale aquifer contamination. Instead, circumscribed impacts will be allowed, that must be corrected by the end of the CEA. The only exception is for areas of natural contamination, which should not be subject to enhancement of ground water quality. NJPDES specifically exempts discharges from single family septage tank systems or other single family subsurface sewage disposal systems which are installed and operating in conformance with the "Realty Improvement Sewerage and Facilities Act" (N.J.S.A. 58:11-23 through 42). Therefore no specific exemptions for single family septic system need be included in the Ground Water Quality Standards.

425. COMMENT: Exxon Company recommended that N.J.A.C. 7:9-6.6(b) be revised by changing: "... the Department shall define appropriate designated uses and constituent standards based upon the natural quality ... to "... the Department shall define appropriate designated uses based upon the natural water quality, and all constituent standards shall be changed to reflect the new designated uses." If the primary designated use is not viable within a limited area, all constituent standards should reflect the new designated use.

426. COMMENT: Chevron USA recommended that the first sentence of proposed N.J.A.C. 7:9-6.6(b) should be changed to read: "... Department shall define appropriate designated uses based on natural quality and all constituent standards shall be changed to reflect the new designated use." Chevron USA recommended that all of the constituent standards should change, not just the one on which the classification exception is based.

RESPONSE: The intent of N.J.A.C. 7:9-6.6(b) is to allow limited use of aquifers where the primary use is precluded by natural water quality. The commenters are suggesting in effect that new classifications be developed for areas where localized natural water quality precludes the primary use. Such an effort by the Department is not warranted for the limited circumstances under which it is expected that natural water quality will preclude primary uses.

Opposition to the Establishment of Classification Exception Areas

427. COMMENT: Association of New Jersey Environmental Commissions said that the proposal for Classification Exception Areas (proposed N.J.A.C. 7:9-6.6) is contrary to the New Jersey Water Pollution Control Act which requires maintenance, enhancement and restoration of the integrity of the state's waters. Association of New Jersey Environmental Commissions recommended that instead of creating exception areas, ground water discharges that pollute should be discontinued over time and/or discouraged and that septic systems should be designed to prevent ground water pollution.

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428. COMMENT: NJ PIRG opposes the establishment of classification exception areas as proposed in N.J.A.C. 7:9-6.6 because these exceptions to the classification system contradict the policy stated in proposed N.J.A.C. 7:9-6.2(a).

429. COMMENT: NJ PIRG said that the Department should actively discourage industrial ground water discharges and that Classification Exception Areas are inconsistent with the protecton of ground water quality protection. NJ PIRG recommended that industrial and commercial users who intentionally or inadvertently contaminate ground water should be required to put in place appropriate technologies to meet applicable standards at the point of contact with ground water.

430. COMMENT: Rutgers Environmental Law Clinic commented as follows regarding proposed N.J.A.C. 7:9-6.6: "This subsection establishes Classification Exception Areas where the standard can be suspended upon a showing of certain circumstances. Although Department personnel have indicated that the purpose of this subsection was to establish 'mixing zones', the broad language used will allow the suspension of the standards established elsewhere in this promulgation, even when the ground waters at issue are being used for potable purposes. The subsection contains no standards to control when exemptions can be issued. It is particularly troubling that the Department would grant such an exemption where potable aquifers are being contaminated due to an existing authorization from the Department through a NJPDES permit, an NJDEPE-supervised site remediation, or other Department approval. If DEPE-sanctioned activity is contaminating potable water supplies, the Department should put a halt to it."

RESPONSE: The commenter correctly points out that the CEA is the ground water equivalent of a surface water mixing zone which allow for localized exceedances in the area of a discharge to surface water. Since the Legislature has authorized permitted discharges while setting a policy of "maintenance, enhancement and restoration," the CEA is the mechanism by which the area of localized and temporary contravention of standards due to discharges is clearly defined, regulated and limited in their longevity. CEAs are in general temporary designations and are necessary only for the duration of a permitted discharge or a regulated cleanup. Only an outright ban on discharges could prevent the localized and temporary exceedances which are associated with permitted discharges to ground water. CEAs by no means represent a permanent or widespread degradation of a water source. In addition, CEAs cannot be designated for the sole purpose of achieving compliance but only as part of a pollution remedy or discharge control scheme under which the affected aquifer will eventually be restored. Finally, the Department's applicable regulatory programs include safeguards for the protection of receptor wells and ecosystems and thus limit the potential for any CEAs that would impair potable uses. These programs also include methods for the designation of areas to be affected by the contamination, which limits the area of individual CEAs.

Suspension of Designated Uses in Classification Exception Areas

431. COMMENT: Browning-Ferris Industries said that there may be legitimate reasons for the continuation of designated uses in a Classification Exception Area and that some industrial or agricultural uses may not be affected by the constituents in the ground water in a CEA.

432. COMMENT: Chemical Land Holdings said that the rationale for suspending all designated uses as called for in the proposed N.J.A.C. 7:9-6.6(d) is unclear. Chemical Land Holdings says that it is unnecessary to suspend all such uses, when the water quality is acceptable for certain designated uses.

433. COMMENT: Chemical Land Holdings asked what form of use restrictions would be placed upon the ground water in Classification Exception Areas pursuant to the proposed N.J.A.C. 7:9-6.6(d).

RESPONSE: N.J.A.C. 7:9-6.6(d) specifies that all designated uses will be suspended. The suspension of designated use within a CEA is merely a recognition that the CEA is "outside" a classification area with its concurrent designated uses. The suspension of designated uses is not a prohibition of existing uses which may continue regardless of designated uses. The Department shall restrict or require the restriction of potable ground water uses within any CEA where there is or will be an exceedance of the primary drinking water quality standards (N.J.A.C. 7:10 et seq.).

434. COMMENT: Princeton University said with regard to proposed N.J.A.C. 7:9-6.6(d) that if treatment is required by the Department, does that requirement designate the area as a "Classification Exception Area"? If so, does that "restrict" the use of the waters to potable ground water?

RESPONSE: The need for treatment of a potable water supply, conventional or advanced, does not in and of itself necessitate a use restriction. CEAs with concurrent use restrictions are strictly associated with permitted discharges and regulated cleanups where a discharge has resulted or will result in localized ground water quality that contravenes one or more of the Primary Drinking Water Standards.

Violations and Classification Exception Areas

435. COMMENT: Chevron USA said that the last sentence in N.J.A.C. 7:9-6.6(a) should be deleted as it contradicts the rest of the paragraph.

436. COMMENT: Chemical Industry Council/NJ recommended deleting the last sentence of N.J.A.C. 7:9-6.6(a) because it limits the flexibility of individual regulatory programs to implement regulations.

437. COMMENT: Exxon Company recommended that regarding N.J.A.C. 7:9-6.6(a), deleting last sentence "Violations of constituent standards for which the above considerations do not apply shall not constitute a valid purpose for a Classification Exception." The sentence is contradictory within the context of the paragraph (states it covers goals, not violations) and its facility-specific language will limit the flexibility of individual regulatory programs to implement regulations using the Ground Water Quality Standards as a reference.

438. COMMENT: New Jersey Petroleum Council recommended deleting the last sentence of proposed N.J.A.C. 7:9-6.6(a) "Violations of constituent standards for which the above considerations do not apply shall not constitute a valid purpose for a Classification Exception" saying that the sentence is contradictory within the context of the paragraph (states it covers goals, not violations) and its facility-specific language will limit the flexibility of individual regulatory programs to implement regulations using the Ground Water Quality Standards as a reference.

RESPONSE: The last sentence of N.J.A.C. 7:9-6.6(a) is not intended to limit the flexibility of the regulatory programs, but to prohibit the use of N.J.A.C. 7:9-6.6 to sanction discharges outside of the regulatory programs. For this reason, it is important to specify the purposes for creating a CEA do not include the mere correction of existing violations but is rather part of a program to maintain, enhance and restore ground water resources. For instance, a discharge which resulted in pollution of ground water and for which no NJPDES or cleanup decision exists may not receive a CEA. The language of N.J.A.C. 7:9-6.6(a) has been clarified.

Boundaries of a Classification Exception Area

439. COMMENT: NJ PIRG said that the proposed Ground Water Quality Standards do not define what is intended by the terms "localized area," "localized effects," or "appropriate boundaries for each Classification Exception Area" as they are used in proposed N.J.A.C. 7:9-6.6. NJ PIRG said the language in proposed N.J.A.C. 7:9-6.6 is so ambiguous that the Department could exempt large portions of aquifers and still meet the proposed requirements.

440. COMMENT: Princeton University commented as follows: "In proposed N.J.A.C. 7:9-6.6(a) the use of the term "localized area" needs to be better defined, indicating ranges or distances."

441. COMMENT: Chemical Industry Council/NJ recommended the provision of N.J.A.C. 7:9-6.6(c) and 6.6(d) which states "... constituent standards of the surrounding classification area shall apply at the perimeter of the Classification Exception Area for the specified constituents" be replaced as follows: "... Actual boundaries will be determined by the applicable regulatory program."

442. COMMENT: Dupont-Chambers Works said "The regulations should specify how the Department will arrive at the appropriate boundary for a CEA. For example, will the boundary reside within the site property line, coincide with the property line, or extend beyond it? This boundary must be drawn so as to accommodate reasonable and practicable remediation methods so that the public can receive adequate notice of suspended designated uses when complete restoration cannot be achieved within the limits of economics and technology."

RESPONSE: The boundaries of CEAs will be set on a site by site basis by the applicable regulatory program. The language of N.J.A.C. 7:9-6.6(a) has been clarified on that point. Two examples which were provided in the Basis and Background Document for the Ground Water Quality Standards illustrate the method for setting the boundaries of a CEA. In the first case, an industrial waste management unit, compliance with the Ground Water Quality Standards is generally measured at the compliance perimeter established through a NJPDES permit (generally at the edge of the waste management unit, not at the property boundary). The area within the compliance perimeter would be a Classi-

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fication Exception Area under the NJPDES permit, recognizing the potential for temporary impacts. In the second example, a ground water quality restoration action, approved pursuant to the Cleanup Standards or another applicable regulatory program, will specify the "contaminated site" including the entire area affected by the decision, covering the area in which the Ground Water Quality Standards are exceeded due to the discharge. This area is a Classification Exception Area and is regulated by the applicable program. In both cases, the Ground Water Quality Standards apply at and outside the boundaries of the Classification Exception Areas, and the exceptions are for specified constituents only (for example, constituents expected to exceed the constituent standards because of the regulated discharge or past discharge).

443. COMMENT: Exxon Company recommended, regarding N.J.A.C. 7:9-6.6(c) and (d), deleting "... Constituent standards of the surrounding classification area shall apply at the perimeter of the Classification Exception Area for the specified constituents." With this statement, the Ground Water Quality Standards cease to be an institutional framework, and become a regulatory program in themselves. In addition, the point of compliance is unclear. For example, the Cleanup Standard may specify 10 ppb of a constituent; antidegradation criteria, based on background levels, may require five ppb at the boundary. Recommend replacing this sentence with "... Actual boundaries will be determined by the applicable regulatory program."

RESPONSE: The Department intends that appropriate boundaries for CEAs will be determined by the applicable regulatory programs. Language has been inserted into N.J.A.C. 7:9-6.6(a) to clarify the Department's intent in this regard. While the Ground Water Quality Standards are not self-executing, they are, however, more than an "institutional framework." The Ground Water Quality Standards are regulatory standards which in conjunction with other regulatory programs assure the quality of the State's ground water resource. The Ground Water Quality Standards form the basis for the Department's cleanup decision affecting ground water. The applicable regulatory program will determine the boundaries of the Classification Exception Area, however outside of such areas the Ground Water Quality Standards apply as the State's standards for ambient ground water. The Ground Water Quality Standards explicitly circumscribe the ground water quality decisions that may be made by applicable regulatory programs, including that exceptions to the Ground Water Quality Standards may not be granted outside of CEAs.

444. COMMENT: Saul, Ewing, Remick, Saul Inc. recommended that like Class II-B classifications, determinations of Classification Exception Areas should be made on a regional basis after input from all affected parties, not just a specific discharger.

RESPONSE: CEAs are by design specific to discharges. They are designations made in recognition of the localized and temporary effects of a discharge or the cleanup of a discharge and have a longevity coinciding with the duration of the discharge or cleanup. Notice and opportunity to comment will be afforded through the applicable regulatory programs. A "regional CEA" would in fact be synonymous with a reclassification and would require adherence to full reclassification procedure.

Support For Classification Exception Areas

445. COMMENT: Dupont-Chambers Works said that the incorporation of CEAs is a valuable mechanism for providing public notice that ground water quality standards are exceeded.

RESPONSE: The Department agrees that this is one very positive aspect of CEAs.

Need For General Classification Exceptions

446. COMMENT: Southeast Morris County MUA said that specific exception should be written into the standards for water suppliers using the ground water as a source, such that for a water supplier removing a constituent (specifically iron and/or manganese) from a ground water supply, a Classification Exception Area is automatically created for the constituent being removed. Southeast Morris County MUA recommended that no NJPDES permit be required for the water supplier to discharge constituents back to the ground water which had been removed from the ground water.

RESPONSE: Under N.J.A.C. 7:9-6.9 of the Ground Water Quality Standards a discharger may show that its discharge is to the same zone of ground water from which its source water is derived and that the source water has constituent concentrations which exceed the criteria. In addition, N.J.A.C. 7:9-6.9 recognizes the situation where the background quality of ground water flowing onto the dischargers property could already exceed the criteria. In both cases, the constituent standards shall reflect the extentuating circumstance. The discharge from conventional potable water treatment may however contain large amounts of iron and manganese concentrated from the treated water combined with various water treatment chemical residuals. When discharged to the ground water, waste water from potable water treatment may result in the concentration and volume of an existing pollution problem being increased or background water quality being exceeded. The Department therefore has determined that such discharges should not be exempt from regulation by the Ground Water Quality Standards, nor does the Water Pollution Control Act allow such an exemption other than through a permit by rule or specific exemption pursuant to the NJPDES regulations. The creation of NJPDES permits by rule for certain de minimus or low-impact discharges is under consideration at this time.

General Comments Concerning N.J.A.C. 7:9-6.7

447. COMMENT: Applied Wastewater Technology asked whether or not the Department intends to require background water quality on a particular site to be analyzed for the entire list of criteria and if so, how many samples will be required to establish the background water quality.

448. COMMENT: New Jersey Builders Association asked the following questions concerning background water quality: "Does the Department intend to require background water quality on a particular site to be analyzed for the entire list of constituents? How many samples will be required to establish the background water quality?"

RESPONSE: The methodological requirements for establishing background water quality have been specified in the adopted definition of "background water quality" in N.J.A.C. 7:9-6.4. In the case of NJPDES-permitted discharges to ground water, background water quality must be established primarily for the constituents in the discharge and other constituents found on site. Other constituents may be of concern to confirm gradients and flow lines or to understand the site geochemistry. Background water quality for cleanup cases generally must be established for contaminants of concern that have been identified in site soils, or ground water under or emanating from the site, to determine ground water quality and cleanup standards, and to identify which contaminants and concentrations should be subject to cleanup at the site. For most cases, therefore, establishment of background water quality is not required for each criterion.

449. COMMENT: CFM Environmental Services recommended that Class I and II-A ground water permits should consider a biotoxicity criteria such as chronic bioassay.

RESPONSE: Generally, the Department prefers the use of numerical, constituent-specific standards for discharge regulation since such standards are easily measured and monitored. N.J.A.C. 7:9-6.7(g) provides for the application of biotoxicity criteria where appropriate to protect surface water quality, while N.J.A.C. 7:9-6.9(c)4 provides for the use of bioassay or bioaccumulation monitoring as a surrogate for numerical PQLs in the case of ground water migration to surface water.

N.J.A.C. 7:9-6.7(a)

450. COMMENT: ENSR Consulting and Engineering said that the proposed Ground Water Quality Standards specify the criteria for Class I ground water will be based on "natural quality" (proposed N.J.A.C. 7:9-6.7(a)); however, no explanation is given of how these levels will be determined. ENSR Consulting and Engineering recommended that the definition of "natural quality" levels should be included in the regulations. For example, the definition could include a set of criteria (that is, concentrations) that are defined to be "natural" or the qualitative conclusion that the aquifer is unaffected by contamination.

451. COMMENT: Environ Corporation said regarding the ground water cleanup standards proposed in N.J.A.C. 7:26D-4: "We disagree with the Department's decision to set standards of 'natural ground water concentration' and 'background ground water concentration' for all areas where contaminants may be present in or have the potential to migrate to Class I ground water. This policy is overly stringent and inconsistent with the stated objective of protection of human health and the environment."

452. COMMENT: Chemrisk McLaren/Hart said regarding the ground water cleanup standards proposed in N.J.A.C. 7:26D-4: "Natural groundwater concentrations has no meaning. The Department is apparently attempting to refer either to 'background' or 'natural background' concentrations, as defined in subchapter 1. Regardless, 'background' concentrations are not health-based criteria, and therefore, use of 'background' values to develop cleanup standards is inappropriate and

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expressly inconsistent with the NCP. The NCP states that cleanup criteria must be health-based or based on existing ARRAS."

453. COMMENT: PPG Industries recommended that the concept of "natural quality" be deleted from the Proposed Ground Water Quality Standards and replaced with concentration levels determined to be protective of the designated Class I area uses.

454. COMMENT: Merck Manufacturing Division said regarding the ground water cleanup standards proposed in N.J.A.C. 7:26D-4: "It is technically difficult, and perhaps impractical, to establish representative concentrations of constituents in 'natural groundwater'. The variety of agricultural and industrial practices in New Jersey over the past century of economic activity have altered the groundwater to the extent that defining 'natural groundwater' will be difficult or impossible. Merck Manufacturing Division recommends that the rule be revised to use 'background' rather than 'natural' as the standard."

455. COMMENT: Dupont Chemical said regarding the ground water cleanup standards proposed in N.J.A.C. 7:26D-4: "It is technically difficult and perhaps impractical to establish representative concentrations of constituents in 'natural ground water.' "

456. COMMENT: Dupont Chemical said regarding the ground water cleanup standards proposed in N.J.A.C. 7:26D-4: "New Jersey has supported for the past century a variety of widespread industrial and agricultural activities, which have altered the ground water to such an extent that determining the quality of truly 'natural' ground water is extremely difficult. Dupont Chemical suggests that the Department employ the more workable standard established for Class I-Pinelands (Protection Area) at 7:26D-4.2(a)6.ii (i.e., background rather than natural ground water concentration of a contaminant) to Class I-A and Class I-Pinelands (Preservation Area) ground waters (7:26D-4.2(a)6.i)."

457. COMMENT: Environ Corporation said regarding the ground water cleanup standards proposed in N.J.A.C. 7:26D-4: "The upgradient or background concentration should be adopted as the standard for organics in Class I ground water."

RESPONSE: The definition of "natural quality" was published in the proposed standards at N.J.A.C. 7:9-6.4. While the Department would prefer to publish numerical criteria for Class I, years of experience have shown that such criteria do not reflect the diversity of pristine ecosystems in the state. Natural quality varies by geology, soils, ecosystems, latitude, altitude and other factors. Class I areas in northern New Jersey will have very different criteria than such areas in the Pinelands. To protect the target ecosystems of Class I areas, natural quality must be determined for the specific area. The Department expects that few discharges will be affected by the Class I-A and Class I-PL (Preservation Area) criteria, but these areas are of very high concern. The Department believes that the effort necessary to identify natural quality is reasonable.

458. COMMENT: Chevron USA said that the Class I-A ground water quality criteria will essentially prohibit septic systems, fertilizer application, de-icing of roads with salt and virtually any other human activity and recommended that the designation of these areas proceed slowly and apply only to those areas where constituents in the ground water actually have the ability to effect the ecology of an area. Chevron USA said that the Department has not demonstrated that attainment of Class II-A criteria within these areas will result in degradation of FW-1 surface waters or the designated Natural Areas.

RESPONSE: Class I-A areas are all owned by the public or by private natural preserves. Each FW-1 watershed and Natural Area has been established through other regulations using very stringent selection criteria, with opportunities for public comment. Only a subset of the Natural Areas were included in Class I-A based upon their reliance on ground water for ecosystem survival. New Class I-A areas may be established through the petition process, which includes many requirements and a public comment process. The Department believes that the proposed process is reasonable and cautious. Regarding the use of Class II-A criteria in Class I areas, the Department believes that human health criteria may often be inappropriate for the protection of pristine ecosystems. Two examples are the effect of "normal" pH water on Pinelands ecosystems that depend on acidic waters, and the effect of nitrates at 10 mg/l on the survival rate of trout eggs and hatchlings.

459. COMMENT: GE Corporate Environmental Programs recommends that only those organic compounds which can reasonably be identified as "synthetic" and whose release at a site can be documented should be regulated under N.J.A.C. 7:9-6.7(a). Further, the Department's requirement of (0.0) as a numerical criterion for synthetic organic compounds in Class I aquifers is non-enforceable in that it is not technically feasible to demonstrate compliance with this criterion.

460. COMMENT: Porzio, Bromberg & Newman said that the requirement of "zero" as a numeric goal for "synthetic organic compounds" in Class I aquifers is similar to the non-enforceable Maximum Contaminant Level Goals (MCLGs) established pursuant to the Federal Safe Drinking Water Act (SDWA) and not technically feasible.

RESPONSE: The Ground Water Quality Standards criteria are established to protect beneficial ground water uses such as potable water supplies (Class II) and ecosystems that rely on ground water (Class I). The use of natural quality as a criterion only applies to the protection of the most sensitive Class I areas (Class I-A and the Pinelands Preservation Area). The protection of such sensitive ecosystems requires that the natural quality for Synthetic Organic Compounds be zero. Enforceability and quantitation are a separate issue from the determination of appropriate criteria. The issue is resolved by Section 6.9 regarding the use of PQLs for quantitation of constituent concentrations in ground water that are below the PQL. For any regulated site, the net effect often is as requested by the commenter. The Department will review the site impacts from discharges, compare the concentrations to background water quality (N.J.A.C. 7:9-6.9(a)), and determine the appropriate ground water quality standards (as different from the criteria). For new discharges, the direct intent of the Ground Water Quality Standards is to prohibit the addition of SOCs in Class I-A and Class I-PL (Preservation Area) classifications. Where SOCs already exist in the background water quality, the Department may take action to identify the source and bring it into compliance with the Ground Water Quality Standards.

N.J.A.C. 7:9-6.7(b)

461. COMMENT: Association of New Jersey Environmental Commissions recommended that the exemptions for agricultural activities contained in proposed N.J.A.C. 7:9-6.7 should be eliminated.

462. COMMENT: Browning-Ferris Industries said that agricultural dischargers should not be exempt from ground water quality controls since the application of fertilizer, herbicides and insecticides along with irrigation, runoff, spills, equipment cleaning, disposal of materials and accidents all of which take place on farms contributes to ground water contamination. Browning-Ferris Industries recommended that the best way to effectively regulate agricultural discharges is to establish best management practices, prohibit unpermitted dumping and take enforcement where ground water contamination is traced to an agricultural activity.

463. COMMENT: USEPA said that it is necessary to ensure that agricultural practices do not cause excessive ground water contamination and that proposed N.J.A.C. 7:9-6.7(b)1 and 2 should indicate what criteria agricultural practices will be required to meet. USEPA recommends that agricultural practices in the Pinelands be required to meet the same criteria as in other geographic areas of the State.

464. COMMENT: Rutgers Environmental Law Clinic said that the Department should not create a different agricultural exemption for each of the two Pinelands regions as called for proposed N.J.A.C. 7:9-6.7(b)1 and 2. Rutgers Environmental Law Clinic said that the plain meaning of these sections is that agricultural activities with great potential for ground water degradation, such as pesticide application, will be permissible in the Protection Area.

465. COMMENT: NJ PIRG recommended that no uses, including agricultural uses, should be excluded from compliance with standards in Class I-PL (Protection Area).

466. COMMENT: National Agricultural Chemical Association said that the exception for indigenous agricultural activity for the Pinelands areas should be allowed for agricultural practices in the entire state or at a minimum some provision should be allowed to permit local production of food when normal and best recognized agricultural practices are utilized.

467. COMMENT: Merck Manufacturing Division said that the term "indigenous agricultural activities" as used in proposed N.J.A.C. 7:9-6.7(b)1 is unclear and should be defined.

RESPONSE: The Pinelands Protection Act of 1979 provides specific statutory preference for the maintenance of agriculture, especially indigenous agriculture (involving production of crops that are native to the Pinelands Area including but not limited to cranberries and blueberries). The Act further enjoins all state agencies to conform to the Pinelands Comprehensive Management Plan, developed and promulgated by the Pinelands Commission. The intent of the proposed language in N.J.A.C. 7:9-6.7(b) was to provide that conformance. The language has been modified to clarify the Department's intent, and to limit exemptions to those specified by the Comprehensive Management

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Plan, not only for agriculture but for all types of discharges. In general, the Pinelands Commission's regulations (N.J.A.C. 7:50-6.81 et seq.) have been specifically cited. As a general comment, agriculture in all areas of the state, including the Pinelands, must comply with Department regulations, to the extent that any Department regulations apply (for example, pesticide application regulations). The intent of the Pinelands Comprehensive Management Plan is to provide for normal agricultural operations, not to allow contamination due to improper practices.

468. COMMENT: NAIOP-NJ Chapter said with respect to proposed N.J.A.C. 7:9-6.7(b), the Ground Water Quality Standards should set forth a time period for measuring existing water quality or else the regulated community will lack the ability to determine an appropriate baseline for measuring the existing water quality.

RESPONSE: Background water quality is determined for specific regulated sites at the time of regulatory review, pursuant to the appropriate regulatory program. Because the timing of regulatory impact is variable, the Department determined that the Ground Water Quality Standards should defer to the regulatory programs for the site-specific determination of background water quality rather than attempting to establish beforehand.

N.J.A.C. 7:9-6.7(b)1

469. COMMENT: Chemical Industry Council/NJ asked for a better description of "indigenous agricultural activities" as it is used in N.J.A.C. 7:9-6.7(b)1.

RESPONSE: The Department agrees that the passage where this phrase appears needs clarification. In providing clarification for the passage, the phrase "indigenous agricultural activities" has been eliminated. By providing this language, the Department was attempting to conform with the Pinelands Comprehensive Management Plan. The language has been modified to clarify the Department's intent, and to limit exemptions to those specified by the Comprehensive Management Plan, not only for agriculture but for all types of discharges. In general, the Pinelands Commission's regulations (N.J.A.C. 7:50-6.81 et seq.) have been specifically cited.

470. COMMENT: New Jersey Health Products Council said that the last sentence of proposed N.J.A.C. 7:9-6.7(b)1 should be expanded to include acid precipitation and road deicing activities as those activities that are not regulated.

RESPONSE: The definition for natural quality does include consideration of "regional precipitation of air pollutants (for example, acid precipitation)" in N.J.A.C. 7:9-6.4. Road deicing is a very different type of discharge activity, with localized application and consequences that may be controlled. The Pinelands Comprehensive Management Plan does not include an exception for road deicing, and the Ground Water Quality Standards may not contravene that regulation, according to the Pinelands Protection Act of 1979. As a general comment, there are myriad human activities that are not actively regulated by the Department through permits, but the lack of a permit program does not mean that they should be exempted from the Ground Water Quality Standards.

N.J.A.C. 7:9-6.7(b)2

471. COMMENT: Applied Wastewater Technology questioned the basis for the exemption for discharges or activities that would result in ground water having a concentration of two mg/l nitrate (N-NO3) or less in Class I-PL classification, where those discharges or activities are otherwise consistent with the Class I-PL criteria (proposed N.J.A.C. 7:9.7(b)2). Applied Wastewater Technology asked where the compliance point for this limit would be measured and how the proposed Ground Water Quality Standards would apply if the background quality exceeds two mg/l for nitrate (N-NO3).

472. COMMENT: New Jersey Builders Association asked for an explanation of the two milligram exception in Class I-PL areas as follows: "Where does this concentration limit originate? Where is the compliance point for this limit? What happens if the background quality exceeds two milligrams per liter for nitrate?"

RESPONSE: The Pineland Protection Act of 1979 provides specific statutory preference for the maintenance of agriculture, especially agriculture involving production of crops that are native to the Pinelands Area including but not limited to cranberries and blueberries. The Act further enjoins all State agencies to conform to the Pinelands Comprehensive Management Plan, developed and promulgated by the Pinelands Commission. The intent of the proposed language in N.J.A.C. 7:9-6.7(b) was to provide that conformance. The language has been modified to clarify the Department's intent, and to limit exemptions to those specified by the Comprehensive Management Plan, not only for agriculture but for all types of discharges. In general, the Pinelands Commission's regulations (N.J.A.C. 7:50-6.81 et seq.) have been specifically cited.

473. COMMENT: Association of New Jersey Environmental Commissions recommends that it should be more clear that existing water quality should not be considered the Ground Water Quality Criteria for Class I-PL (Protection Areas) where past activities may have polluted ground water and that improvement of ground water quality be required in those areas.

474. COMMENT: NJ PIRG opposes the proposed ground water criteria for Class I-PL (Protection Area) since existing water quality in Class I-PL (Protection Area) varies with past activities. NJ PIRG said that the Department should require improvement in water quality where past activities have resulted in contamination.

475. COMMENT: Rutgers Environmental Law Clinic said that maintaining existing quality for the Pinelands Protection Area as called for in proposed N.J.A.C. 7:9-6.7(b) is not appropriate since there are a number of sites in the Protection Area which will pose a continuing threat to ground water, such as old landfills, Superfund sites, and underground storage tanks. Rutgers Environmental Law Clinic recommended that given the extraordinarily sensitive nature of the ground water in this region, and the fact that there is little if any hydrogeological distinction along the borders of the Preservation and Protection Areas, it is imperative that all efforts be made to return Protection Area waters to natural quality.

RESPONSE: The Department regrets the confusion caused by the wording of the first sentence ("existing water quality") which is different than the second sentence ("background water quality"). "Existing" should have read "background." With this clarification, it should be clear that the quality of existing contaminated sites is not granted an exemption from mitigation requirements. The intent of the Ground Water Quality Standards, as echoed by the proposed Cleanup Standards, is cleanup to background levels to the extent feasible. In the Preservation Area, natural quality is the standard.

N.J.A.C. 7:9-6.7(c)1

476. COMMENT: Chemical Industry Council/NJ recommends changing the wording "Specific Criteria . . ." to "Specific health based goals . . ." in N.J.A.C. 7:9-6.7(c)1.

477. COMMENT: Exxon Company recommended modifying N.J.A.C. 7:9-6.7(c)1 as follows: "Specific criteria . . ." be changed to "Specific health-based goals . . ." to reflect the procedures used in the derivation of the values.

RESPONSE: Not all of the criteria are health-based. Some are based upon organoleptic or human welfare concerns. Further, the values are ground water quality criteria, which should not be confused with "constituent standards" that reflect not only the criteria but also background levels and antidegradation policies. The ground water quality criteria are not goals, but rather are legal requirements with provisions for flexibility through the regulatory programs. The Department does not believe that a modification of this language is appropriate.

478. COMMENT: Applied Wastewater Technology said that the number of ground water constituents proposed as criteria in the proposed Ground Water Quality Standards is extremely large and broad in scope. Applied Wastewater Technology questioned how the Department is going to determine which parameters are to be tested for as part of an application for NJPDES-DWG.

479. COMMENT: Dupont-Chambers Works said that the expansion of compound specific water quality standards will significantly enlarge the domain of regulated activities in New Jersey. Dupont-Chambers Works indicated that ground water users are already protected by the federal Safe Drinking Water Act and State drinking water regulations, as well as numerous other New Jersey regulations and common law principles. Therefore, adding constituent standards does not advance the protection of ground water users; however, it will substantially reduce the Department's flexibility to arrive at appropriate remediation techniques and ground water management controls.

RESPONSE: The expansion of compound specific ground water quality standards does not enlarge the domain of regulated activities since any newly listed parameters were previously regulated as "pollutants" if they were discharged to ground water. For each permitted discharge or approved cleanup the Department through its applicable regulatory programs, will identify parameters of concern which are to be monitored. The expansion of listed water quality criteria does not equate with increased monitoring under a permit or Department-approved cleanup.

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480. COMMENT: CFM Environmental Services recommended that additional parameters be added to the list of ground water quality criteria including: sulfides, total organic carbon (TOC) and chlorine. TOC criteria is essential to prevent the ground water degradation by nonregulated, nonpriority pollutant organic substances.

RESPONSE: The odor threshold for sulfides is well below detectable limits via laboratory analysis. Therefore direct monitoring for sulfides in ground water is considered unnecessary. The Department has included standards for the general category of Synthetic Organic Chemicals which is a narrower category of organics than Total Organic Carbon but focuses on the organics most likely to be problematic in ground water. Chlorine has not historically been found to be a prevalent pollutant in ground water however it is a pollutant of concern in surface waters. The Department will therefore regulate chlorine (actually Chlorine Produced Oxidants) in ground water where it discharges to surface waters in accordance with the Surface Water Quality Standards, N.J.A.C. 7:9-4.

481. COMMENT: NAIOP-NJ Chapter said that many of the proposed ground water quality criteria are not only unachievable, but also inconsistent with levels developed under other regulatory programs. NAIOP-NJ Chapter added that this divergence significantly impacts the design and operation of treatment works since the Department will require that the treatment works must be designed, constructed and operated to meet the criteria, even when the ground water quality criteria are unachievable.

RESPONSE: The Department does not believe that discharge limits resulting from the Gound Water Quality Standards will result in unachievable standards for the discharge of waste water from water treatment plants. In fact, such limits are routinely met by numerous water treatment facilities and are not inconsistent with other regulatory programs.

482. COMMENT: Chemical Industry Council/NJ asked that additional language be added to the proposed Ground Water Quality Standards which specifies how the ground water standards will be updated as the toxicity data in the respective databases are updated.

483. COMMENT: Institute for Responsible Environmental Policy recommended that the proposed Ground Water Quality Standards be modified to ensure that health based criteria are derived from the best available toxicological information.

484. COMMENT: Dupont-Chambers Works applauded the Department's intent to incorporate a mechanism into these draft standards to allow for the adoption of new toxicological data on a regular basis. Dupont-Chambers Works recommended that this intent needs to be extended to new guidance and techniques as they become available to allow the standards to develop with the science of risk assessment.

485. COMMENT: Merck Manufacturing Division said that additional language should be included in the rule which specifies how the ground water standards will be updated as the toxicity data in the database are updated.

486. COMMENT: Waste Management of NA said that "NJDEPE should pay careful attention to the results of current NTP and NCTR experiments which will investigate the effects of caloric intake on cancer incidence and the effects of three vegetable oils on rodent carcinogenesis. Since it is quite possible that the entire toxicological database foundation of EPA's risk assessment approach since 1980 will be invalidated by the outcome of these experiments, NJDEPE should keep in close contact with EPA and other environmental protection agencies, and toxicologists to devise interim toxicological criteria if the NTP data are invalidated. In particular, careful consideration should be devoted to how existing toxicity data may be used, if at all, and whether conclusions already reached for specific chemicals require reevaluation."

487. COMMENT: CPS Chemical Company said that the IRIS search cited as a basis for EPA toxicological information is 1987, with "periodic updates through March 1990." CPS Chemical Company says that this indicates a temporal data gap of 20 months between the most recent IRIS search and the promulgation of the proposed standards. CPS Chemical Company said that while a certain time lag may occur due to the time needed to assemble documents, this time period is excessive.

RESPONSE: The toxicity factors based on IRIS have been updated during the response period, and are current through August 1992. The toxicity factors based on HEAST were similarly updated through the 1992 version. Criteria that have changed based on the recent update are being reproposed. The Department has made every effort to assure that the criteria adopted reflect the most up to date toxicological information and intends to update the criteria regularly. Regarding currently ongoing experiments which may suggest new interpretations of the studies which form the basis for the criteria, the Department is aware of current research investigations relating to many aspects of risk assessment, including chemical carcinogenesis, and does keep in contact with scientists at USEPA and other agencies to follow these developments. The Department will remain aware of the results of such studies and their implications for risk assessment policy in determining if changes in the criteria are warranted in the future.

488. COMMENT: GE Corporate Environmental Programs said that many of the specific proposed numeric standards for protection of Class II-A ground water are significantly more stringent than the Federal Safe Drinking Water Act MCLs and New Jersey MCLs for potable water. GE Corporate Environmental Programs said that the Department has not provided sufficient justification for its policy of regulating ambient water quality for potable and potentially potable uses at levels well below those that are considered protective of drinking water at the tap.

489. COMMENT: Mobil Oil Corporation recommends that the Department adopt the Federal EPA's human health based drinking water standards as the Specific Ground Water Quality Criteria.

490. COMMENT: New Jersey-American Water Company commented as follows: "The specific ground water quality criteria given in Table 1 should be conformed to the Safe Drinking Water Act requirements for potable water if a standard has been established under the Safe Drinking Water Act. A section of Table 1, in fact, does this. Microbiological criteria, radionuclides and turbidity are, in fact, treated this way. The prevailing Safe Drinking Water Act regulations are established as the criteria for these constituents. In addition, a mechanism should be adopted within the regulations under a general heading for Safe Drinking Water Act elements. This is necessary since the Federal Government has mandated USEPA to establish new Safe Drinking Water Act criteria on a pre-determined schedule. Some compounds contained in Table 1 may, in fact, be regulated under the Safe Drinking Water Act in the future. As a result, it is important to eliminate confusion and conflict in the regulations by favoring the Safe Drinking Water Act constituents as a criteria for ground water quality.

491. COMMENT: Ruetgers-Nease objected to New Jersey applying drinking water standards to determine **ground** water quality criteria and that the use of drinking water criteria to accomplish environmental remedies of ground water is excessive and unnecessarily costly. Instead, Ruetgers-Nease recommended that the criteria should consider the use of conventional drinking water treatment technologies to accomplish additional public health protection. Ruetgers-Nease explained that if conventional drinking water treatment technologies were to be considered in the formulation of the proposed criteria, these options could be implemented at the site of a public drinking water treatment facility or at the point of use. This treatment would efficiently remove many of the subject ground water criteria compounds, and also result in the remedy of the ground water source.

492. COMMENT: Schering Laboratories said that the use of drinking water standards in microbial and turbidity determinations should be removed because drinking water standards were meant to be applied to "end of tap", not at well heads or monitoring wells.

493. COMMENT: Porzio, Bromberg & Newman said that in general many of the specific proposed numeric standards are more stringent than existing federal or state standards and that no scientific basis was provided for the added degree of stringency. Porzio, Bromberg & Newman gave as example the lead criteria and said that it is inconsistent with the USEPA and its supporting studies.

494. COMMENT: Porzio, Bromberg & Newman said that the basis of the Department developing ground water cleanup standards that are more stringent than the Safe Drinking Water Act's maximum contaminant levels is unclear and unjustifiable based on current scientific knowledge.

RESPONSE: The State and Federal Safe Drinking Water Programs provide for the regulation of public water supply systems, not nonpublic systems such as wells that supply single residences (domestic wells). Domestic well users are responsible for the operation, monitoring and **conventional** treatment (where necessary, compromising treatment for nitrate, bacteria, iron, manganese, hardness) of their systems. Almost none have the sophisticated treatment necessary to remove hazardous substances. This generally accounts for the difference in lead standards. The Class II-A criteria and antidegradation policies provide protection for these ground water users. Further, the health-based criteria are derived in the same manner as health-based concentrations upon which Federal Maximum Contaminant Levels (MCLs) are based, but using the risk factor specified in **New Jersey's** Safe Drinking Water Act. The MCLs

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incorporate issues of laboratory analytical capability, which is addressed separately in N.J.A.C. 7:9-6.9 of the Ground Water Quality Standards.

495. COMMENT: Environ Corporation said regarding the ground water cleanup standards proposed in N.J.A.C. 7:26D-4.1: "... there are chemicals for which standards have been established under one set of rules, but not under the other (see Table 2). For example, the Water Technical Program's proposed rules list a standard of 0.002 ppb for 1,2-dibromo-3chloropropane (DBCP), while the Site Remediation Program does not list a numeric standard; conversely, a standard of 30 ppb for naphthalene appears in the SRP's proposed rules, whereas none is listed in the WTP's proposed rules. Presumably, since the same sources of toxicity values and essentially identical exposure formulas are used by the two sets of rules, one would expect that standards would be available under both programs for the same chemicals."

496. COMMENT: Chemical Industry Council/NJ found discrepancies between the values in Table 1 of the proposed Ground Water Quality Standards and the values given in Table 4-1 of the proposed Cleanup Standards specifically for Vinyl Chloride, Methylene Chloride, 1,4-dichlorobenzene and naphthalene. Chemical Industry Council/NJ found similar discrepancies exist in the tables listing the PQLs.

497. COMMENT: Merck Manufacturing Division said that a side by side comparison between the Table 1 of the Ground Water Quality Standards and Table 4-1 of the Cleanup Standards for Contaminated Sites show discrepancies which are likely attributed to differences in rounding of significant figures. Specifically Merck Manufacturing Division gave as example the following: vinyl chloride, methylene chloride, 1,4-dichlorobenzene and naphthalene. Merck Manufacturing Division said that this is a partial listing and complete detailed side by side comparisons have not been made.

498. COMMENT: Texas Eastern Gas Pipeline Co. acknowledged and supported the integration of the proposed Ground Water Quality Standards and Cleanup Standards in the regulatory language and program revisions but requested clarification on the rationale for differences between the Ground Water Quality Standards and Cleanup Standards for compounds such as PCBs and STEX.

RESPONSE: The Department intends to incorporate numerical criteria from the Ground Water Quality Standards into the Cleanup Standards by reference. Many of the apparent discrepancies arose from the fact that the numerical ground water cleanup standards are equal to the greater of the PQL and the ground water quality criterion for any given parameter.

499. COMMENT: OHM Corporation said regarding the ground water cleanup standards proposed in N.J.A.C. 7:26D-4, TABLE 4-1: "A brief review of the cleanup standards shows allowable levels of 0.02 mg/L for acrylonitrile (a B1 carcinogen), 0.001 mg/L for benzene (an A carcinogen), and 0.05 for benzidine (an A carcinogen). Based on the available cancer slope factors for these compounds, the associated risks are 10^{-6} for benzene but 3×10^{-4} for acrylonitrile and $>10^{-2}$ for benzidine. Why are these so different? Also, the EPA maximum contaminant level goal for xylene is 10 mg/L, what is the basis for the groundwater standard of 0.04 mg/L?"

RESPONSE: The proposed Cleanup Standards combined two concepts, the PQL and the health based ground water quality criterion, using whichever is greater as the numerical ground water cleanup standard. For parameters for which the numerical ground water cleanup standard is less than the PQL, such as those pointed out by the commenter, the risk level associated with such cleanup standards will vary widely. New Jersey health based standard for xylene differs from the USEPA because it is based on a different health endpoint (the affected organ, system, etc.) as was explained in the Basis and Background document for the Ground Water Quality Standards. Reference: New Jersey Drinking Water Quality Institute. Maximum Contaminant Level Recommendations for Hazardous Contaminants in Drinking Water, March 26, 1987.

500. COMMENT: Southeast Morris County MUA said that since the MCL for iron and manganese is exceeded in many water supply aquifers treatment is often necessary to reduce the levels of these constituents. Southeast Morris County MUA is concerned that the proposed Ground Water Quality Standards would impose strict limits on these treatment residuals which are often returned to ground water by on-site disposal systems. Southeast Morris County MUA recommended that an exception be written into the standards for water suppliers using the ground water as its source which would apply to constituents for which the water supply is being treated. In addition Southeast Morris County MUA recommended that no NJPDES permit be required for the water supplier to discharge constituents back to the ground water which had been removed from the ground water via treatment.

501. COMMENT: CFM Environmental Services commented that the proposed Ground Water Quality Standards did not consider the effect of the ground itself on the quality of ground water and the fact the water is in equilibrium with the surface of millions of tons of minerals and other geological materials.

502. COMMENT: CFM Environmental Services said that it is unnecessary to include some of the secondary drinking water criteria in the proposed Ground Water Quality Standards. In particular the commentor felt that adopting ground water quality criteria for aluminum, manganese and iron in the proposed Ground Water Quality Standards is pointless since these constituents are plentiful in the geologic materials that form aquifers.

503. COMMENT: Elizabethtown Water Company said the specific criteria for ground water quality listed in Table 1 for iron and manganese are below the levels of natural occurrence so that discharges of source water will violate the limits of specific criteria. Elizabethtown Water Company suggested that the Department may need to re-evaluate the existing ground water quality of these constituents for Class II-A or reconsider the method for derivation of specific criteria for iron, manganese and other naturally occurring constituents. Elizabethtown Water Company asked that a classification exception be granted to water purveyors engaged in removing natural constituents from ground water and discharging treatment residue to ground waters via infiltration/percolation lagoons.

504. COMMENT: National Agricultural Chemical Association recommended that the Department determine the natural range of lead and other inorganics in the various geological regions of New Jersey and use the upper limit of those ranges as the ground water quality standard for the various regions.

RESPONSE: The Ground Water Quality Standards adopted in 1981 included as "secondary criteria" substances that were regulated as "secondary MCLs" under the Safe Drinking Water Program, some of which are naturally occurring. Accordingly the Department decided for the new Ground Water Quality Standards that protection of ground water for potable use required that these substances be regulated in the same manner as other constituents.

The Department fully supports the beneficial use of ground water for potable purposes, which may require treatment of water for some natural contaminants and the discharge of treated effluent. The Department also recognizes that the geologic and soils matrix may have a major effect on the discharged constituents, bringing the ground water concentrations back to an equilibrium over time or distance. However, changes in other constituents or parameters of the water (for example, pH, Dissolved Oxygen) from background water quality may slow the rate or distance at which the discharge reaches equilibrium with the geologic matrix. Such changes may also alter the discharged constituents from a less harmful to a more harmful state. Also, concentrations of the discharged constituents may be significantly higher than the background water quality, causing concern for nearby (but probably not for distant) ground water users. Finally, the discharge method (for example, infiltration/percolation lagoons) may result in precipitation of the discharged constituents prior to infiltration.

A discharge of raw water or effluent from one ground water unit (for example, Class III-B) into another unit (for example, Class II-A or Class I) could indeed be a serious issue resulting in a contamination problem. A NJPDES permit action (that is, permit, general permit or permit by rule) may be appropriate. On the other hand, the withdrawal of water from one classification area, followed by a discharge of water treatment effluent into the same classification, may also be a problem depending upon the proximity of adjacent receptors and the ability of the ground water unit to attenuate the added concentration of the constituent, taking into account any modifications to pH, Dissolved Oxygen or other constituents. It is not appropriate for one ground water user to harm another even if the constituent involved is primarily "aesthetic" in nature (for example, responsible for taste or color problems).

With regard to constituents that are naturally occurring in ground water, N.J.A.C. 7:9-6.9 of Ground Water Quality Standards provides for a criteria exception in cases where the background water quality for that constituent exceeds the ground water quality criterion. The Department agrees that some additional flexibility may be appropriate for these naturally occurring substances and is considering proposing an amendment to the antidegradation policy in N.J.A.C. 7:9-6.8 of the Ground Water Quality Standards to allow for the degradation of ground water

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quality to the criteria, for these substances only, in Class II-A. The justification is that the substances are expected to reach equilibrium relatively quickly, so that background water quality will be reestablished close to the discharge site. The regulatory programs also have flexibility for dealing with this circumstance through the Classification Exception Area provisions of the Ground Water Quality Standards.

The Department's NJPDES program is reconsidering the extent to which discharges from water treatment operations may be subject to NJPDES permit actions, including the possibility of permits by rule for certain classes of discharges. The requirement for NJPDES permits will be addressed in a later modification of the NJPDES rules (N.J.A.C. 7:14A et seq.). Until such time as they are specifically addressed, the New Jersey Water Pollution Control Act requires a permit for their operations.

The Department believes that the existing criteria exceptions and the Classification Exception Area procedures provide sufficient flexibility to the regulatory programs and regulated parties to protect ground water while recognizing the special circumstances of naturally occurring constituents.

505. COMMENT: CFM Environmental Services said that adoption of some of the Secondary Drinking Water standards as Ground Water Quality Criteria is neither beneficial nor practical and could limit the ability of the discharger to remove other more toxic compounds and/or increase treatment costs unnecessarily. CFM Environmental Services provided the following comments on specific secondary standards:

Taste—eliminate as a criterion because it is subjective and hazardous to evaluate;

Color—establish a less restrictive criteria because of the ground's capacity to absorb and remove color, perhaps 30 color units. A color criteria is needed;

Aluminum—Raise the criteria to about two mg/l of soluble aluminum. Such a level would allow aluminum sals to be more easily used for treatment to remove hazardous substances;

Iron—Raise the criteria to one mg/l of soluble Fe which would allow ferric salts to more easily be used as coagulants to remove hazardous substances;

Manganese—Raise the criteria to 0.1 mg/l of soluble manganese;

Corrosivity—Delete this criterion. The pH criteria and other criteria will indirectly control corrosivity enough for ground water discharges;

Sulfate—Wastewater coagulant levels such as for alum ($A1_2(SO_4)_3$) can be in the hundreds of parts per million or higher for a difficult waste. Sources of non-sulfate salt coagulants are limited, more expensive, more hazardous to handle and of more variant quality; and

Total Dissolved Solids—The criteria should be raised to 750 mg/l or 1000 mg/l. 500 mg/l of TDS is not compatible with the reality of meeting the other criteria. TDS removal is very expensive and usually does not involve the removal of harmful substances.

506. COMMENT: Kerby, Cooper, English questioned some of the parameters listed in Table 1, as follows:

pH 6.5-8.5: Absolutely neutral, distilled water will usually have a pH or 7.0, so that the proposed regulation allows only 0.5 pH units leeway on the acid side, while allowing 1.5 pH units on the basic side. Moreover, the area near neutrality is the steepest part of the pH curve, so that minute quantities of acidic ions such as chlorides or sulfates in the soil could drop the ground water pH below 6.5. Acid rain could do the same thing. We believe the pH range should be 6.0-8.5.

Taste: "None noticeable." This is totally subjective and has no place in the regulations. Clean potable waters vary in taste from place to place and laboratory distilled water has a characteristic flat taste.

Hardness: 50 to 250 mg/L as $CaCO_3$. Rainwater would fall on the low end. There should be no lower limit at all, but merely an upper limit of 250 mg/L.

507. COMMENT: Ciba-Geigy said that parameters which are secondary standards should be defined with a footnote next to each parameter in Table I, as a numerical goal for Class II-A waters, but the concentration will be allowed to vary from background levels.

RESPONSE: The Ground Water Quality Standards function to protect the designated uses of ground water in each of the classifications. The usability of ground water is directly related to its quality as measured by all its constituents including parameters identified as secondary standards under the Safe Drinking Water Act. It is therefore appropriate that the Ground Water Quality Standards include all parameters affecting the potability of ground water in Class II-A ground water classification areas. The general question concerning criteria for naturally occurring substances was addressed in the previous response. This response is directed toward the other organoleptic criteria, such as taste and odor, and toward the specific criteria recommended by the commentors.

The Department concludes that the taste, odor and appearance of ground water are critical factors in the assessment of "potability." Domestic, nonpublic and small public water supplies, which supply a significant percentage of New Jersey's population, often have no or minimal treatment. Regardless of the health implications, people will not drink water with noxious odor, taste or aesthetic effects. Therefore, these criteria are retained in the Ground Water Quality Standards. The Department recognizes that some of the criteria may be considered subjective. However, drinking water analyses regularly include consideration of these criteria, for which standard methods are available that provide analytical rigor.

Regarding the specific comments on criteria levels, the Department has decided that the existing methods for modifications from the criteria in N.J.A.C. 7:9-6.9 negate the need for changes to the criteria for taste, color, iron, manganese, sulfate and total dissolved solids. The Department agrees that Taste should be clarified to "none objectionable" from "none noticeable" because water does have characteristic tastes even in the natural state. The term "none objectionable" imparts the original intent of the criterion. The Department addresses comments on aluminum in the following response. The criterion for pH has been 6.5 to 8.5, as proposed, since 1981 and is not known to have caused any significant regulatory problems. The Department agrees to delete the criterion for corrosivity because other constituent standards will provide sufficient control of the causes for corrosive behavior, duplicating the effects of the criterion. Finally, the Department agrees to modify the criterion for hardness by eliminating the low end of the range. The criterion will be 250 mg/l, equivalent to the upper end of the proposed range. The Department agrees with the justification stated by the commenter, regarding the lack of impacts at the lower end, which fits the original purpose of the criterion.

508. COMMENT: GE Corporate Environmental Programs said that aesthetic requirements do not serve to further the goal of protecting human health and the environment. GE Corporate Environmental Programs recommended that they should not be considered when establishing criteria as proposed at N.J.A.C. 7:9-6.7(c)2 because of their subjective nature.

509. COMMENT: PPG Industries recommended that those ground water quality criteria based upon aesthetics rather than health and environmental protection should be deleted or designated as non-mandatory guidelines.

510. COMMENT: Porzio, Bromberg & Newman objected to the establishment of ground water standards based on odor, taste, or "offensive appearance." Porzio, Bromberg & Newman said that such ground water levels are based on an inherently subjective notion of aesthetics rather than on public health factors derived from good science.

511. COMMENT: Chemical Land Holdings said that the inclusion of constituents with non-numerical criteria in Table 1, such as corrosivity, oil and grease and petroleum hydrocarbons, and taste will potentially lead to significant confusion and frustration.

512. COMMENT: CFM Environmental Services said that is it not reasonable to include taste as a ground water quality criteria since it is not quantifiable or applicable.

513. COMMENT: Institute for Responsible Environmental Policy said that the inclusion of standards for oil and grease and total petroleum hydrocarbons is arbitrary since these standards are not health based.

514. COMMENT: Dupont-Chambers Works said that aesthetic effects on water quality should be considered on a more flexible basis than those constituents that can potentially impact human health. Dupont-Chambers Works said that criterion for taste and the non-noticeable criterion for petroleum hydrocarbons were of particular concern. Dupont-Chambers Works recommended that the Department delete such subjective criteria from the proposed Ground Water Quality Standards.

515. COMMENT: Ruetgers-Nease requested that references to organoleptic criteria be removed from the regulation saying that these are not health based standards and are subjectively defined.

516. COMMENT: Chevron USA said that some of the criteria such as pH, oil and grease, and petroleum hydrocarbons are not health based and should not be included in Table 1. Chevron USA said that these are for the most part indicator compounds and that the Department is proposing adequate compound specific standards so that there is no need for such indicator parameters.

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RESPONSE: Ground water quality criteria for Class II are designed to protect ground water for potable use. Organoleptic criteria have an impact on the potability of drinking water. The Department has used a "sheen test" for oil and grease and petroleum hydrocarbons for years, based upon the 1981 Ground Water Quality Standards. Such substances may be noticeable at concentrations that are below laboratory analytical levels, but clearly objectionable in ground water used for drinking water when a sheen or odor exists. Therefore, criteria for organoleptic and welfare considerations are retained in the rules to be adopted.

517. COMMENT: Browning-Ferris Industries said that requiring monitoring for total metals would result in costly, time consuming and unnecessary monitoring.

518. COMMENT: Chemical Land Holdings said in regard to the Class II-A ground water quality criteria in Table 1 that the proposed criteria for all non-volatile constituents, including metals and other inorganic parameters, should be based on total recoverable constituent after filtration, not total constituent in the ground water sample.

519. COMMENT: Ciba-Geigy said the Table I should take into consideration "total versus dissolved" metals in ground water. Ciba-Geigy said that a potable well yields mostly dissolved metals and that the total metals measurement may not always be appropriate and is frequently too conservative.

520. COMMENT: ENSR Consulting and Engineering said that large differences in constituent concentration can be observed between samples that are filtered and those that are not (Puls et al., 1989) and that the mobility and bioavailability of constituents associated with suspended solids is likely to be site-specific and clearly has an important impact on the relevance of the ground water criteria. ENSR Consulting and Engineering recommended that the proposed Ground Water Quality Standards should provide specific protocols for sample collection and preparation so that the comparison to standards is consistent and relevant. In the absence of this guidance, compliance monitoring will be subject to undue variability and may result in inappropriate conclusions regarding the toxicological impact of ground water contamination.

521. COMMENT: Ruetgers-Nease requested that the Department supply guidance for the determination of contaminant levels in ground water to answer such questions as: As samples are taken, should suspended sediments be included in the analysis? Should sediments be filtered? Are ground water contaminant concentrations considered as the highest level reported or the average for a given area? How many samples are required?

RESPONSE: The Department agrees with the commenters on the importance of consistency in sampling and analytical protocol. For sample collection, the commenter should consult the New Jersey Department of Environmental Protection and Energy's Field Procedures Manual (1992). Analytical methodology and other sampling requirements are listed in 40 CFR Parts 141 and 142, particularly under sections 141.23, and 141.89.

The Department agrees that the requirements for the use of the "total metals" needs to be clarified. To clarify requirements for metals analyses the Department has incorporated by footnote in Table 1 of the Ground Water Quality Standards a definition of "total metals" based on the USEPA's National Primary Drinking Water Regulations (USEPA. National Primary Drinking Water Regulations; Synthetic Organic Chemicals and Inorganic Chemicals; Final Rule; VOL. 57, NO. 138, Friday, July 17, 1992 pp. 31799, 31838, 31847). The technique for total metals applies to properly preserved unfiltered samples. Non-turbid samples (<1 NTU) which are properly preserved may be analyzed without digestion for total metals. Under these circumstances the "total metals" result is essentially equal to the "dissolved metals", since the concentration of the suspended metals would be negligible. When digestion is required, the total recoverable technique as defined in the method for a given parameter must be used. For details the commentor should refer to the Federal Register citations referenced above.

522. COMMENT: New Jersey-American Water Company commented as follows: "The specific ground water quality criteria listed in Table 1 may, in fact, limit the ability of water companies to use aquifer storage. Specifically, some consideration should be given to the establishment of criteria for corrosivity, pH and hardness, other than those criteria listed. In the case of pH and corrosivity, some Aquifer Storage and Recovery (ASR) projects may require the injection of extremely low pH and corrosive water at the outset of the project. The standard for hardness listed in Table 1 sets a lower bound which is, in fact, lower than the ambient water quality in most aquifers in the state. At a minimum, the Department should lower the lower bound of the hardness standard to ambient conditions. Specific exceptions concerning corrosivity and pH should be provided where approved ASR projects are are under way."

RESPONSE: The lower bound of the hardness criterion has been eliminated because it provides no protection to the designated uses of Class II ground water. The Department is aware of the current and potential benefits of ASR, and that in some situations the aquifer must be treated to allow proper operation. The Department generally supports application of this technology within the constraints of existing law. Exceptions to immediate application of the Ground Water Quality Standards are possible using the Classification Exception Area process, which requires that natural background levels exceed the criteria, or that an NJPDES permit action or Cleanup Standards approval be given by the Department. If the actions described by the commenter are approved in an NJPDES permit action (permit, general permit or permit by rule), a Classification Exception Area would apply to the affected area until the permit action lapses. At that time, the discharger would need to show that the ground water system has either regained equilibrium, and that the ground water will otherwise meet the Ground Water Quality Standards. The Department is considering how this issue will be addressed within future amendments to the NJPDES rules (N.J.A.C. 7:14A et seq.). The Water Supply Element is working with the NJPDES program in developing workable regulations and permit conditions for ASR.

523. COMMENT: Waste Management of NA recommended that the Department introduce quantitative and qualitative uncertainty analysis in its decisions pertaining to the development of ground water quality standards for sites.

RESPONSE: It is recognized that uncertainty exists in all risk assessments, including the risk assessments used to develop the groundwater quality criteria. The methodologies, toxicity factors, and assumptions used are the same as those utilized to develop drinking water criteria by both the Department and USEPA. The exposure assumptions and toxicity factors utilized are likely to overestimate, rather than underestimate, risk, in the interest of protection of public health. The Department has decided that uniform risk assessment methodologies are required because an assumption is made that future uses of ground water should not be obviated by current or past discharges to the extent practicable.

524. COMMENT: Waste Management of NA said that the proposed Ground Waste Quality Standards do not identify a method to be used for treating nondetects of chemicals in environmental media and that this should be addressed since the method of treating nondetects can greatly influence calculated statistical parameters on the concentration, exposure, and risk distributions. Waste Management of NA suggests that a statistically-based approach or approaches for the computation of statistical parameters be incorporated into the Department's final ground water quality standards rule.

RESPONSE: At present each of the applicable regulatory programs have program specific statistical procedures, including methods for handling nondetects. The Department, however, is presently developing Department wide uniform statistical procedures.

525. COMMENT: PPG Industries said that NJDEPE cites a number of references which are not available in the public domain such as: Dourson, 1990; NJDWQI 1987a; and NJDWQI 1987b. PPG Industries recommends that all references be made immediately and fully available for public comment.

RESPONSE: The reference by Dourson, 1990 was cited in connection with the development of toxicity factors for nitrate and nitrite, because IRIS information on these two chemicals was not available at the time of developing the proposal. However, the oral RfD assessments for nitrate and nitrite became available in IRIS on October 1 and August 1, 1991, respectively, before the publication of the proposed Ground Water Quality Standards.

The two references prepared by the New Jersey Drinking Water Quality Institute (NJDWQI) have been available at the Bureau of Safe Drinking Water of this Department since their publication in March 1987. NJDWQI 1987 a and b are the Basis and Background documents for the regulations adopted pursuant to the A-280 amendments to the Safe Drinking Water Act. They are available from the Bureau of Safe Drinking Water, NJDEPE, at (609) 292-5550. These references were available at the time that the Ground Water Quality Standards were proposed.

526. COMMENT: Exxon Company said that there are deviations in Table 1 between the methodology proposed in the rule and the value shown in the table. For example, Chemical Abstracts System Registry

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Number (CASRN) 7440-47-3, specified in Tables 1, is for Hexavalent Chromium. The values given for specific criteria and Practical Quantification Level are in terms of Total Chromium.

RESPONSE: The Chemical Abstracts System Registry Number 7440-47-3 is for chromium not for hexavalent chromium and was incorrectly indicated as such in a footnote in Table I (now Table 1). This has been corrected in the final adoption. The standard is set for total chromium based on the toxicology of hexavalent chromium but regulated as total chromium because the two valence states are in dynamic equilibrium with the degree of oxidation depending on factors such as pH, dissolved oxygen, or the presence of reducing agents. Because of the potential for Cr III to be oxidized to Cr IV in the drinking water the USEPA has set its standard for total chromium (Federal Register: USEPA. National Primary Drinking Water Regulations; Final Rule Vol. 56, No. 20 Wednesday January 30, 1991. pp. 3536, 3537).

527. COMMENT: Chemical Industry Council/NJ said that there are several errors in Table 1 and that these errors are computational, rounding or use of a slope factor or reference dose that differs from the Technical Support Document and the EPA. Chemical Industry Council/NJ said that examples of such are: Acetone, 1,4-dicholorobenzene, Methylene Chloride, Naphthalene and Vinyl Chloride which have different criteria in the Ground Water Standards, as compared to either the Cleanup Standards or the Technical Support Document. In addition Chemical Industry Council/NJ said that the toxicity data that differs from the Technical Support Document or the EPA IRIS database for various compounds include: Benzene, Carbon Tetrachloride, Chlorobenzene, Dichloroethene, 1,2-Dichloroethane, and Trichloroethene among others.

528. COMMENT: Merck Manufacturing Division said that there appear to be several errors in Table 1 and that the errors are computational, rounding or use of a slope factor or reference dose that differs from the Cleanup Standard for Contaminated Sites, the Technical Support Document and USEPA. Merck Manufacturing Division presents some examples as follows: Acetone, 1,4-dichlorobenzene, methylene chloride, naphthalene and vinyl chloride which have different criteria in the Ground Water Standards, as compared to either the Cleanup Standards or the Technical Support Document. The following compounds use toxicity data that differs from the Technical Support Document or EPA IRIS data base; Benzene, carbon tetrachloride, chlorobenzene, 1,1-dichloroethene, 1,2-dichloroethane, methylene chloride, methyl ethyl ketone, xylene, trichloroethene, carcinogenic PAHs, di-N-octyl phthalate, 1,2,4-trichlorobenzene, PCBs, chlordane and silver.

529. COMMENT: Chevron USA said that some of the values in the tables were not derived in accordance with the procedures described in the proposed rule. Where there is a deviation from the derivation process provided in the rule, Chevron USA recommended that the deviation and the reason for the deviation should be documented.

RESPONSE: The values in the tables are derived from a number of sources which was explained in the Basis and Background and N.J.A.C. 7:9-6.7 of the Ground Water Quality Standards. The A-280 toxicity factors are given the first priority, because they have been developed and promulgated as health-based drinking water criteria by New Jersey. In some cases therefore the New Jersey criteria differ from those derived by USEPA. The next priority for a source of toxicity factors is IRIS, which represents consensus between groups within USEPA. HEAST is the third priority which represents a final risk assessment of one group within USEPA, but not necessarily consensus. Use of this hierarchy of sources explains some of the deviations pointed out by the commenters. The toxicology information used to calculate the adopted criteria has been checked against IRIS data from August of 1992 and the HEAST for FY 1992. Thorough checking of the adopted criteria indicates there are no calculation errors or errors based on misapplication of toxicology information. Criteria which have changed significantly based on the updated IRIS and HEAST data have been left out of the adopted standards and are being reproposed.

530. COMMENT: Environ Corporation said regarding the ground water cleanup standards proposed in N.J.A.C. 7:26D-4: "Compared with the proposed Ground Water Quality Standards the difference in the tabular presentation of the respective standards under both rules does make it confusing if direct comparisons of the standards are attempted by relying strictly on the Ground Water Quality Standard Table 1 and the cleanup standards Table 4-1."

531. COMMENT: Chevron USA said that Table 1 and 3 listing Ground Water Quality Criteria and PQLs would be much clearer if the information were combined into one table. Chevron USA recommended that a Table 4 should be provided which integrates Tables 1 and 3 and lists the actual ground water quality standard.

RESPONSE: The Department agrees that provision of a single table that lists the criteria and PQLs side by side would be helpful in understanding the application of N.J.A.C. 7:9-6.9. However, it should be noted that the higher of the criterion or PQL is not the "constituent standard." The constituent standard is the criterion (N.J.A.C. 7:9-6.7) as modified by background water quality policy (N.J.A.C. 7:9-6.9) and anti-degradation policy (N.J.A.C. 7:9-6.8), for any particular classification (N.J.A.C. 7:9-6.5). The PQL is a numerical concentration value below which an analytical result must be considered qualitative, rather than quantitative. If a constituent standard is below the PQL value, any analytical result below the PQL will be considered equivalent to the constituent standard. The Department has added a column showing the concentration that is the higher of the PQL or criterion which it intends to incorporate by reference in the Cleanup Standards.

532. COMMENT: CFM Environmental Services asked whether the proposed standard for aluminum refers to dissolved or total since the proposed method of analysis, 200.7, can be conducted before or after filtration to determine total aluminum or dissolved aluminum, respectively.

533. COMMENT: CFM Environmental Services asked what are the toxicity, organoleptic or welfare concerns of each of the possible species of aluminum: colloidal aluminum hydroxide, colloidal clays or other naturally occurring aluminum containing soil particles, soluble aluminum hydroxide, soluble trivalent aluminum ions and hydrolyzed aluminum ions. In addition CFM Environmental Services asked which species mentioned above is the DEPE most concerned about with regard to toxicity, organoleptic or welfare effects and why.

534. COMMENT: CFM Environmental Services asked what are the background ground levels of aluminum in New Jersey's ground waters and are these values for total or dissolved aluminum.

535. COMMENT: CFM Environmental Services said that aluminum is a constituent of foods, cosmetic products and medicines, especially some antacids and antiperspirants. How can these products be found safe for human contact or ingestions while the proposed Ground Water Quality Standards find it necessary to require a criteria of 0.05 to 0.2 mg/L.

536. COMMENT: CFM Environmental Services asked whether or not there is any evidence that introducing aluminum in ground water will significantly affect the equilibrium which is reached naturally between aluminum in ground water and aluminum in the earth's crust.

537. COMMENT: New Jersey Health Products council asked why is the criteria for aluminum a range and is the criteria greater than 50.

RESPONSE: The proposed standard for aluminum refers to total metals. A footnote has been added to Table 1 to clarify the definition of "total metals." Specifically, for non-turbid samples (<1 NTU) having been properly preserved (conc HNO3 to pH <2), digestion is not required. Thus, the "total metals" result is equal to that from "dissolved metals", as "suspended metals" concentration would be negligible. For other samples (NTU >1), digestion using the total recoverable technique must be used and the result can be reported as "total metals" (Federal Register: USEPA. National Primary Drinking Water Regulations; Synthetic Organic Chemicals and Inorganic Chemicals; Final Rule; Vol. 57, No. 138, Friday, July 17, 1992. pp. 31799, 31838, 31847).

The range of 0.05 to 0.2 mg/L for aluminum originated with the USEPA Office of Drinking Water which promulgated this range as Secondary Maximum Contaminant Level (SMCL) for aluminum because of concern over discoloration and turbidity (Federal Register: USEPA. National Primary Drinking Water Regulations—Synthetic Organic Chemicals and Inorganic Chemicals; Monitoring for Unregulated Contaminants; National Primary Water Regulations Implementation; National Secondary Drinking Water Regulations, Final Rule; Vol. 56, No. 20, Wednesday, January 30, 1991. pp. 3573, 3597). Although aluminum has been implicated in connection with senile dementia and dialysis encephalopathy, aluminum is regulated in these Ground Water Quality Standards for organoleptic or welfare concerns.

The chemistry of aluminum in water is complex. It is amphoteric. At pH near neutral, aluminum can exist as monomeric, dimeric, and polymeric hydroxides and as complexes with humic acids and forms soluble complexes with ions such as chloride and sulfate. The Department's interest in aluminum is not in any one distinct species.

The background concentration of aluminum varies. Whether the reported levels represent total or dissolved aluminum depends on turbidity (see discussions above). The commenter should note that the ground

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water constituent standards may be modified in accordance with N.J.A.C. 7:9-6.9 of the Ground Water Quality Standards when the background water quality exceeds these levels (N.J.A.C. 7:9-6.9, constituent standard modifications and practical quantification levels, also Basis and Background for the Ground Water Quality Standards, N.J.A.C. 7:9-6, November 14, 1991, p. 27).

The Department agrees that there is no need for the criterion to be expressed as a range. The concern rather is with higher concentrations. The criterion has been modified accordingly.

538. COMMENT: Waste Management of NA said that the proposed ground water quality standard for arsenic of 0.02 ug/L appears to demonstrate a failure to keep current with the toxicological literature, in particular a recent report on ingested arsenic by the Drinking Water Subcommittee of the USEPA's Science Advisory Board. Waste Management of NA said that the report concludes that daily ingestion of 200 to 250 micrograms of arsenic probably will not cause skin cancer in humans, the most likely form of cancer that may be induced by ingested arsenic (EPA/SAB, 1989f) and that humans detoxify low levels of ingested arsenic. Waste Management of NA concluded that this information has profound implications for the estimation of human health risk.

539. COMMENT: Chevron USA said that the Class II-A ground water quality criterion for arsenic (0.02 ug/L) could be modified upwards by an order of magnitude based on information in IRIS.

RESPONSE: The oral unit risk factor in IRIS of 5.5×10^{-5}/ug/L is the best available information and was used as the basis for the criteria for arsenic.

540. COMMENT: GE Corporate Environmental Programs said that in proposed N.J.A.C. 7:9-6, Table 1, 24 N.J.R. 192-193 (January 21, 1992) lists Trichloroethylene as CASN 79-01-6, but it is incorrectly listed as "trichloroethane" in the New Jersey Register, Table 4-1, p. 390.

RESPONSE: This typographical error has been corrected in the Table 1 of the Ground Water Quality Standards. The Department intends to incorporate numerical criteria from Table 1 of the Ground Water Quality Standards into the proposed Cleanup Standards on adoption.

541. COMMENT: Merck Manufacturing Division said in regard to proposed N.J.A.C. 7:9-6.7(c)1—Table 1, the ground water quality criteria in Class II-A for benzene of 0.2 ppb is unreasonable since the Federal drinking water is five ppb.

542. COMMENT: New Jersey Petroleum Council that the ground water quality criteria in Class II-A for benzene of 0.2 ppb is unreasonable since the Federal drinking water standard is five ppb.

543. COMMENT: Chevron USA recommended use of the current USEPA drinking water standard of five ug/L for benzene.

RESPONSE: The Department does not use the current Federal drinking water standard as the ground water quality criterion because the two regulatory levels reflect different concerns. The ground water quality criteria are health-based criteria, while the Federal drinking water standards (MCLs) were based on treatability, cost, and analytical detectability, in addition to toxicity. The criterion noted is based on health risks alone.

544. COMMENT: Waste Management of NA said that USEPA promulgated a final MCL for chlorobenzene of 100 ug/L on January 30, 1991. It is unclear what technical basis could support the Department's 20-fold lower proposed value for this compound of five ug/L.

545. COMMENT: CPS Chemical Company said that the Department did not consider the most current information available in the toxicity information for chlorobenzene in deriving the water quality standard for this parameter. CPS Chemical Company said that chlorobenzene has been downgraded to Class D and that this information has been available on IRIS for over a year and was reported in the Federal Register in 1989 (FR 54997:22087). CPS Chemical Company said that using this current information would result in raising the water quality standard from four ug/l to 50 ug/l.

546. COMMENT: CPS Chemical Company said that the USEPA has promulgated and MCL of 100 ug/l for chlorobenzene (Fed. Reg. 56(20), 1991). CPS Chemical Company said that the Department has not specifically described the basis for differences with the USEPA in the "Support Document" for chlorobenzene provided by the NJDWQI.

RESPONSE: The toxicity factor for chlorobenzene is based on the New Jersey Health-based Maximum Contaminant Level which forms the basis for the New Jersey Maximum Contaminant Level for drinking water. The Department is aware that the USEPA MCL and the Reference Dose upon which it is based differ from that used by New Jersey. The New Jersey Reference Dose for chlorobenzene is 6.4×10^{-4} mg/kg/day while the USEPA Reference dose in IRIS is 2×10^{-2} mg/kg/day. Both Reference Doses are based on the same toxicological study in dogs (Monsanto, 1977). The 30 fold difference between the two Reference Doses results from two differences in application of uncertainty factors: First, New Jersey included an additional modifying factor of three because of the small number of experimental animals used in the study. The incorporation of such a factor, when justified by scientific considerations, is recommended by USEPA (1986). Second, New Jersey classifies chlorobenzene as a possible human carcinogen (Group C) while USEPA classifies it as Group D (inadequate evidence of carcinogenicity), and therefore NJDEPE applies an additional uncertainty factor of 10 to account for possible carcinogenicity. New Jersey's classification in Group D is based on application of USEPA guidance for interpretation of liver lesions in the rat (USEPA, 1986) and is based on an increased incidence of neoplastic nodules in rats exposed chronically to chlorobenzene (NTP, 1985). New Jersey Drinking Water Quality Institute is currently reviewing the chlorobenzene risk assessment as part of the triennial review process for the A-280 drinking water contaminants.

References:

Monsanto Company (1977). 13-Week oral administration—dogs, monochlorobenzene. USEPA. OPTS. Washington, DC. TSCA sec. 8(e). Submission 8 DHQ-0778-0212(2).

NTP (1985). National Toxicology Program. Toxicology and carcinogenesis studies of chlorobenzene in F344/N rats and B6C3F1 mice (gavage studies). NTP Technical Report Series No. 261.

USEPA (1986). Proliferative hepatocellular lesions of the rat: review and future use in risk assessment. Risk Assessment Forum, USEPA, Washington, D.C.

547. COMMENT: PPG Industries recommended that NJDEPE provide data or an evidential citation to support the use of the 70% relative source contribution of chromium and explain that use thoroughly or remove that factor from further consideration.

RESPONSE: For relative source contribution (RSC) for chromium, the commenter should refer to the sections on chromium in the proposed and final rules of National Primary Drinking Water Regulations (Federal Register: USEPA. National Primary Drinking Water Regulations; Synthetic Organic Chemicals, Inorganic Chemicals and Microorganisms; Proposed Rule; Vol. 50, No. 219, Wednesday, November 13, 1985. p.46966. Also, National Primary and Secondary Drinking Water Regulations; Proposed Rule; Vol. 54, No. 97, Monday, May 22, 1989. p.22075. National Primary Drinking Water Regulations; Final Rule; Vol. 56, No. 20, Wednesday, January 30, 1991. p.3536). The relative source contribution represents the drinking water contribution relative to the total exposure to the contaminant via air and food in addition to drinking water and is expressed as a percentage. This percentage drinking water contribution is used to calculate the Maximum Contaminant Level Goal (MCLG) from a Drinking Water Equivalent Level (DWEL), that is,

MCLG = (DWEL) * (% Drinking Water Contribution),

where, DWEL = oral RfD * body weight/daily water ingestion (* represents the multiplication symbol).

The use of relative source contribution in deriving the ground water quality criterion is shown in the section on Derivation of Human Health-Based Criteria in the Basis and Background of the proposed Ground Water Quality Standards. From an equation modified after the above equations, the ground water quality criterion can be derived. Thus,

Criterion = oral RfD*body weight*RSC/daily water ingestion.

In the case of chromium, using data listed in Table 1 for chromium in the Basis and Background document,

Criterion = 0.0048 (mg/kg/day)*70kg*70%/2L/day
= 0.1 mg/L or 100 ug/L.

It is prudent to allow for the contingency that might occur due to exposure via air, food and other sources. The factor of relative source contribution ensures that the criterion will be low enough to provide adequate protection.

548. COMMENT: USEPA said that although a Cleanup Standard and Federal MCL have been developed for Lindane, no Ground Water Quality Standard is given. USEPA recommended that a Ground Water Quality Standard be developed for Lindane.

RESPONSE: Lindane was listed in Table I (now Table 1) of the Ground Water Quality Standards Regulations under gamma-BHC (gamma-HCH/Lindane). The Department regrets any confusion regarding the constituent name.

549. COMMENT: Ruetgers-Nease said that since mirex has low water solubility, high sorption coefficient and is unlikely to migrate in ground

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water, mirex should be deleted from the ground water quality criteria list.

550. COMMENT: Ruetgers-Nease said that because of its environmental transport patterns and the absence of any but highly unusual sources of mirex in the ground waters of New Jersey, a 20 percent factor for mirex exposure via drinking water is significantly low. Ruetgers-Nease further stated that inhalation, ingestion in fish and food, and direct contact are not likely exposure routes, so allocating only 20 percent of the potential exposure to the drinking water route is too low and should be higher.

551. COMMENT: Ruetgers-Nease objected to the use of the current RfD, 2×10^{-6} for mirex, derived from IRIS and urges the Department to consider a revised RfD, 7.5×10^{-4}, based on information obtained from the more reliable National Toxicology Program bioassay conducted in 1990.

RESPONSE: The IRIS RfD represents the best available information for the development of a criterion for mirex. Mirex's low solubility accounts for the relatively low source contribution factor for the drinking water route. However, because it is a widely used chemical and sufficiently soluble to contaminate water supplies above health based criteria it is appropriately included in the Ground Water Quality Standards.

552. COMMENT: Chevron USA recommended a criterion for naphthalene of 28 ug/L based upon reference dose of 0.04 mg/kg/d found in the 1991 HEAST.

RESPONSE: A ground water cleanup criterion of 30 ug/L was proposed in N.J.A.C. 7:26D-4 based on the information cited by the commenter which remains unchanged in the FY 1992 HEAST. This criterion has been moved to Table 1 of the Ground Water Quality Standards as a ground water quality criterion as suggested by the commenter.

553. COMMENT: Exxon Company recommended replacing mistyped compound name, "2,5,6-Trichlorophenol" with the correct name, "2,4,6-Tricholorophenol" in Table 1.

RESPONSE: 2,5,6-Trichlorophenol is a distinct compound identified by its own CAS registry number. The chemical name of the compound is not in error.

554. COMMENT: Chevron USA recommended a criterion for xylenes of 10,000 ug/L based on the current MCLG for xylene.

RESPONSE: The Department is aware of the MCLG for xylene which is based on the results of a two year chronic oral study in rats and mice (NTP, 1986). New Jersey has adopted an MCL for xylene based on developmental effects observed by Mirkova (1985). These endpoints were not examined in the NTP study (NJDWQI, 1987). The Department believes that the developmental effects are a more sensitive endpoint for xylene toxicity.

555. COMMENT: Chemical Land Holdings said that Table 1 of the proposed Ground Water Quality Standards contains no distinction for transition area where ground water is in direct communication with saline surface waters, particularly ground water beneath land forms adjacent to an estuary, including natural formations and those created by filling in wetland areas. The ground water in such situations may be adversely affected by the quality of surface water in the estuary. In addition deteriorated surface waters may have an adverse impact on ground water beneath adjacent land forms.

RESPONSE: Where ground waters are in direct contact with saline waters, the concentrations of chlorides or Total Dissolved Solids (TDS) may exeed 3,000 mg/1 or 5,000 mg/l respectively. In that case, the ground waters are defined as Class III-B and Department concurrence may be obtained through an applicable regulatory program. This is not considered an "adverse effect" but rather is the natural condition and should be addressed as such. If the ground water still qualifies as Class II or I, background water quality may be taken into account by the applicable regulatory program pursuant to N.J.A.C. 7:9-6.9. Surface water quality standards generally consider potential impacts on ground water in the regulation of surface water discharges. In addition, the Department does not have authority under the Water Supply Management Act to regulate major withdrawals of water, and includes in its considerations the potential impact of pumping on the flow of contaminated ground water or surface water into a higher quality ground water area.

N.J.A.C. 7:9-6.7(c)2

556. COMMENT: Frank Markewicz asked whether or not the Department would set up a clearing house for information about pollutants in ground water which are not included on Table 1 of the proposed Ground Water Quality Standards.

557. COMMENT: Frank Markewicz asked whether or not the Department would maintain and periodically publish a listing of any interim specific criteria which it develops.

RESPONSE: The interim specific criteria developed or approved by the Department will be available to the public on request. In addition, the Department intends to move each new criterion through the rulemaking process as expeditiously as possible to allow review and comment by the general public. As set forth in N.J.A.C. 7:9-6.7(c)3, the Department intends to maintain and make available to the public a listing of all interim specific criteria and the information used in their derivation.

558. COMMENT: Frank Markewicz asked whether or not the development of interim specific criteria will be managed by the Department's Bureau of Risk Assessment.

RESPONSE: The Department will assign the development of interim specific criteria to appropriate staff with the qualifications necessary to prepare the criteria. The process will be coordinated with the regulatory programs, which will request interim specific criteria of the appropriate unit. It is not appropriate to specify the administrative unit, as the assignment may change over time.

559. COMMENT: Applied Wastewater Technology commented that interim specific standards should be based on Federally mandated limits, not risk assessment information which Applied Wastewater Technology feels may be inaccurate.

RESPONSE: The development of interim specific criteria will follow the methodology adopted in N.J.A.C. 7:9-6.7(c)2, using the data sources in the order noted. The term "Federally mandated limits" is inferred to mean Maximum Contaminant Levels from the Safe Drinking Water Program, which may indeed be a source of information. However, some MCLs are not equivalent to ground water quality criteria, because the MCLs may incorporate factors for the measurability or treatability of the contaminant. The Ground Water Quality Standards address these issues through provisions for PQLs in N.J.A.C. 7:9-6.9 and through flexibility provided to the regulatory programs regarding treatability issues. The public will have the opportunity to comment on the criteria as they are proposed for adoption. The regulated party involved in the specific case for which interim specific criteria are derived may comment on the derivation through standard administrative processes.

560. COMMENT: Applied Wastewater Technology said that the Department should not be allowed to impose specific limits until they become regulation.

561. COMMENT: Chemical Land Holdings said that the establishment of interim specific criteria should be subject to a rule-making procedure.

562. COMMENT: NAIOP-NJ Chapter said that the Department should not be allowed to establish interim specific or interim generic criteria without first following formal rule making procedures.

RESPONSE: The Department has provided a comprehensive list of criteria for constituents that are known to be of concern, but recognizes that others may be needed in the future as more information concerning the presence or toxicology of various constituents becomes available. The Department could derive site-specific standards as needed, as such constituents are identified. Instead, the Department has determined to provide public notice through N.J.A.C. 7:9-6.7(c)3 as to the methods that will be employed in setting interim specific criteria from which such constituent standards will be derived. This procedure allows the Department to respond to environmental threats on a timely basis, while at the same time putting the regulated community on notice as to how it will be regulated. It is the Department intent to undertake rulemaking on interim specific criteria as expeditiously as possible, in accordance with the Administrative Procedure Act, once they are developed. In the meantime, the regulated community will be provided with the opportunity to comment on interim specific criteria as they are incorporated by constituent standards into oversight documents by the applicable regulatory program. This method allows the Department to provide timely responses for the benefit of the environment as well as regulated parties, rather than forcing them to wait until criteria are promulgated, or subjecting them to a second phase of regulation with the adoption of new criteria.

563. COMMENT: Chemical Industry Council/NJ recommended that the words "on a" should be inserted in the second sentence of N.J.A.C. 7:9-6.7(c)2 between the words "established case."

564. COMMENT: Merck Manufacturing Division said that the words "on a" should be inserted in the second sentence of this paragraph between the words "established case" in proposed N.J.A.C. 7:9-6.7(c)2.

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RESPONSE: The Department has modified the language of N.J.A.C. 7:9-6.7(c)2 in response to the comments. The second sentence of this paragraph now reads "Interim specific criteria may be established on a case by case basis using the method . . .". This modification does not alter the original intent of the provision.

565. COMMENT: Applied Wastewater Technology recommended that the tests in the proposed Ground Water Quality Standards to determine interim specific criteria should be more clearly defined including carcinogenicity, toxicity and organoleptic effects.

RESPONSE: The Department has defined the methods and references for the health endpoints used in developing interim specific criteria and considers the methodology sufficient with regard to the determination of criteria for carcinogens, systemic toxicants and organoleptic effects.

566. COMMENT: New Jersey Builders Association asked for a definition of the term "organoleptic effect" as it is used in proposed N.J.A.C. 7:9-6.7(c)2.

RESPONSE: The Department agrees to include a definition of "organoleptic effect." According to Stedman's Medical Dictionary, "organoleptic" is defined as "1. Stimulating any of the organs of sensation. 2. Susceptible to a sensory stimulus." Of course the types of organoleptic effects which the Department is concerned with are offensive ones which make water unusable for potable purposes. Therefore, as used in the Ground Water Quality Standards, "organoleptic effect" generally relates to the taste, odor or aesthetic properties of the water. This is reflected in the definition which has been provided in N.J.A.C. 7:9-6.4.

N.J.A.C. 7:9-6.7(c)3

567. COMMENT: Chemical Industry Council/NJ recommended that the Department allow the regulated community to submit data and site-specific assumptions to be used in conducting the risk assessments called for in proposed N.J.A.C. 7:9-6.7(c)3 and 4.

568. COMMENT: Institute for Responsible Environmental Policy recommended that the Proposed Ground Water Quality Standards include a specific process to allow a regulated party to present the results of an independent assessment of the relevant toxicological data used in the three listed sources, as well as the results of additional toxicological and epidemiological studies.

569. COMMENT: Exxon Company said that many owners have conducted extensive site assessments; the owner or operator should be allowed to submit data and site-specific assumptions to the Department, to be used in conducting the risk assessment for the development of interim specific criteria.

570. COMMENT: PPG Industries recommended that NJDEPE include bioavailability or absorption adjustment factors in risk calculation or provide an opportunity for introduction of alternative calculations on a site specific basis.

571. COMMENT: Chemical Industry Council/NJ recommended that the owner or operator should be allowed to submit data and site specific assumption to the Department, to be used in conducting the risk assessment for the development of interim specific criteria.

RESPONSE: The Ground Water Quality Standards are intended to protect designated uses. Since waters designated as Class II-A are designated for potable use, regardless of whether or not there is currently potable use, site specific assumptions are not relevant to the interim specific criteria. The exposure assumptions used for Class II-A are those utilized for developing health-based drinking water standards. Thus the interim specific criteria are use specific and not site specific. Regarding bioavailability or absorption, such factors may be considered on a constituent-by-constituent basis in the risk assessment data sources cited, as well as by the Department in developing interim specific criteria.

N.J.A.C. 7:9-6.7(c)3i

572. COMMENT: Applied Wastewater Technology recommended against the use of the assumption of a "20% relative source contribution factor where sufficient quantitative data are not available" (N.J.A.C. 7:9-6.7(c)3i) for developing interim specific criteria.

573. COMMENT: Chemical Land Holdings said that no justification or rationale is provided for the 20 percent relative source contribution and as such it appears arbitrary and inappropriate for a rulemaking process.

574. COMMENT: Institute for Responsible Environmental Policy recommended that the Department eliminate the use of the 20% relative source contribution factor called for in the proposed N.J.A.C. 7:9-6.7(c)3i.

575. COMMENT: Dupont-Chambers Works said that the Department assumption of a 20 percent relative source contribution (proposed N.J.A.C. 7:9-6.7(c)3i and in equations at N.J.A.C. 7:9-6.7(c)5) is inappropriate unless there is specific evidence to indicate that a given population is exposed to the constituents of concern.

576. COMMENT: Dupont-Chambers Works said that the 20 percent relative source contribution provision should be moved to the "additional stringent conditions" at proposed N.J.A.C. 7:9-6.7(g) [now 6.7(h)], as an option to be exercised by the Department in situations where "other known sources of exposure to the constituent exist."

577. COMMENT: ENSR Consulting and Engineering said that the assumption that the receptor receives 20 percent of their daily exposure from drinking water (proposed N.J.A.C. 7:9-6.7(c)) should not be used.

578. COMMENT: Rutgers Environmental Law Clinic commented with regard to proposed N.J.A.C. 7:9-6.7(c)3i as follows: "Interim specific human health-based criteria for Class II-A ground waters may be derived using a relative source contribution factor for noncarcinogens which is assumed at 20 percent when data are otherwise unavailable. What is the basis for that assumption?"

579. COMMENT: NAIOP-NJ Chapter said that the Department should justify its assumption of a 20 percent relative source contribution factor used in proposed N.J.A.C. 7:9-6.7(c).

580. COMMENT: Chevron USA said that the use of a generic Relative Source Contribution (RSC) as called for in proposed N.J.A.C. 7:9-6.7(c)3i could overestimate or underestimate risks depending on site conditions. Chevron USA recommended that the appropriate regulatory program should be able to easily modify the RSCs within a given range based on site specific considerations.

RESPONSE: The Department intends to apply the Relative Source Contribution factor described by USEPA in 54 FR 22062 (May 22, 1989) and 56 FR 3526 (January 30, 1992), as follows: if actual data are available regarding relative source contribution, this will be utilized. If drinking water exposure is known to be 80 percent or greater of total exposure, a ceiling value of 80 percent will be used to protect for potential additional exposures to individuals. If the percent of total exposure resulting from drinking water exposure is 20 percent or less or is not known, a relative source contribution value of 20 percent will be utilized. A relative source contribution of 20 percent is considered to be justified because of the known importance of pathways of exposure other than ingestion. In addition to exposures which do not result from potable water, such as from the ambient air and from food, exposures from potable water result from dermal absorption and from inhalation of volatile contaminants, such as during showering and bathing. The estimated magnitudes of these exposures suggest that 20 percent is a reasonable generic value for Relative Source Contribution.

581. COMMENT: Browning-Ferris Industries said that the Department should consider the development of standards that are derived from federal drinking water standards since the Federal MCLs represent the level of water quality, measured at the tap, that the government believes is acceptable for Americans to consume every day from public drinking water facilities. In all cases, the MCLs have been set or proposed at levels that USEPA has determined to be safe and protective of human health.

582. COMMENT: ENSR Consulting and Engineering said that "the term 'significant risk' is referred to several times in the regulations as it applies to public health, public welfare, different ecological systems, and pollution. A definition and risk level (e.g. 10^{-5}) would clarify the regulations. A risk level would also reduce the subjective interpretation of the regulations, and result in a uniform and fair implementation of the regulations."

583. COMMENT: GE Corporate Environmental Programs said regarding the ground water cleanup standards proposed in N.J.A.C. 7:26D-4: "Table 4-1 of the Standards, pp. 389-90, contains the numerical cleanup standards for Class II-A groundwaters (defined to include all groundwaters in the State suitable for potable water use). Class II-A in fact encompasses most of the State's groundwater. Twenty-two (22) of the proposed Class II-A cleanup standards are more stringent than the MCL's for public drinking water without any apparent scientific basis. MCL's are recognized by the Department, EPA, and other regulatory agencies as protective of public health at the point of consumption of the drinking water. There is no scientific or public health justification for imposing an even more stringent standard upon groundwater underlying an industrial site, especially where the water is not consumed by human beings and the site owner may have to spend millions of dollars in a futile attempt to cleanse an aquifer."

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584. COMMENT: Institute for Responsible Environmental Policy said regarding the ground water cleanup standards proposed in N.J.A.C. 7:26D-4: "The standard for chloroform in ground water (Table 4-1) is more stringent than the 100 ppb level set for public drinking water supplies. While the technology to reduce chloroform (and associated trichloromethanes) from drinking water is available, it would be costly to implement. Consequently, the EPA and the Department recognizes this and thus allow for risks within the acceptable range of 10^{-4} to 10^{-6} in public drinking water. Similarly, remediating ground water to the low level standards (ppb) for ground water is far more costly than achieving the 100 ppb standard. In addition, EPA and some professionals within the Department recognize the difference in health risk between the two standarss is minimal and not justified considering the costs."

585. COMMENT: Browning-Ferris Industries commented that the Federal Safe Drinking Water Act does not supply enforceable standards for source contamination or even for contamination in the distribution system. Accordingly, contamination in a drinking water reservoir of an aquifer would not be controlled under the SDWA if MCLs were still met at the tap. Any exception created for ground water under the proposed Ground Water Quality Standards will create confusion and interject irrationality into the USEPA's approach of establishing remedial action objectives and performing risk assessments.

RESPONSE: The criteria for waters designated potable are based on the same risk assessment approaches and assumptions utilized to derive drinking water criteria by New Jersey. In some cases the New Jersey criteria developed under the A-280 amendments to the New Jersey Safe Drinking Water Act differ from the health-based levels (MCLGs) developed by USEPA, because of scientific differences between New Jersey and USEPA scientists. The MCLs developed by USEPA reflect considerations other than health protection, including analytical limitations, feasibility of treatment removal, and economic considerations, which are not appropriate for the development of groundwater criteria. It is appropriate to apply these criteria to aquifers designated as potable, so that water which is obtained from them will be suitable for potable use without further treatment. A large percentage of New Jersey's population uses ground water with little or no treatment (for example, domestic wells).

586. COMMENT: Chemical Land Holdings said with regard to proposed N.J.A.C. 7:9-6.7(c)3i(4) that the Department should use only USEPA-verified toxicity criteria and not Department generated toxicity criteria.

587. COMMENT: Chemical Land Holdings said the Department should define the phrases "convincing scientific evidence" as used in N.J.A.C. 7:9-6.7(c)3i(4) since these conditions allow the Department to deviate from a series of databases. It is important that only pertinent, credible and verifiable data be considered.

588. COMMENT: Chemical Land Holdings recommended that specific criteria should be developed to determine when the Department should deviate from USEPA guidance.

589. COMMENT: Schering Laboratories expressed concern over procedures regarding non-listed contaminants pursuant to proposed N.J.A.C. 7:9-6.7(c) where the NJDEPE reserves the right for a case by case review of contaminants not listed in Table 1 of the regulation. Schering Laboratories said that this can potentially lead to an undetermined postponement of a regulatory decision regarding ground water and may translate to lost time, more money, and a "study further" mentality. Schering Laboratories recommended that this part be rewritten to require a mandatory deadline by which the Department must determine an interim specific criterion for the questioned contaminant.

590. COMMENT: NAIOP-NJ Chapter said that the Department does not set forth a standard for establishing what constitutes "convincing scientific evidence" as that term is used in proposed N.J.A.C. 7:9-6.7(c), nor an appeal procedure for interested parties to challenge the Department's conclusion.

RESPONSE: As discussed in the Basis and Background document for the proposed rules, the Department intends to use the procedures utilized by the New Jersey Drinking Water Quality Institute (NJDWQI, 1987) to develop interim specific criteria. The risk assessments which form the basis for the drinking water standards adopted by New Jersey pursuant to the Safe Drinking Water Act have undergone both peer review and public comment prior to promulgation, and therefore form a solid basis for ground water criteria. These approaches are similar to those utilized by USEPA to develop risk assessments for drinking water contaminants. Interim Specific Criteria developed pursuant to these proposed regulations will be proposed as specific criteria as soon as practical (see N.J.A.C. 7:9-6.7(c)2) and at that time there will be opportunity for public comment as to the basis for the criterion. In the meantime, a regulated party would have the opportunity to comment on the resulting constituent standard through the administrative process that is afforded when the regulatory oversight document is opened to incorporate the criteria. It would be difficult to enumerate specific factors which would result in the Department developing criteria which differ from those based on UESPA databases, since it is difficult to foresee all circumstances which may occur. Some examples of instances in which the Department might choose to differ from USEPA include cases in which the Department is aware of a toxicity study which is more appropriate than the one which USEPA used, or cases in which recent information which has not yet been considered by USEPA is available, as analyzed by the Department's experts. The need to address contaminants not listed in Table 1 is clear since thousands of harmful substances may become ground water contaminants. The interim specific criteria mechanism provides an expeditious process that allows the Department to be responsive to incidents of pollution while maintaining a fair and reasoned approach. If an interim criterion is required for a case decision, an interim specific criterion will be developed within the regulatory decision schedule if sufficient data are available. Lacking such data interim specific or generic criteria may be applicable.

591. COMMENT: Rutgers Environmental Law Clinic commented that N.J.A.C. 7:9-6.7(c)3i states development of these criteria shall be based on data sources to be used in a 'hierarchy.' It is completely unclear what is meant by a 'hierarchy.' The sources listed should be used in a manner which gives the greatest protection possible to human health.

RESPONSE: The term hierarchy refers to the order of priority for using the data sources mentioned. The language of N.J.A.C. 7:9-6.7(c)3i has been modified to clarify the Department's intent. The A-280 toxicity factors are given the first priority, because they have been developed and promulgated as health-based drinking water criteria by New Jersey. It is logical to utilize the same criteria for drinking water and ground water within New Jersey, and it would be inconsistent to do otherwise. The next priority for a source for toxicity factors is IRIS, which represents consensus between groups within USEPA. HEAST is the third priority; this data base represents final risk assessment decisions of a group within USEPA, but does not represent consensus of the agency as a whole.

592. COMMENT: Chemical Land Holdings said that the USEPA HEAST is not appropriate for regulatory use and NJDEPE should remove this document from the hierarchy for sources of carcinogenic potency slopes and reference doses.

593. COMMENT: Chemical Industry Council/NJ said that the latest HEAST database contains errors and inconsistencies and should not be used until the 1992 HEAST database is released.

594. COMMENT: NAIOP-NJ Chapter said that the proposed Ground Water Quality Standards should expressly provide that the Ground Water Quality Standards are referring to the most recent publication of the IRIS data base and HEAST.

RESPONSE: Periodic updates of the standards will incorporate the most recent information in IRIS and HEAST. It is recognized that HEAST information does not necessarily represent USEPA consensus, but it is a source of information regarding final risk assessments developed by individual offices within USEPA. Because of the need to address a large number of contaminants in these standards, it was decided to utilize the information available through HEAST.

595. COMMENT: Waste Management of NA said that chloroform was found to be carcinogenic when administered in corn oil (Bull, 1986), but not carcinogenic when administered in water. (Jorgensen, 1985) They declared that there is a legitimate concern that toxicological findings and the basis of the proposed regulation. Waste Management of NA recommended that the Department should reexamine this of issue of testing process artifacts, in this case the dosing vehicle. (Bull, R.J., et al., 1986) Enhancement of the hepatocarcinogenicity of chloroform in B6C3F1 mice by corn oil. Implications for chloroform carcinogenesis. Environ. Health Persp. 69:49-5; Jorgensen, T.A., et al., 1985. Carcinogenicity of chloroform in drinking water to male Osborne-Mendel rats and female B6C3F1 mice. (Fund. Apple. Topical. 5:760-769).

RESPONSE: The Department is aware of the differences observed in carcinogenicity studies when chloroform was given by gavage in corn oil (NCI, 1976) versus in drinking water (Jorgenson et al., 1985—cited above). However the commenter is incorrect in stating that chloroform was not carcinogenic when administered in water. Chloroform caused liver tumors in mice when given in corn oil, but not when given in water. In both studies, similar dose-related increases in kidney tumors in male

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rats were observed. The potency factor for chloroform which forms the basis for the ground water criterion is derived from the data on male rat kidney tumors administered chloroform in drinking water. (NCI 1976). National Cancer Institute Carcinogendsis Bioassay of Chloroform, NTIS No. PB264018/AS).

N.J.A.C. 7:9-6.7(c)3ii

596. COMMENT: Chemical Industry Council/NJ said that statement is needed in the proposed Ground Water Quality Standards as to how final toxicity calculations will be rounded off.

597. COMMENT: Chevron USA recommended that the following sentence be added to proposed N.J.A.C. 7:9-6.7(c)3ii: "Application of the standards should be to one significant figure." In addition, Chevron USA recommended that a consistent rounding procedure be applied to all the ground water quality criteria.

RESPONSE: The Department has decided to adopt a policy of rounding to one significant figure for the Ground Water Quality Standards, in recognition of the degree of accuracy regarding the toxicity factors utilized in deriving the criteria. This is consistent with the policy of USEPA in deriving Maximum Contaminant Levels for drinking water. N.J.A.C. 7:9-6.7(c)3ii already contains language to this effect.

N.J.A.C. 7:9-6.7(c)4

598. COMMENT: Woodward-Clyde Consultants said that the calculation of the health based criteria failed to take into account some factors which USEPA would take into account such as 30 years of exposure at one residence.

599. COMMENT: Merck Manufacturing Division said that in proposed N.J.A.C. 7:9-6.7(c)5i the Department assumes that the exposure will last an entire lifetime which is not consistent with the soil cleanup standards which include an exposure factor of 30 years residence divided by 70 years lifetime. Merck Manufacturing Division recommended that this factor of 30/70 should be included in the derivation formula for carcinogens.

600. COMMENT: Chevron USA said that the equation used to calculate Ground Water Quality Standards for carcinogens should incorporate a factor of 30 years divided by 70 years as the exposure duration.

601. COMMENT: Chevron USA said that criteria for carcinogens in Group A or B should be based on a reasonable length of stay at one residence, rather than lifetime exposure. Chevron USA said that thirty years is the national upper-bound time at one residence.

RESPONSE: The goal of the Ground Water Quality Standards for waters in aquifers classified as potable is to allow the waters to be utilized as sources of drinking water. Therefore, the assumptions utilized in deriving the criteria are those used for deriving human health-based drinking water criteria for chronic (lifetime) exposure. Both New Jersey and USEPA assume a 70 year exposure period when developing the human health basis for drinking water standards. In development of drinking water standards, it is assumed that exposure could take place throughout the lifetime of an individual, since drinking water contamination is not a rare situation, and even if an individual did not remain at the same residence for a lifetime, the same type of contamination may be present at more than one residence used by the individual.

N.J.A.C. 7:9-6.7(c)4i

602. COMMENT: Browning-Ferris Industries recommended that a range of acceptable risk consistent with that employed by the USEPA in the National Contingency Plan be used with a range of acceptable risks ranging from 10^{-4} to 10^{-6}.

603. COMMENT: Browning-Ferris Industries said that the ground water quality standards should be based on human health risk information. However, the proposed Ground Water Quality Standards establish human health-based standards for synthetic organic chemicals (SOCs) on the assumption that a risk level of 10^{-6} is appropriate despite the USEPA-endorsed risk range from one in ten thousand to one in one million.

604. COMMENT: Browning-Ferris Industries said the control of overall risk to the one in a million level may not, in practice, even be possible due to natural conditions, the state of current control and remediation technology, and the risks associated with remediation.

605. COMMENT: Chemical Land Holdings said that the one in a million risk level used in the proposed N.J.A.C. 7:9-6.7(c)4i differs from the NCP, which state that the one in a million criterion is only to be used as a point of departure, and that site specific evaluations of health-protective ground water quality standards are made from that point.

606. COMMENT: Chemical Industry Council/NJ recommended that the Department use the USEPA range of 1×10^{-4} to 1×10^{-6} for risk assessment.

607. COMMENT: Exxon Company recommended that the Department use the USEPA range of 1×10^{-4} to 1×10^{-6} probability of increased cancer risk for all carcinogens.

608. COMMENT: Newport said that the Department should justify its adoption of 10^{-6} as the basis for defining acceptable risk and that many of the ground water standards seem overly stringent and may be unachievable in any practical way. Newport recommended that the Department consider the economic impact of establishing such extraordinarily low standards of concentrations.

609. COMMENT: PPG Industries recommends that NJDEPE should calculate standards using 10^{-6} as a point of departure, recognizing 10^{-4} as an appropriate risk factor for many situations.

610. COMMENT: NAIOP-NJ Chapter said that the Department should justify its use of the lifetime cancer risk of 1×10^{-6}.

611. COMMENT: Chevron USA recommended that a risk of 10^{-5} be used to calculate the ground water quality criteria.

RESPONSE: The 10^{-6} risk level has been used as the basis for a number of different contaminant-specific, human health-based regulations, including the New Jersey drinking water standards and the surface water criteria proposed by USEPA. These contaminant-specific criteria are comparable to the proposed Ground Water Quality Standards, which contain criteria developed on a contaminant-specific basis. In regard to the risk range cited for the NCP, the 1×10^{-6} contaminant-specific, medium-specific risk, used by New Jersey is not directly comparable to the 10^{-4} to 10^{-6} range utilized by USEPA. The USEPA risk range refers to the risk from the contaminants at an entire site, involving combining risks from the total number of environmental contaminants through all media and exposure routes. Therefore, when multiple contaminants and/or contaminants in more than one medium are present, the total site risk under the Groundwater Quality Standards will be higher than 10^{-6} and can approach the upper limits of the USEPA risk range. Additionally, pathways not considered by New Jersey are discussed by USEPA, such as bioaccumulation of contaminants into fish and agricultural products.

The USEPA uses 10^{-6} as a "starting point" for development of the cleanup levels. Similarly, the Department's use of 10^{-6} can be considered a "starting point", since practical considerations such as analytical limitations and background levels can modify the health-based criteria and result in a standard which is at a higher level of risk.

612. COMMENT: Browning-Ferris Industries suggested that the Department should attempt to minimize reliance upon an overly conservative risk assessment process by abandoning use of the worst-case assumptions and upper bound estimates in favor of a process that defines a "best estimate" within the range of acceptable risk.

RESPONSE: The exposure assumptions for ground water quality criteria utilized by New Jersey in its proposal are in agreement with the approach used by both New Jersey and USEPA in developing health-based Maximum Contaminant Levels for drinking water. The toxicity factors utilized were developed according to risk assessment procedures and assumptions currently utilized by USEPA and other states. It is understood that these approaches are more likely to overestimate, rather than underestimate risk. This is consistent with the goal of protection of public health.

N.J.A.C. 7:9-6.7(c)4(ii)

613. COMMENT: Chemical Land Holdings said that it is unclear, given the definition of a chronic reference dose, why the Department chose to reduce the chronic RfD by a factor of 10.

614. COMMENT: Chemical Land Holdings recommended that the Department should provide a basis for the use of the one in one hundred thousand risk level when an RfD is unavailable.

615. COMMENT: Dupont-Chambers Works said the application of an uncertainty factor of 10 to carcinogens in Group C (proposed N.J.A.C. 7:9-6.7(c)4ii) is not appropriate and that the cleanup level for a Group C carcinogen should be based on the carcinogenic potency factor to achieve a risk of 10^{-5} or on the reference dose itself.

616. COMMENT: ENSR Consulting and Engineering said that "the Department is commended for treating class C carcinogens differently than class A carcinogens (Proposed N.J.A.C. 7:9-6.7(c)). We suggest, however, that it would be most appropriate to use either the RfD/10

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or a risk level of 10^{-4}, whichever is higher. Based upon a review of about ten chemicals for which both values were available these two methods give comparable results on average."

617. COMMENT: GE Corporate Environmental Programs said that the Department should evaluate drinking water criteria derived using both the RfD and the carcinogenic slope factor, if available, in selecting ground water criteria for Group C compounds.

RESPONSE: Chemicals classified in Group C are considered possible human carcinogens. These chemicals have some evidence of carcinogenicity which is not sufficient to classify them as Group A or Group B contaminants. The risk assessment approach for such contaminants is partially a policy decision. The risk assessment for such chemicals may be based on either systemic (non-carcinogenic) or carcinogenic effects. The Department has decided to develop ground water criteria for Group C carcinogens consistent with the approach used by both New Jersey and USEPA for developing health-based drinking water risk assessments. This approach involves utilizing the Reference Dose, when available, and incorporating an additional safety factor of 10 as a standard convention to account for potential carcinogenicity. If no Reference Dose exists for the contaminant, the risk assessment will be based on the Potency Factor. The Department believes that Group C chemicals should be regulated less stringently than Group A or Group B chemicals. Therefore, a risk level of 1×10^{-5} rather than 1×10^{-6} will be utilized in these cases.

N.J.A.C. 7:9-6.7(c)4(iv)

618. COMMENT: Ciba-Geigy said that the application of the five ug/l MCL for lead in Class II-A ground waters is inappropriate for two reasons, as follows: First, the Federal MCL for treated water is 15 ug/l total lead. Second, lead behaves differently in potable wells which are continuous pumped and monitoring wells which are sampled periodically. A continuously pumped well apparently filters out most particulate matter such that the total and dissolved metals measurements are essentially the same. A monitoring well, on the other hand, contains a large amount of particulates which are not removed during the routine three to five well volume purging, such that the total measurement of metals frequently exceeds the dissolved level. Ciba-Geigy recommended that two lead levels be established as follows: five ug/l total lead after treatment of ground water and 15 ug/l of total lead in the ground water. Ciba-Geigy said that a similar approach is suggested for establishing other metals standards. Ciba-Geigy said that establishing a limit of five ug/l for lead statewide will essentially make it impossible to use Class II-A waters for drinking water purposes without treatment.

619. COMMENT: Waste Management of NA said the proposed lead criterion of five ug/L (N.J.A.C. 7:9-6.7(c)4(iv)) does not appear to be scientifically defensible and that it would be better to identify reasonable exposure scenarios and input them into USEPA's Integrated Uptake-Biokinetic Model (IU-BK). Waste Management of NA recommended that once an "acceptable" blood-lead distribution value is specified it should be readily apparent what the range of lead concentrations in ground water should be.

620. COMMENT: NAIOP-NJ Chapter said that with respect to the Class II-A criterion for lead, the Ground Water Quality Standards do not account for contamination by any piping or other part of a distribution system.

621. COMMENT: Chevron USA said that five ug/L for lead may be too conservative and recommended a higher value of 15 ug/L.

RESPONSE: The proposed criterion of five ug/L for lead is considered by the Department to be reasonable. The primary source of lead in drinking water is not source water (that is, ground water), but is corrosion within the distribution system after the water leaves the treatment plant. As discussed in the Basis and Background for the Ground Water Quality Standards, the final MCL for lead adopted by USEPA specifies that 90 percent of monitored household water supplies should have lead levels of 15 ug/L or below, anticipated to correspond to an average level at the tap of approximately five ug/L.

N.J.A.C. 7:9-6.7(c)4(v)

622. COMMENT: Chemical Land Holdings said that the Department should provide justification for deviating from recent USEPA guidance on evaluating the carcinogenic potency of polycyclic aromatic hydrocarbon which categorizes PAHs into three groups.

623. COMMENT: Dupont-Chambers Works commends the Department for use of the variable potency factor approach to evaluate polycyclic aromatic hydrocarbons other than benzo(a)pyrene and dibens(a,h)anthracene (N.J.A.C. 7:9-6.7(c)4v). Dupont-Chambers Works said that this approach reflects current thinking regarding differential carcinogenic potency among PAHs.

624. COMMENT: Merck Manufacturing Division said that instead of the toxicity equivalency approach to PAHs described in proposed N.J.A.C. 7:9-6.7(c)4v NJDEPE should use an approach similar to USEPA interim approach whichutilizes the benzo(a)pyrene slope factor for all of the B2 carcinogens. Merck Manufacturing Division said that the USEPA is expected to reduce the slope factor for benzo(a)pyrene from 11.5 to 5.8 in the near future and recommended that the Department should take this information into consideration and revise the criteria accordingly.

625. COMMENT: Waste Management of NA said that the proposed carcinogenic slope factors for certain polyaromatic hydrocarbons (PAHs) appear to be ill-founded. Waste Management of NA recommended that the Department consult several recent toxicity equivalency factor approaches developed by, or for, the USEPA which have estimated substantially different values than those proposed here, and revise these proposed toxicity weights and the associated ground water quality standards. (ICF-Clement, 1988. Comparative potency approach for estimating the cancer risk associated with exposure to mixtures of polycyclic aromatic hydrocarbons. April 1, 1988.; CFM Environmental Services International Corporation, 1990. Development of relative potency estimates for PAHs and hydrocarbon combustion product fractions compared to benzo[a]pyrene and their use in carcinogenic risk assessments. Prepared for USEPA, September 30, 1990; Tong, P., 1989. Development of estimated carcinogenic relative potencies for polycyclic aromatic hydrocarbons (PAHs). Toxics Integration Branch, U.S. EPA, October 30, 1989.)

626. COMMENT: PPG Industries recommended that NJDEPE utilize chemical specific toxicity factors to arrive at accurate site specific mitigation decision and not use factors such as "one tenth the potency of benzo(a)pyrene" for PAHs. PPG Industries said that chemical specific relative potencies are presented in the reference document cited by NJDEPE (Clement, 1988) and include: anthracene, benz(a)anthracene, chrysene, dibenz(a)anthracene and pyrene.

627. COMMENT: Chevron USA recommended that for chrysene the criterion should be 230 times higher than benzo(a)pyrene value based on relative potency factors quoted by USEPA's Carcinogenic Assessment Group. Chevron USA said that enough information is now available for many PAHs to determine relative potency in a more precise manner than merely using one-tenth.

RESPONSE: The Department has withdrawn its proposed criteria for PAHs and will repropose them based on the August 1992 IRIS. The Department is aware of the references by Clement and by USEPA which are cited in the comments. The Department does not believe that the toxicity of the other PAHs relative to benzo(a)pyrene has been quantitated sufficiently to incorporate the factors proposed by Clement, but does believe that their lesser degree of toxicity has been demonstrated sufficiently to assume that they are approximately 1/10 as potent as benzo(a)pyrene.

N.J.A.C. 7:9-6.7(c)5

628. COMMENT: Middlesex County Planning Board said in regard to proposed N.J.A.C. 7:9-6.7(c)5 that the health risk analysis does not consider some common exposure routes such as inhalation during showering, humidifiers, steam heat, and air conditioner mists nor does it attempt to consider synergistic effects. Middlesex County Planning Board suggested that the proposed Ground Water Quality Standards should provide a way to easily modify health based limits as new information becomes available.

RESPONSE: The Department shares the commenter's concern with the contributions from exposure routes other than ingestion of water, such as inhalation during showering, etc. Such concern is expressed in N.J.A.C. 7:9-6.7(c)3 and (c)5 in a factor termed "relative source contribution." Thus, derivation of ground water criteria involves both the health-based limit and a relative source contribution factor. When sufficient quantitative data are not available on the contribution of each source of exposure, the Department assumes drinking water's contribution at 20 percent of total exposure (that is, RSC at 20 percent). The criterion developed following standard methodology would then be 20 percent of the health-based limit. In the case of mixtures, the Department assesses potential toxicological interactions in accordance with the USEPA Guidelines for the Health Risk Assessment of Chemical Mixtures as specified in the N.J.A.C. 7:9-6.7(h). Synergistic or antagonistic interac-

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tions are generally not considered because of lack of defensible quantitative information. As new information becomes available in terms of source apportionment or toxicity interactions, the Department shall evaluate the data and modify the health-based limits to reflect the additional information, if warranted.

629. COMMENT: Dupont-Chambers Works said that the equations used to calculate ground water criteria for Class II-A aquifers fail to accommodate three important aspects of exposure assessment: exposure deviation, exposure frequency, and differentiated gastrointestinal absorption. Dupont-Chambers Works recommended that exposure deviation should be incorporated by including a modifying factor to the equation of 30 yrs/70 yrs to reflect the current upper-bound estimate of an individual living at a given residence. Dupont-Chambers Works recommended that exposure frequency should be incorporated by including a modifying factor to the equation of 350 days/year out of 365 days/year to reflect the current upper-bound estimate of the number of days that an individual spends at his or her residence in a given year. Dupont-Chambers Works recommended that gastrointestinal absorption should be incorporated by including a modifying factor to the equation of 0.01 to 1.0 to reflect the differential gastrointestinal absorption of certain constituents.

RESPONSE: The exposure durations and frequencies utilized by the Department in deriving the ground water criteria are the same as those used to derive human health-based drinking water criteria. This is appropriate because the goal of the ground water criteria is to result in water suitable for potable use. A large proportion of the ground water used for potable water received minimal or no treatment. The Water Pollution Control Act specifically mentions the protection of potable water uses.

The extent of gastrointestinal absorption incorporated into the health-based criteria is not 100 percent, but is equal to the absorption which occurred in the toxicology study which forms the basis for the criterion, and thus may vary. Studies in which the contaminant is injected directly into the animal are not considered appropriate for quantitative risk assessment and, therefore, are not utilized to develop criteria. Most of the studies which form the basis for the groundwater criteria involve oral administration of the chemical. Means of oral administration include incorporation into the food, mixing with drinking water, or gavage in corn oil or another vehicle. It is recognized that the assumption that the bioavailability of the contaminant in ground water is equal to the bioavailability in the toxicity study is a simplifying one, but is considered by the Department to be reasonable.

630. COMMENT: Dupont-Chambers Works said that the Department should not specify the model to be used to establish the q* value for carcinogens and that doing so makes the proposed rule dated and unnecessarily inflexible to new developments in this area of science.

RESPONSE: The proposed approach for carcinogen risk assessment reflects current policy of New Jersey, as well as USEPA and other states. The Department is aware of current efforts by scientists associated with many different institutions to improve the scientific basis of carcinogen risk assessment, and is open to future revisions of these procedures, when new approaches are developed and accepted.

631. COMMENT: GE Corporate Environmental Programs recommended that the Department consider use of a dose scaling modeling approach which GE Corporate Environmental Programs says is used by the USEPA and FDA described in A Cross-Species Scaling Factor for Carcinogenic Risk Assessment Based on Equivalence of mg/kg 3/4 day—Draft Report, EPA Mar. 7, 1991.

632. COMMENT: GE Corporate Environmental Programs said that the Department should incorporate the use of more biologically-based models, such as the two-stage birth-death-mutation model when suggested by available data for the derivation of Interim Specific Criteria.

633. COMMENT: Ruetgers-Nease said that the proposed Ground Water Quality Standards should encourage the use of models more appropriate than the linearized multistage model (the current default model used by regulatory agencies) when appropriate data are available for deriving dose-response relationships and extrapolating from high to low doses.

634. COMMENT: Waste Management of NA recommends that the NJDEPE foster the application of better, biologically-based mechanistic models of carcinogenicity, rather than mechanical approaches of the linearized multistage curve-fitting (LMS) procedure that ignore real differences among chemical mechanisms of toxicity. In addition, Waste Management of NA recommended that the NJDEPE should encourage the reanalysis of bioassay results to remove the confounding factors introduced by National Toxicology Program and USEPA testing protocols.

635. COMMENT: PSE&G said that there is a need for NJDEPE to use external peer review to work towards scientific consensus on general approach to criteria development; selection of models; selection of factors and assumptions; and selection of risk-based end points (for example, 10^{-4} vs 10^{-5} vs 10^{-6} cancer risk).

RESPONSE: The Department is aware that various approaches for improving the scientific basis for risk assessment of carcinogens mentioned in the comments above are currently under investigation. The report on cross-species scaling is a draft which was published in the Federal Register (June 5, 1992) for public comment. New models for low-dose extrapolation for carcinogen risk assessment are also currently under investigation, but have not yet been accepted as the basis for health-based criteria by USEPA or other agencies. The goal of the ground water quality criteria is to produce water suitable for potable use. Therefore, the approaches utilized to develop the criteria are based on those used by New Jersey to develop Health-based Maximum Contaminant Levels for drinking water, and are consistent with those utilized by USEPA and other regulatory agencies. Specifically, the 1×10^{-6} risk level for carcinogens is specified in the A-280 Amendments to the New Jersey Safe Drinking Water Act and is the basis for the human-health based ground water criteria.

N.J.A.C. 7:9-6.7(c)6

636. COMMENT: Frank Markewicz asked what criteria will be used for applying the various interim generic ground water quality criteria found in Table 2 of the proposed Ground Water Quality Standards.

RESPONSE: The interim generic ground water quality criteria will be applied when needed to regulate the cleanup or discharge of synthetic organic chemicals. The interim generic criteria will be applied only when there is no specific criterion, no existing interim specific criterion and there is insufficient data for developing interim specific criteria.

637. COMMENT: NJ PIRG said that the interim criteria for total synthetic organic chemicals (SOCs) proposed by the Department fails to take a conservative approach and that the high levels seem to have been set arbitrarily.

638. COMMENT: GE Corporate Environmental Programs said that while it may be appropriate in some cases to select interim generic criteria until interim specific criteria can be identified, no scientific basis has been provided for these interim generic criteria for SOCs.

639. COMMENT: Rutgers Environmental Law Clinic said that there is no justification for increasing the level of exposure to total SOCs by a factor of five over interim generic criterion that will be set at five ug/l for carcinogens and 100 ug/l for noncarcinogens. Rutgers Environmental Law Clinic said that where the evidence is unclear as to the toxicological properties of a given contaminant, the Department should take the conservative approach and should set the standard at a stringent level which guarantees protection of human health.

640. COMMENT: PPG Industries objected to the use of five ug/L and 100 ug/L generic criteria for all categories of synthetic organic chemicals. PPG Industries said that this is arbitrary and that standards for all chemicals of concern should be derived on scientifically supportable health basis.

RESPONSE: The use of the generic criteria, five ug/L and 100 ug/L, was presented to peer reviewers for comment as part of the preliminary draft of the proposed Ground Water Quality Standards. Based on peer reviewer comments and the Department's review of these default values, it was determined that if adequate toxicological data to develop a specific criterion does not exist, this approach is acceptable. The 100 ug/L value can be considered generally protective for noncarcinogens, as it corresponds to a Reference Dose which is lower than 72 percent of the Reference Doses for noncarcinogens in the IRIS data base, and is higher than 28 percent of the Reference Doses. For carcinogens, the five ug/L value is higher than the 1×10^{-6} risk level for 90 percent of the carcinogens in IRIS. However, criteria developed based on the 1×10^{-6} risk level are generally below the levels which can be reliably quantitated by available analytical methods. The 5 ug/L value is supported by the Practical Quantitation Limits derived for the proposed Groundwater Quality Standards. Therefore, the use of the five ug/L value is primarily driven by analytical constraints.

641. COMMENT: Union Carbide said that proposed N.J.A.C. 7:9-6.7(c)6 should read: "Where no specific criteria exists for a Synthetic

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Organic Chemical, the interim ... has been established **or until an interim specific criteria can be demonstrated to the satisfaction of the Department**."

RESPONSE: The Department agrees that N.J.A.C. 7:9-6.7(c)6 could be clarified to identify the process for establishing interim specific criteria and has added language to this section to do so.

642. COMMENT: Chevron USA recommended that in regard to interim generic criteria for Synthetic Organic Chemicals (SOCs) that the Department allow for the evaluation of each SOC at a site and assign criteria on the basis of structure-activity relationships with a compound that has a specific criterion.

RESPONSE: While it may be possible to estimate the toxicity of a chemical based on quantitative structure-activity relationships with other chemicals of known toxicity, the Department does not at present recommend the use of structure-activity relationships as the sole basis of risk assessment due to the uncertainties involved. In developing criteria, quantitative structure-activity relationships are considered only in conjunction with other data. Hence, the Department does not endorse the commentor's recommendation of assigning criteria on the basis of structure-activity relationships with other chemicals that have a specific criterion, even though the Department does recognize the need of refinement in developing interim generic criteria.

643. COMMENT: Chevron USA recommended that a sentence be added at the end of proposed N.J.A.C. 7:9-6.7(c)6 as follows: "The Synthetic Organic Chemical interim generic ground water quality criteria do not apply to tentatively identified compounds and associated estimated concentrations."

RESPONSE: The Department's regulatory programs apply the Ground Water Quality Standards to positively identified compounds. Where tentatively identified compounds exist, the Department generally requires further analysis if the compounds may be the driving or limiting factor behind the regulatory action. The Department has decided not to include a specific exclusion for tentatively identified compounds.

N.J.A.C. 7:9-6.7(d)

644. COMMENT: New Jersey Business and Industry Association recommended that the criteria for Class II-B ground water described in N.J.A.C. 7:9-6.7(d) of the proposed Ground Water Quality Standards should be clarified to acknowledge exemptions by classification or by ACLs.

645. COMMENT: Chemical Industry Council/NJ recommended that the Department assign an additional narrative standard to Class II-B areas to reflect the cases where a discharge from a contaminated site in a Class II-B area, where restoration is deemed technologically impracticable or economically infeasible, is likely to contravene Class II-A criteria beyond the foreseeable future. To this end Chemical Industry Council/NJ suggested that the following language be added to N.J.A.C. 7:9-6.7(d) "... except for all those constituents which caused the classification of the aquifer to class II-B. The criteria for those constituents will be anti-degradation limits."

646. COMMENT: CITGO Asphalt Refining said that Class II-B ground water criteria should be established on an area specific basis as the actual conditions currently existing. The antidegradation policy would then restrict further degradation.

647. COMMENT: Exxon Company recommended an additional narrative standard be assigned to Class II-B areas to reflect the case where discharges from a contaminated site in a Class II-B area, where restoration is deemed technologically impracticable or economically infeasible, is likely to contravene Class II-A criteria beyond the foreseeable future.

648. COMMENT: Mobil Oil Corporation said that proposed N.J.A.C. 7:9-6.7(d) should be revised to read "The ground water quality criteria for Class II-B ground waters shall be the Class II-A criteria, except for classification exceptions or alternative concentration limits (ACL) as determined by Section 7.9-6.6(a)."

649. COMMENT: New Jersey Petroleum Council recommended revising proposed N.J.A.C. 7:9-6.7(d) to read "The ground water quality criteria for Class II-B ground waters shall be the Class II-A criteria, except for classification exceptions or alternative concentration limits (ACL) as determined by N.J.A.C. 7:9-6.6(a)."

650. COMMENT: New Jersey Health Products Council said that proposed N.J.A.C. 7:9-6.7(d) should be modified to state that ground water quality criteria for Class II-B ground waters shall be Class II-A criteria except for those constituents causing the reclassification of Class II-A to Class II-B.

651. COMMENT: Merck Manufacturing Division suggested that the following be added to proposed N.J.A.C. 7:9-6.7(d) "... except for all those constituents which caused the classification of the aquifer to Class II-B."

652. COMMENT: New Jersey Business and Industry Association recommended that the words "except for criteria exemption by classification or ACLs" should be added to proposed N.J.A.C. 7:9-6.7(d). This would then read: "Criteria for Class II-B ground water shall be the Class II-A criteria **except for criteria exemption by classification or ACLs.**"

653. COMMENT: Newport urged the Department to adopt less stringent standards with respect to Class II-B areas saying that as these areas are never likely to be used as potable water sources, they should not be subject to the same standards as Class II-A areas.

RESPONSE: The criteria for Class II-B engendered a great deal of discussion and debate, as indicated by this set of comments and others listed below. The Department included Class II-B within Class II after extensive discussion both within the Department and with a public advisory committee. Most areas considered potential Class II-B areas have a history of potable water use, prior to the provision of surface water supplies at the turn of the century onward. Pollution from industrial and urban activity has played a major role in the limited use of these resources at this time. However, the long-term trends toward urban development in rural reservoir watershed lands, population shifts, competing demands for surface waters and new water supply treatment technologies make clear that the long-term interest of New Jersey is served by restoring polluted ground waters to potability. The problem in potential Class II-B areas is that the pollution loading exceeds the current capabilities of cleanup technology. Furthermore, regarding comments on exceptions from the criteria for "those constituents which caused the Class II-B classification of the ground water" the concentration and existence of those constituents will likely be highly variable within any Class II-B area. For example, if a Class II-B area includes extensive exceedance of benzene in one part, petroleum hydrocarbons in another, and carbon tetrachloride in a third, it would be inappropriate to exempt all three substances from the criteria for the entire Class II-B area. Nevertheless, there is no need to modify the criteria for Class II-B areas because of this problem. The Ground Water Quality Standards, in combination with the proposed Cleanup Standards, establish a mechanism to address these concerns without modification of the Class II criteria in Class II-B. One point of confusion is between the establishment of **criteria**, on one hand, versus the application of constituent **standards** to a specific site through a regulatory program. The Class II-B criteria are set forth in N.J.A.C. 7:9-6.7; but the specific constituent standards are established by applying N.J.A.C. 7:9-6.9 and 6.8 to the criteria. For new discharges, the critical regulatory issue will be the "background water quality" for the site, which will influence the constituent modifications for the discharge permit as provided in N.J.A.C. 7:9-6.9(a). For cleanups, the proposed Cleanup Standards establish requirements for the **active** remedy, while the Ground Water Quality Standards establish the Class II criteria as the target quality for the combined influence of active and passive cleanup over the long term. The contaminants remaining in Class II-B ground water after the active cleanup are still considered to be regulated by the cleanup program and are not violations of the Ground Water Quality Standards.

654. COMMENT: Chemical Land Holdings said with regard to proposed N.J.A.C. 7:9-6.7(d) that it is inappropriate to consider deteriorated ground water in the Class II-A category when the feasibility of achieving same in the foreseeable future is negligible.

RESPONSE: Most areas considered potential Class II-B areas have a history of potable ground water use. Thus, natural hydrogeology supports potable ground water use. Much of the contamination occurred during the last 50 to 100 years. Reattainment of Class II-A status for these ground waters will be a difficult technological task, at best, and will require an extended period of time. However, restoration of polluted, potable ground waters is within the clear intent of the New Jersey Water Pollution Control Act of 1979, and has been adopted by the Department for Class II-B.

655. COMMENT: Schering Laboratories said that since Class II-B is a different class aquifer than Class II-A the criteria for II-B should not be the same as Class II-A.

656. COMMENT: National Agricultural Chemical Association said that the Ground Water Quality Standards should more clearly differentiate the ground water quality criteria for Class II-A and Class II-B areas, or else there is no reason for distinguishing between the two classes.

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RESPONSE: Both Class II-A and Class II-B are contained within Class II, leading to the similarity of criteria. The primary designated use for these areas is potable use. Historically ground water in potential Class II-B areas were used for potable water supply. A long term goal of the Ground Water Quality Standards is to restore these areas to potable use. The Class II-B criteria reflect this goal. The difference between the two subclassifications is found in the antidegradation policy (N.J.A.C. 7:9-6.8).

N.J.A.C. 7:9-6.7(e)

657. COMMENT: Chemical Land Holdings said that the Department's process for determining ground water quality criteria in Class III-B classification areas is inappropriate for a rulemaking process, as it is excessively vague and could lead to discrepancies in regulatory actions. Chemical Land Holdings recommended that all cases should be addressed on a consistent basis with regard to such elements as risks, cost, performance, etc.

658. COMMENT: NJ PIRG opposes the Department's proposal to set water quality criteria on a case by case basis for Class III waters since this may result in dramatically different levels of protection and significant degradation of high quality Class III waters.

659. COMMENT: Rutgers Environmental Law Clinic strenuously objected to case-by-case ground water standards for Class III Classification Areas. Rutgers Environmental Law Clinic said that such a manner of standard setting will lead to dramatically different levels of ground water protection for waters of equivalent quality and/or in the same vicinity. In general Rutgers Environmental Law Clinic stated "Lack of a general standard provides too much room for manipulation by polluters and any others with an interest in reducing costs at the expense of environmental quality. This is particularly troubling with regard to the aquitards, which are located in areas of either existing or growing high population density. DEPE's failure to promulgate standards for these waters is an unjustifiable write-off of high quality waters."

660. COMMENT: NAIOP-NJ Chapter said that by providing for a determination for Class III-A areas to be made on a case-by-case basis, without any additional guidelines, the Department cannot ensure that the determinations will be consistent.

RESPONSE: The Ground Water Quality Standards promulgated in 1981 included a classification GW-4 that is analogous to Class III-B in that it included ground waters with high dissolved solids levels. GW-4 standards were established on a case-by-case basis to protect beneficial uses within the GW-4 ground water or any potential receptor area. Very few discharges were found to exist in such areas. Class III-B has a different dissolved solids threshold (5,000 mg/l versus 10,000 mg/l for GW-4), and so will include a larger land area. Nevertheless, most Class III-B ground water will be confined, saline units that involve very few discharges. Because of the larger scope of Class III-B, the Department has decided to change the site-by-site decision process to an area-by-area process that is triggered by the regulation of a particular site. This process will help ensure consistency over broad areas, based upon the decision criteria in N.J.A.C. 7:9-6.7(f). For Class III-A, most regulated sites will be subject to Class II-A standards or the Surface Water Quality Standards, or both, due to the requirements for protection of downgradient waters and designated uses. Application of the site-by-site decision criteria will therefore be limited. The Department believes that the decision criteria for Class III are sufficiently clear to provide sound mandates to the regulatory programs and regulated parties, and are significantly more detailed than the decision criteria for GW-4 in the 1981 Ground Water Quality Standards.

N.J.A.C. 7:9-6.7(e)1

661. COMMENT: Chemical Land Holdings said that the Department should provide details on how it will determine if ground water will migrate from one area to the next and what constitutes "significant potential" for ground water migration as that term is used in proposed N.J.A.C. 7:9-6.7(e)1.

RESPONSE: Because of the variability in hydrogeologic settings within Class III-A areas, a certain level of professional judgment must be exercised in the regulatory process. Ground water migration analysis will be based upon the existing gradients through the confining unit, and between the confining unit and adjacent ground water classifications. The Department will also consider potential changes in gradients due to new or modified ground water withdrawals, contaminant transport potential for constituents in the discharge, etc., such that the standards for adjacent classification area are met.

662. COMMENT: Chemical Land Holdings said the Department should list the applicable regulatory programs referred to in proposed N.J.A.C. 7:9-6.7(e)1 and further discuss criteria of how each site will be treated on a case by case basis.

RESPONSE: N.J.A.C. 7:9-6.1(b) lists various Acts through which these Standards will be applied. The programs that implement these laws are considered "applicable regulatory programs" as the phrase is used throughout the Ground Water Quality Standards. Other regulatory programs may also use these Standards. Other regulatory programs that make use of the Ground Water Quality Standards will reference such use in their regulations, and of course public comment will be solicited when the regulations are proposed. A definition of applicable regulatory programs has been provided in N.J.A.C. 7:9-6.4 for clarification.

663. COMMENT: NAIOP-NJ Chapter said that proposed N.J.A.C. 7:9-6.7(e) which provides that the criteria shall be the "**least** stringent" criteria that will "ensure" against certain conditions or events is internally inconsistent. In addition NAIOP-NJ Chapter said the standard does not delineate the degree of proofs required of a landowner to show that the suggested criteria will "**ensure**" against the conditions referred to in the standard.

RESPONSE: N.J.A.C. 7:9-6.7(e) and (f) provide the minimum criteria for Class III site-by-site decisions. By saying that the criteria shall be the "least stringent criteria that will ensure that" conditions are met, the Department is stating that conformance with the criteria is required but more stringent requirements will not be imposed under these Standards. The language is simultaneously a minimum and maximum requirement. The language has been clarified in the final adoption. The Department's regulatory programs are responsible for ensuring that the regulated party provides sufficient technical information to prove that the conditions are met.

N.J.A.C. 7:9-6.7(f)

664. COMMENT: Applied Wastewater Technology said that the proposed N.J.A.C. 7:9-6.7(f) is vague and has not adequately defined the specific criteria to be used to determine whether or not the flow of ground water pollutants into surface water will cause a violation of the Surface Water Quality Standards.

665. COMMENT: Dupont-Chambers Works said the proposed N.J.A.C. 7:9-6.7(f)2 should state that the Department will consider a mixing zone relative to ground water discharges to surface water.

666. COMMENT: New Jersey Builders Association asked what criteria the Department will use to determine if ground water is discharging to surface waters pursuant to proposed N.J.A.C. 7:9-6.7(f).

RESPONSE: Proposed N.J.A.C. 7:9-6.7(f) has been recodified as N.J.A.C. 7:9-6.7(g). The Department intends to regulate discharges to ground water to prevent degradation of surface water quality as well as to meet ground water quality standards. The specific method of calculating the impact of a discharge to ground water on surface water quality will be determined by the applicable regulatory programs. The programs will be guided by the surface water quality standards (N.J.A.C. 7:9-4) in applying such concepts as load rates, point versus non-point sources, and mixing zones. The selection of monitoring locations, parameters and methods will be made by the applicable regulatory programs on a site by site basis.

667. COMMENT: Middlesex County Planning Board said that ground water discharges to surface water may rejoin the ground water further downstream. Middlesex County Planning Board therefore recommended that the following sentence be added to proposed N.J.A.C. 7:9-6.7(f) "... or other applicable ground water standards if the flow should be reintroduced as ground water at some point downstream."

RESPONSE: The Department recognizes the validity of this concern. Many New Jersey streams gain flow from ground water in some reaches and lose flow to ground water in others. The Surface Water Quality Standards include a provision to protect ground water quality, analogous to this provision of the Ground Water Quality Standards which is now provided at N.J.A.C. 7:9-6.7(g). The two standards in combination should protect against occurrences of ground water pollution from reintroduction of contaminants. Also, the issue should be minimized because the Surface Water Quality Standards and the Ground Water Quality Standards protect similar designated uses in most of the State. The Surface Water Quality Standards also consider issues such as Total Maximum Daily Loadings of contaminants and the potential for mixing with instream water. Finally, volatile chemicals will tend to be lost to the atmosphere from ground water, which will reduce the potential for reintroduction of ground water pollutants from surface waters.

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668. COMMENT: Ciba-Geigy said that the phrase "in the context of the applicable regulatory procedure" as used in proposed N.J.A.C. 7:9-6.7(f) (adopted N.J.A.C. 7:9-6.7(g)) is too vague and that the phrase should be revised to read "in the context of a permitted NJPDES discharge or a State/Federally mandated cleanup."

RESPONSE: While these two programs are the largest regulatory programs through which this requirement will be applied, the Ground Water Quality Standards are not limited to them. Please see N.J.A.C. 7:9-6.1(b) for a more complete list. A definition of "applicable regulatory program" has been added to the regulation at N.J.A.C. 7:9-6.4 to clarify this point.

669. COMMENT: NAIOP-NJ Chapter said with respect to proposed N.J.A.C. 7:9-6.7(f) (adopted at N.J.A.C. 7:9-6.7(g)), this standard should be revised to make it clear that in the event the surface water quality standards are less stringent than the proposed Ground Water Quality Standards, the landowner shall only be subject to the surface water quality standards.

RESPONSE: This suggestion is apparently based upon the assumption that the discharge site is contiguous to the surface water body. **Many** discharges to ground water will flow eventually to surface water, but may pass through many intervening properties on their way. The Department is also concerned about the potential for induced changes in ground water flow due to new or modified ground water withdrawals. A blanket exception, therefore, is not considered the most appropriate response. However, the NJPDES Alternative Concentration Limit (ACL) and the proposed Cleanup Standards Alternate Cleanup Standard (ACS) are mechanisms that can address the commentor's concerns on a site-by-site basis. The ACL provisions of N.J.A.C. 7:14A-6.15 have been used by regulated parties to achieve the recommended end.

N.J.A.C. 7:9-6.7(g)

670. COMMENT: Chemical Industry Council/NJ recommends that additional wording be added to proposed N.J.A.C. 7:9-6.7(g) stating that this paragraph dealing with potential toxicological interactions apply only to Class I and Class II-A aquifers. Chemical Industry Council/NJ said that to apply this requirement to Class II-B, Class III or Classification Exception Areas where ground water is not used for potable purposes, is inappropriate and does not achieve any health or environmental benefit.

671. COMMENT: Merck Manufacturing Division suggested that additional wording or sentence should be added to proposed N.J.A.C. 7:9-6.7(g) stating that this paragraph dealing with potential toxicological interactions apply only to Class I and Class II-A aquifers.

RESPONSE: Proposed N.J.A.C. 7:9-6.7(g) has been recodified and is now set forth at N.J.A.C. 7:9-6.7(h). The Department disagrees with the suggestion since this provision may also be applied to Class II-B and III-A in cases where the criteria for these classification areas are the same as Class II-A.

672. COMMENT: NJ PIRG said that the N.J.A.C. 7:9-6.7(g) (adopted at N.J.A.C. 7:9-6.7(h)) does not sufficiently protect against synergistic effects of exposure to multiple carcinogens. NJ PIRG recommends that the Department evaluate toxicological interactions for both carcinogens and noncarcinogens to the fullest extent possible.

RESPONSE: The Department believes that the procedures proposed for evaluating interactions between contaminants represent the best currently available approaches. It is not possible to more fully characterize toxicological interactions, particularly at the very low exposure levels which the concentrations at the level of the criteria represent. Additivity of cancer risk is predicted by the models utilized at low doses of carcinogens.

N.J.A.C. 7:9-6.7(g)1

673. COMMENT: NJ PIRG asked that explanation be given as to why an acceptable risk of 1×10^{-4} was used for the aggregate risk in proposed N.J.A.C. 7:9-6.7(g)2 and 1×10^{-6} is used elsewhere in the proposed Ground Water Quality Standards. NJ PIRG said that this standard is not protective of human health and strongly recommended that the level of risk to human health from carcinogens never be greater than 1×10^{-6}.

674. COMMENT: Middlesex County Planning Board said that the total health risk allowed under proposed N.J.A.C. 7:9-6.7(g)1 should not exceed the 10^{-6} limit used elsewhere in the proposed standards. Middlesex County Planning Board recommended that in those cases where a discharge is not feasibly controlled, the private domestic users at risk should be provided with home filter/treatment systems under specific discharge or remediation agreements with responsible parties or applicants.

675. COMMENT: Rutgers Environmental Law Clinic said that the Department's risk assessment for individual carcinogens contains a risk limit of 1×10^{-6}, while the assessment for interactions among contaminants contains a risk level of 1×10^{-4}. Rutgers Environmental Law Clinic asked what is the basis for the use of the less protective figure for chemical interactions. Rutgers Environmental Law Clinic recommended that the Department should adopt a consistent standard for risk assessments for all potential contaminants, and that standard should be set at the level most protective of human health, 1×10^{-6}.

676. COMMENT: Ruetgers-Nease said that proposed Ground Water Quality Standards stipulate that individual Group A or B carcinogenic constituents must not be present at levels equivalent to greater than a 1×10^{-6} excess cancer risk but where more than one of these constituents are present, the total risk level is not to exceed a 1×10^{-4} excess cancer risk. Ruetgers-Nease said that this represents an unexplained inconsistency regarding what constitutes an "acceptable" risk.

RESPONSE: Proposed N.J.A.C. 7:9-6.7(g)2 was recodified and has been adopted at N.J.A.C. 7:9-6.7(h)2. The 1×10^{-6} risk level refers to the risk from individual contaminants while the 1×10^{-4} risk level refers to the total risk from all of the carcinogenic contaminants which are present. If the total risk value were not included, an unlimited total risk level would be permitted. Therefore, the inclusion of the 10^{-4} level for total carcinogenic risk serves to make the proposed standards more stringent, rather than less stringent.

N.J.A.C. 7:9-6.7(g)2

677. COMMENT: Dupont-Chambers Works said that the Department should clarify the application of a hazard index approach described at proposed N.J.A.C. 7:9-6.7(g)2 to indicate that it "... may require more stringent criteria when there is a hazard index of greater than one for **similar** non carcinogenic effects."

678. COMMENT: Chevron USA recommended that more stringent criteria be imposed under proposed N.J.A.C. 7:9-6.7(g)2 only if the chemicals under consideration affect the same target organs with the same mechanism of action.

RESPONSE: Proposed N.J.A.C. 7:9-6.7(g)2 has been recodified and was adopted at N.J.A.C. 7:9-6.7(h)2. The description of the derivation of the Hazard Index in N.J.A.C. 7:9-6.7(h)2 includes the qualification that similar endpoints should be combined. Accordingly, the requested clarification is not necessary. The Department does not intend to combine dissimilar toxic effects to derive a Hazard Index.

Effectiveness of the Antidegradation Policy

679. COMMENT: NJ PIRG is deeply concerned that the proposed Ground Water Quality Standards include a classification system that is not protective of all ground waters and contains provisions that allow significant, long term degradation of ground water.

680. COMMENT: Association of New Jersey Environmental Commissions is concerned that the proposed classification system will allow degradation over the long-term of the state's ground water and that any such degradation could produce serious, negative economic and social impacts.

681. COMMENT: Association of New Jersey Environmental Commissions said the proposed Ground Water Quality Standards will allow degradation of some ground water in contravention of the New Jersey Water Pollution Control Act which requires maintenance, enhancement and restoration of the integrity of the State's waters.

682. COMMENT: Association of New Jersey Environmental Commissions recommended that all classes of ground water should be protected by antidegradation policies and that ground water standards should be based on the possible future need to use all ground water of the State.

683. COMMENT: NJ PIRG said that the levels of degradation proposed by the Department for Class II-A and B will allow significant deterioration of water quality and will, over time result in the downgrading of Class II-A waters to Class II-B.

684. COMMENT: NJ PIRG said that the current unsuitability of an aquifer as a drinking water source should not result in less protection of the resource and that it is inappropriate for the Department to set different levels of protection for ground waters based on contamination levels.

685. COMMENT: Middlesex County Planning Board said that water quality in classification areas naturally cleaner than the established

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criteria will be allowed to deteriorate under the antidegradation policy set forth in the proposed Ground Water Quality Standards. Middlesex County Planning Board said that the long term consequences of this approach are troublesome since over time relatively clean areas receiving contaminated discharges will inevitably raise the background levels used to set permitted discharge levels eventually degrading areas that are still clean while maintaining contaminated areas at their current levels.

686. COMMENT: Middlesex County Planning Board said that maintenance of natural ground water quality superior to the criteria should not be undermined through regulation over time.

687. COMMENT: Rutgers Environmental Law Clinic said that if proposed N.J.A.C. 7:9-6.8 is adopted it will permit a serious deterioration of ground water quality for sources of potable water because the 50 percent and 100 percent reductions permitted for Class II-A and II-B, respectively, are far in excess of what should be permitted in order to guarantee that these sources of potable water are adequately protected from contamination. Rutgers Environmental Law Clinic said that for these classes of ground water, the proposed antidegradation policy is actually a significant degradation policy.

688. COMMENT: Cohen, Shapiro, Polisher et al. said regarding the ground water cleanup standards proposed in N.J.A.C. 7:26D-4.1: "We have a fundamental problem with the proposed cleanup standards of ground water, to the extent that they may require lower concentrations than are necessary to protect a probable receptor."

RESPONSE: The antidegradation program serves to impose stricter standards for water quality than would otherwise be imposed by the ground water quality criteria in areas where background quality is better than the criteria. For Class I areas no further degradation is allowed, and most of Class I requires restoration of natural quality. For Class II-A, the balance is struck between the desire to prevent degradation of potable ground water and a recognition that New Jersey is a heavily urbanized state that also contains significant agricultural activity. Human activities have a major potential to degrade ground water quality, but this degradation must be limited. The antidegradation policy by imposing limits more stringent than the normal water quality criteria significantly decreases the rate of water quality degradation. As the remedial programs result in pollution source control and mitigation action, the Department fully expects cleaner background water quality should result, thus **reversing** the degradation trend. In the case of Class II-B the criteria themselves serve as the antidegradation policy. Thus for constituents that are now in compliance with the criteria, the Ground Water Quality Standards seek to maintain constituent levels, the antidegradation policy is no further degradation beyond current quality. Despite the dense development of New Jersey, it should be recognized that few areas have a high concentration of ground water discharges. Use of a percentage-based antidegradation policy should maintain the integrity of ground water quality for designated uses.

689. COMMENT: Applied Wastewater Technology felt that the antidegradation policy is unnecessary and nonproductive.

690. COMMENT: Applied Wastewater Technology said that the current Ground Water Quality Standards allow for meeting the criteria at the discharge point or the property line, without antidegradation limits, and that the current Standard is reasonable and should not be changed.

RESPONSE: The antidegradation policy is part of New Jersey's recognition of water as an invaluable natural resource which is not to be abused by any segment of the State's population or its economy. It is the State's policy as enunciated in the New Jersey Water Pollution Control Act, 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. The previous Ground Water Quality Standards also contained an antidegradation policy which was applied on a case by case basis. Unfortunately, it was cumbersome to use and difficult to understand, and did not sufficiently protect ground water quality.

Comments on the Antidegradation Limits

COMMENT: New Jersey Business and Industry Association felt that 50 percent and 100 percent antidegradation limits seem arbitrary and that clarification is needed to understand the basis and background for these numbers.

691. COMMENT: Applied Wastewater Technology said that the antidegradation limits for Class II-A waters are too arbitrary. In particular Applied Wastewater Technology questioned the basis for the value of 50 percent of the maximum limit for Class II-A.

692. COMMENT: CITGO Asphalt Refining said that the Department proposed 50 percent and 100 percent antidegradation limits for Class II-A and Class II-B based on its experience but fails to present supporting data and statistical analyses.

693. COMMENT: New Jersey Petroleum Council said that the antidegradation levels established by the Department are arbitrary. New Jersey Petroleum Council said that the problem is not so much that higher quality ground water may be desirable and scientifically supported, the problem is that the Department has set the levels of some contaminants without additional scientific support and set the levels so low that they cannot be accurately measured with today's scientific equipment.

694. COMMENT: Chevron USA said that the application of a 50 percent antidegradation criteria for Class II-A ground water appears to be arbitrary and its derivation is not discussed in the rule or accompanying Basis and Background document.

695. COMMENT: New Jersey Business and Industry Association suggested that the antidegradation policy for Class II-A Classification Areas should be a more flexible limit set on the specific conditions of the area and the volume and toxicity of the pollutants and their relationship to potential human receptors.

RESPONSE: The antidegradation policy sets a clear, numerical definition of "significant degradation" beyond which discharges may not degrade existing ground water quality for each of the classes of ground water. The antidegradation levels reflect the policy goals for each of the classes of ground water. The antidegradation policy allows for the consideration of background water quality and discharge characteristics in each site and is protective of human health. Thus, neither underprotection nor overprotection of the ground water resource will result from implementation of this policy. As explained in the Basis and Background the II-A antidegradation limit of 50 percent was formulated on a policy basis in order to strike a balance between the desire to prevent degradation of potable ground water and a recognition that New Jersey is a heavily urbanized state that also contains significant agricultural activity. The Department weighed the administrative burden to both the Department and regulated interests of site-by-site antidegradation analyses versus the use of thresholds based on percentages of the criteria. A general policy was chosen that reflects the need for limiting degradation in classification areas. Regarding the ability to measure certain very low concentrations, this issue is addressed by N.J.A.C. 7:9-6.9(c).

696. COMMENT: New Jersey-American Water Company said that in the case of Class II ground water, specific reference to the Safe Drinking Water Act standards should be made the Department's antidegradation policy in proposed N.J.A.C. 7:9-6.8. Specifically, New Jersey-American Water Company said that for those constituents regulated under the Safe Drinking Water Act, the antidegradation policy should establish standards which prohibit degradation of the various constituents to levels which would exceed the Safe Drinking Water Act requirements.

RESPONSE: The primary designated use of Class II is potable use. Thus, Class II criteria were derived from Safe Drinking Water Act requirements. The antidegradation policy is protective of human health and potability in these areas. For areas where background water quality is better than the criteria the policy imposes standards more stringent than the criteria. In areas where background quality is in excess of the limit, the antidegradation limit calls for no further degradation or levels equal to the criteria. Thus, all antidegradation levels for Class II are at or below the Drinking Water Quality Standards where they exist.

Effect of Antidegradation Policy on the Use of Septic Systems

697. COMMENT: Applied Wastewater Technology said that the antidegradation policy in the Class I-PL (Protection Area) appears to prevent the construction of individual septic systems. Applied Wastewater Technology said that since a septic system provides primary treatment only, the antidegradation policy will eliminate further housing development in this area and that existing communities utilizing community septic systems in this area may be driven out if the proposed Ground Water Quality Standards are adopted.

698. COMMENT: Browning-Ferris Industries said that the antidegradation policy for Class I-A may prohibit the use of a water softener in a home with a septic system.

699. COMMENT: New Jersey Builders Association said that the antidegradation policy in the Class I-PL (Protection Area) appears to prevent the construction of individual septic systems in a large portion of southern New Jersey and that since a proposed household can conceivably discharge constituents found in the ground water standards and since the septic systems provide primary treatment only, the anti-

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degradation policy will eliminate further housing development in this area. New Jersey Builders Association added that existing communities utilizing community septic systems in this area may be forced out as a result of these standards.

700. COMMENT: New Jersey Business and Industry Association requested clarification of the application of the antidegradation policy especially as it applies to individual and community septic systems.

701. COMMENT: New Jersey Business and Industry Association requested clarification of the application of the antidegradation policy especially as it applies to individual and community septic systems.

RESPONSE: The Ground Water Quality Standards are not self-executing but rather will be applied to discharge control decisions through regulations such as the New Jersey Pollutant Discharge Elimination System (NJPDES). NJPDES (N.J.A.C. 7:14A-6.14(a)1) specifically exempts discharges from single family septage tank systems or other single family subsurface sewage disposal systems which are installed and operating in conformance with the "Realty Improvement Sewerage and Facilities Act" (N.J.S.A. 58:11-23 through 42). For most areas of the State, the limits for conventional pollutants will be the same as those resulting from the previous Ground Water Quality Standards. In the Class I-PL (Protection Areas) where the greatest concern regarding the impact on the use of subsurface disposal systems arises, a specific provision has been included in the Ground Water Quality Standards which addresses these concerns. N.J.A.C. 7:9-6.7(b)2 specifies that the Ground Water Quality Standards shall not be deemed to prohibit activities allowed under the Pinelands Protection Act, which permits controlled development. This provision assures that septic systems approvable under the Pinelands Protection Act and the Realty Improvement Sewerage and Facilities Act will not be prohibited by application of the Ground Water Quality Standards. This policy has been in use by the Pinelands Commission for over 10 years.

Antidegradation in Class II-B Areas

702. COMMENT: Chemical Industry Council/NJ said that proposed N.J.A.C. 7:9-6.8(a) which states "Where the concentration of a constituent at background quality currently contravenes the criteria in N.J.A.C. 7:9-6.7, no further degradation of ground water quality shall be allowed for that constituent" is in conflict with N.J.A.C. 7:9-6.8(b) which limits the further degradation to a percentage of the difference of the criterion and background concentration.

703. COMMENT: Merck Manufacturing Division said that since the definition of antidegradation in N.J.A.C. 7:9-6.4 applies only to ground water, which is of higher quality than the water quality criteria, the second sentence of N.J.A.C. 7:9-6.8(a) should be deleted.

RESPONSE: The antidegradation limits specified in N.J.A.C. 7:9-6.8(b) are applicable to those ground waters which are of **better** quality than the ground water quality criteria specified in N.J.A.C. 7:9-6.7. The stipulation in N.J.A.C. 7:9-6.8(a) applies only to ground waters where the concentration of a constituent at background water quality are of **worse** quality than the criteria. There is therefore no inherent contradiction between the two provisions.

704. COMMENT: Chemical Industry Council/NJ said that proposed N.J.A.C. 7:9-6.8(c) is in conflict with proposed N.J.A.C. 7:9-6.8(b) by limiting the antidegradation limit to the Class II-B criteria. Chemical Industry Council/NJ recommends that this paragraph be deleted or additional language be included to clarify the antidegradation policy.

705. COMMENT: Middlesex County Planning Board said that residential consumers of Class II-B aquifer waters, which may include up to five percent of the area's water consumption, are at greater risk under the antidegradation policy since background levels rather than health criteria will be used as the discharge concentration allowed.

706. COMMENT: CITGO Asphalt Refining asked if the antidegradation limit for Class II-B is 100 percent of 50 percent since proposed N.J.A.C. 7:9-6.8(c) indicates that the antidegradation limit for Class II-B is equal to that of Class II-A, while proposed N.J.A.C. 7:9-6.8(b) clearly establishes different limits. The Class II-B limit should be clearly specified as 100 percent or set on a case-by-case basis.

707. COMMENT: Newport said with regard to the antidegradation policy that the percentage issued in establishing antidegradation limits does not make a great deal of sense when it refers back to Class II-B criteria which are the same as the Class II-A criteria.

708. COMMENT: NJ Health Products Council said that proposed N.J.A.C. 7:9-6.8(c) is redundant since N.J.A.C. 7:9-6.7(d) and N.J.A.C. 7:9-6.8(b) already establish the criteria and antidegradation limit, respectively.

709. COMMENT: NAIOP-NJ Chapter said that the antidegradation standard for Class II-B areas is internally inconsistent because it is unclear just what the antidegradation limits are for Class II-B areas since a percentage of 100 percent is set forth; however, there is also a reference to section (c) within N.J.A.C. 7:9-6.8 which then equates the antidegradation limit for Class II-B areas with the antidegradation limit set for Class II-A areas.

RESPONSE: The Department agrees that the language describing the antidegradation policy for Class II-B ground waters needs clarification and has provided changes to that language. The intent for Class II-B is that the criteria themselves serve as the antidegradation levels. That is, for constituents that are now in compliance with the criteria, the Ground Water Quality Standards seek to maintain the concentrations at or below the criteria. For other constituents, the antidegradation policy is no further degradation beyond current quality.

710. COMMENT: Merck Manufacturing Division recommended that the proposed Ground Water Quality Standards include antidegradation language that specifies that: "In Class II-B and Class III areas, no significant decrease in downgradient ground water quality over time is permitted irrespective of upgradient concentration. In cases where downgradient concentration does exceed upgradient concentrations, source control and free product removal must be performed."

711. COMMENT: Chemical Industry Council/NJ lauds the Department's intent to limit further degradation of the ground water of the State. However Chemical Industry Council/NJ believes that proposed N.J.A.C. 7:9-6.8 is vague, unclear and requires clarification. Chemical Industry Council/NJ said that it is not clear if Classification Exception Areas would be required to perform active remediation, or is it clear that remediation must be technologically practicable and economically feasible. Chemical Industry Council/NJ said that it is not clear what would be required in Class II-B and Class III areas for past discharges where source control, free product removal and protection of receptors measures have already been completed and the downgradient concentration is greater than the upgradient concentration.

712. COMMENT: Chemical Industry Council/NJ suggested that the proposed Ground Water Quality Standards should include antidegradation language that specifies: "In Class II-B and Class III-B areas, no significant decrease in downgradient ground water quality over time is permitted irrespective of upgradient concentration. In cases where downgradient concentration does exceed upgradient concentrations, source control and free product removal must be performed."

RESPONSE: The actual constituent standards to be applied at the downgradient compliance point and the specific remedial measures or discharge controls necessary to attain those standards will be specified by the applicable regulatory program. Specifying particular remedial measures is not appropriate for the ground water quality standards. The constituent standards are developed for each class of ground water, including Class II-B, based on the criteria in N.J.A.C. 7:9-6.7, adjusted by the applicable provisions of the antidegradation policy and constituent modifications of N.J.A.C. 7:9-6.8 and 6.9, respectively. The language suggested for Class II-B and Class III does not achieve the intent of the antidegradation policy. The use of percentages is more clear and appropriate in this case than the use of "significant decrease." The latter language can be construed as the intent of the existing antidegradation policy for all classification areas.

Proposed Exceptions to the Antidegradation Policy

713. COMMENT: Chemical Industry Council/NJ recommended that an additional subparagraph be added to N.J.A.C. 7:9-6.8 saying the following: "The foregoing antidegradation requirements shall apply to new or proposed discharges. They shall not apply to existing discharges where the facility is in compliance with current permits but out of compliance with these Ground Water Quality Standards".

714. COMMENT: Exxon Company recommended adding the following phrase N.J.A.C. 7:9-6.8(d), "The foregoing antidegradation requirements shall apply to new or proposed discharges. They shall not apply to existing discharges where the facility is in compliance with current permits but out of compliance with these proposed Ground Water Quality Standards."

715. COMMENT: Mobil Oil Corporation said that existing permitted discharges should be exempt from the antidegradation policy as defined in N.J.A.C. 7:9-6.8.

716. COMMENT: Chevron USA recommended that the following addition be made as proposed N.J.A.C. 7:9-6.8(d): "The antidegradation policy will apply only to new and/or active discharges where the facility

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is in compliance with current standards and not to existing discharges that are in compliance with their NJPDES permit but not these new standards."

RESPONSE: The antidegradation provisions will be implemented through the applicable regulatory programs. The antidegradation policy is not only applicable to the control of new or ongoing process discharges but is also used as a basis for ground water cleanup decisions. Conformance with the policy is required at the boundary of Classification Exception Areas. While active remedies may not be able to reach the constituent standards, the long-term goal of active and passive pollution remedies is compliance with the Ground Water Quality Standards. The process of phasing in the newly adopted Ground Water Quality Standards for existing discharges will be accomplished in an orderly fashion at the time of renewal of NJPDES permits.

Antidegradation Policy in Class III-B areas

717. COMMENT: NJ PIRG recommended that the Department specify an antidegradation standard for Class III waters and that the antidegradation policy should not result in the degradation of high quality Class III water flowing to lower quality Class II waters.

718. COMMENT: Rutgers Environmental Law Clinic said that with respect to Class III waters, the proposed N.J.A.C. 7:9-6.8 provides that antidegradation policy is "not applicable" and that the plain meaning of this section is that Class III waters can be degraded with impunity. Rutgers Environmental Law Clinic recommended that this subsection should be clarified so that it does not appear that Class III ground waters are available for discharging at will.

RESPONSE: The Department agrees that the intent of N.J.A.C. 7:9-6.8 as it relates to Class III areas needs clarification and has provided language in the adopted regulation to do so. Specifically, the antidegradation policy is not applicable directly to Class III-A since it takes on the constituent standards (including the antidegradation policy) of the downgradient classification area. In the case of Class III-B areas, constituent standards are to be developed which: have no adverse impact on existing uses of ground water; don't cause exceedances of surface water quality standards; and assure no violation of constituent standards for downgradient classification areas (Section 6.7 of the Ground Water Quality Standards). Thus, appropriate requirements are included in the Ground Water Quality Standards to ensure that Class III waters will not be degraded with impunity.

Antidegradation Policy Applied to Agriculture

719. COMMENT: The New Jersey Department of Agriculture said that the policies of nondegradation and antidegradation may be so restrictive as to prohibit or severely limit agriculture if the standards are to apply to such agricultural operations.

720. COMMENT: Rutgers Environmental Law Clinic said that in the Pinelands Preservation Area, "indigenous agricultural activities" are exempt from the antidegradation provisions, while "agricultural activities" are exempted in the Protection Area. Rutgers Environmental Law Clinic recommended that the Department should use the same antidegradation policy for the entire Pinelands region. Rutgers Environmental Law Clinic commented that the Department's failure to take that stand represents a major retreat from New Jersey's special treatment for the priceless resources of the Pinelands region.

RESPONSE: The intent of the Ground Water Quality Standards is to provide for normal agricultural operations but certainly not to allow contamination due to improper practices. Agriculture in all areas of the State must comply with Department regulations, to the extent that such regulations are applicable to agriculture (for example, pesticide application regulations). The Ground Water Quality Standards will be implemented through the applicable regulatory programs. There is presently no applicable program, other than regarding the application of sewage residuals, which imposes specific monitoring or discharge controls on agriculture. As such programs are developed, the Ground Water Quality Standards will be applied to agriculture. The Pinelands Protection Act of 1979 provides specific statutory preference for the maintenance of agriculture, especially the production of crops that are native to the Pinelands Area, including but not limited to cranberries and blueberries. The Act further enjoins all state agencies to conform to the Pinelands Comprehensive Management Plan, developed and promulgated by the Pinelands Commission. The intent of the proposed language in N.J.A.C. 7:9-6.7(b) was to provide that conformance. The language has been modified to clarify the Department's intent, removing specific reference to "indigenous agriculture", and to limiting exemptions to those specified by the Comprehensive Management Plan.

Economic Impact of the Antidegradation Policy

721. COMMENT: Dupont-Chambers Works agreed with the general goals of the antidegradation policy, but commented that the strict adherence to these goals through the proposed cleanup regulations and the NJPDES regulations contradicts the language in the preamble, which purports to recognize economic limits on practicability of remediation. Dupont-Chambers Works said that the antidegradation policy when applied will mean that ground water dischargers in or surrounded by Class I and II-A ground waters will be required to employ costly ground water remediation methods even in scenarios where a contaminant source is removed and no downgradient receptors exist. Dupont-Chambers Works recommended that the antidegradation policy be revised to permit the natural attenuation forces in the ground water system to correct some of the past release scenarios where downgradient receptors are not existent.

RESPONSE: The antidegradation policy as presented in the Ground Water Quality Standards reflects the policy of the State of New Jersey, as set forth in the Water Pollution Control Act, to restore, enhance and maintain the chemical, physical and biological integrity of its waters. Class I and II-A by definition are "receptors" and have designated uses which must be protected. In recognition of the limitations of the effectiveness of natural attenuation and of the long periods of time required for it to result in cleanup the Department has limited the application of this policy to Class II-B areas. However, the use of the antidegradation policies, while clearly requiring more stringent control of new or ongoing discharges, does not specifically require greater cleanup costs. The remedial programs will determine the appropriate mix of active and passive attenuation for a contaminated site, not the Ground Water Quality Standards.

Establishing Background For the Application of the Antidegradation Policy

722. COMMENT: Ciba-Geigy said that antidegradation limitations should not be applied to secondary standards where natural background exceeds the criteria.

RESPONSE: The antidegradation limits are only applied where ground water is of better quality than the criteria in N.J.A.C. 7:9-6.7. In areas where ground water quality exceed those criteria no further degradation is allowed.

723. COMMENT: GE Corporate Environmental Programs said "The Department has failed to identify how background at a site will be established. This is a critical omission because the Department's proposed antidegradation policy depends on the determination of site specific background concentrations in ground water. Identification of site specific background concentrations in ground water is an important part of site characterization. It is imperative that 'background' be determined in recognition of regional impacts and employ a realistic assessment of historic conditions in a given area. Therefore, procedures must be established to define an adequate sampling program such that a statistically valid comparison can be made between constituent concentrations and potentially affected ground water and background ground water."

RESPONSE: The Department agrees that clarification is needed as to how background water quality is to be established. It is the Department's intent to use the methodology established in N.J.A.C. 7:14A-6.15 of the NJPDES regulations. The Department has over a decade of experience in the determination of background water quality pursuant to these regulations. Reference to these regulations has been added to the language of the definition of "background water quality" in N.J.A.C. 7:9-6.4

Legality of the Antidegradation Policy

724. COMMENT: Rutgers Environmental Law Clinic said that proposed N.J.A.C. 7:9-6.8 is at odds with the fundamental purpose of the Federal Clean Water Act to "... restore and maintain the chemical, physical and biological integrity of the Nation's waters." 33 U.S.C.A. 1251. Rutgers Environmental Law Clinic said the subsection also conflicts with the purpose of the New Jersey Water Pollution Control Act, to "... restore, enhance and maintain the chemical, physical and biological integrity of its waters ..." N.J.S.A. 58:10A-2. and also represents a retreat from prior Department policy, as exemplified by the antidegradation requirements in the surface water quality standards. N.J.A.C. 7:9-4.5(d), and the policy statement in the ground water standards being supplanted by these standards.

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725. COMMENT: PPG Industries said that the proposed antidegradation policy is inappropriate since it exceeds the mandate to protect public health and the environment. PPG Industries believes that the antidegradation policy goes beyond the Department's authority to "restore, enhance and maintain . . . the integrity of its waters" pursuant to N.J.S.A. 58:10A-2. PPG Industries recommended that the Department reevaluate the antidegradation policy to ensure that approaches afford necessary protection of public health and the environment without unjustified costs associated with overprotection.

RESPONSE: The Department maintains that the antidegradation policy is a balanced implementation of the State's policy to restore, enhance and maintain the quality of its waters. Indeed, the antidegradation policy serves to impose stricter standards for water quality than would otherwise be imposed by the ground water quality criteria. This policy together with the site remediation program and the discharge control program will act in concert to achieve the policy goals of the State. Both the Ground Water Quality Standards and the Surface Water Quality Standards have included antidegradation policies for many years. The Ground Water Quality Standard's antidegradation policy in no way conflicts with the antidegradation policy of the Surface Water Quality Standards. At the same time the policy does not impose unnecessary restrictions on discharges or persons responsible for ground water cleanups. USEPA reviewed the antidegradation policy and found no conflict with USEPA policies and classification system. As a point of clarification, the Ground Water Quality Standards are not affected by the Federal Clean Water Act, which applies to surface water permits.

Application and Fairness of the Antidegradation Policy

726. COMMENT: Schwartz, Tobia & Stanziale said that the antidegradation policy of the proposed Ground Water Quality Standards have the effect of treating adjoining landowners differently with regards to their ability to discharge and may ultimately place an unfair burden upon parties which are downgradient of other dischargers. Schwartz, Tobia & Stanziale says that this is so because if ground water coming onto Site A is free of any constituents, then a discharger at that site may discharge up to 50 percent of the difference between background water quality and the constituent limit. However, adjoining Property Owner B would then have only 50 percent of the difference of the "new" background and the criterion for the area. The progression could continue until a property owner downgradient of Property Owners A and B be in a zero discharge situation. Schwartz, Tobia & Stanziale said that this presents an inherent unfairness in the system, based solely upon the location of a potential discharge. Schwartz, Tobia & Stanziale recommended that the proposed regulations violate notions of uniformity and equal protection and that the proposed Ground Water Quality Standards be modified to treat all land owners equitably.

RESPONSE: The applicable regulatory programs have discretion in cases where sampling at wells other than those immediately upgradient of a discharge provide an accurate indication of background ground water quality. The case presented by the commentor may be such a case where it would be appropriate to use other wells to establish background water quality. However this would be established on a case by case basis. The commentor seems to be suggesting that a system of waste load allocation is needed similar to that used in receiving streams in the surface water program to equitably distribute the burden of discharge control in an area where numerous ground water dischargers are present. However ground water and surface water systems are not necessarily comparable in terms of dilution, mixing, flow regimes and biological activity; therefore, the Department does not consider such a scheme appropriate.

727. COMMENT: New Jersey Builders Association asked how New Jersey's proposed antidegradation and nondegradation policies differ from those administered by the U.S. Environmental Protection Agency.

RESPONSE: The antidegradation policy is more stringent than policies of the USEPA. However, USEPA has adopted a major ground water policy initiative that would allow federal use of state standards, even where these are more stringent, to the extent allowed by law. (see Protecting the Nation's Ground Water: EPA's Strategy for the 1990's, The Final EPA Ground Water Task Force Report, July, 1991)

728. COMMENT: Chemical Industry Council/NJ said that the determination of antidegradation (or no further degradation) should be based on the downgradient water quality.

RESPONSE: The purpose of the antidegradation policy is to protect from significant degradation of ground water which has yet to be degraded by discharges. Therefore it is necessary to judge the impact of a discharge on background water quality upgradient of the discharge.

N.J.A.C. 7:9-6.9(a)

729. COMMENT: Middlesex County Planning Board said in regard to proposed N.J.A.C. 7:9-6.9(a)1 that it should be explicitly mentioned that "directly upgradient" not be a different class than the receiving area downgradient. Middlesex County Planning Board said that the deriving "source water from directly upgradient of the discharge" offers no quantifiable measure of separation between these points. Contaminated upgradient water could be discharged into uncontaminated, downgradient water thereby quickening the rate of contaminant transmission through the aquifer.

730. COMMENT: NAIOP-NJ Chapter said that with respect to proposed N.J.A.C. 7:9-6.9(a) it may not be appropriate to determine constituent standards for a discharge which derives its source water from directly upgradient of the discharge if the source water is from a different water-bearing zone. NAIOP-NJ Chapter said that in many cases the source water may be derived from a deep aquifer (in the range of +/-200 feet) while the discharge is to the shallow water table and consequently, the background quality of the shallow water table will likely be different than the background quality of the source water.

731. COMMENT: Saul, Ewing, Remick, Saul Inc. said that the phrase "directly upgradient of a discharge" appears in proposed N.J.A.C. 7:9-6.9(a)(1) and in the definition of "Background Water Quality" but that in many situations it is difficult if not impossible to determine what is "upgradient" of a discharge. Saul, Ewing, Remick, Saul Inc. recommended that the language should be modified to read "directly upgradient of or otherwise not influenced by a discharge."

RESPONSE: It is important to ensure that the constituent modifications for background water quality do not result in additional threats to designated uses. The critical term in N.J.A.C. 7:9-6.9(a)1 is "upgradient." Ground water in one zone with no direct flow to another zone cannot be considered "upgradient" of that latter zone. Cross-contamination is not allowed by N.J.A.C. 7:9-6.9(a)1 for this reason. The background water quality is the critical issue, regardless of the classification of the upgradient area. Clearly, this provision does require that the ground water gradient be established, which can be difficult. The NJPDES-DGW program has been requiring the evaluation of gradients and background water quality for over ten years. This experience has proven the importance and viability of the concept. There is a slight possibility that the flow of contamination could be hastened slightly, but this possibility is minimized by requirements that background water quality be established **directly** upgradient of the site, and regulatory requirements that establish permit compliance points close to the discharge.

732. COMMENT: Porzio, Bromberg & Newman said that throughout the proposed Ground Water Quality Standards, the Department has not adequately considered that the extent of background levels at a site should be a fundamental consideration in establishing ground water standards for that site. Porzio, Bromberg & Newman said that procedures must be established to define an adequate sampling program such that a statistically valid comparison can be made between constituent concentration in potentially affected ground water and background ground water.

733. COMMENT: Ruetgers-Nease requested that the Department supply guidance for developing a sampling and analytical plan for the determination of background levels in ground water systems.

RESPONSE: The Department has clarified the definition of "background ground water quality" by including specific reference to the methods for establishing background in the NJPDES regulations (N.J.A.C. 7:14A) as follows: "Background water quality" means the concentration of constituents in ground water which is determined to exist directly upgradient of a discharge but not influenced by the discharge, or is otherwise representative of such concentration of constituents as determined using methods and analyses consistent with the requirements of N.J.A.C. 7:14A-6.15(h)7.

734. COMMENT: Middlesex County Planning Board said in regard to proposed N.J.A.C. 7:9-6.9(a)2ii that no volumetric limitations are discussed in this provision. Concentration limits can be avoided by dilution and/or areal distribution of discharge. Applying limits on total loading would reduce dilution practices that could otherwise occur.

RESPONSE: Ground water contaminant plumes tend to dilute slowly (being subject primarily to laminar flow), and many contaminants attenuate little if at all. Concepts of "total maximum daily loads" used in surface water discharge controls are less useful in ground water for these reasons. Therefore, the requirement that "the volume and concentration of ground water exceeding the criteria are not increased by

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discharges" is considered sufficient to prevent improper discharges. It must be recognized that all discharges involve an added loading of constituents to ground water. From the perspective of the Ground Water Quality Standards, the issue is whether violations of the standards will occur in ground water due to the discharges.

735. COMMENT: USEPA said that the criteria which will be applied to the re-injection of treated ground water needs to be stated and that this criteria be different from proposed N.J.A.C. 7:9-6.9(a)1 which states that constituent standards shall not be more stringent than the source water quality if that source is upgradient from the discharge. USEPA recommended that the proposed Ground Water Quality Standards be applied to re-injected ground water since those standards are intended to address "discharges that cause or may cause pollutants to enter the ground waters of the State."

RESPONSE: If the reinjection occurs as part of a ground water remedy, such that a recycling of ground water occurs within the Classification Exception Area (CEA), the Ground Water Quality Standards are not directly applicable to that discharge. The discharge limits would be established through the remedial program. However, discharges that will migrate from the CEA are subject to the Ground Water Quality Standards. In that case, the provisions of N.J.A.C. 7:9-6.9(a) are triggered regarding background water quality. The contaminated site is not considered "directly upgradient" of the discharge, because it is the subject of the remedial action and directly related to the discharge.

736. COMMENT: Saul, Ewing, Remick, Saul Inc. recommended that the language of proposed N.J.A.C. 7:9-6.9(a)1 which provides that constituent standards shall not be more stringent than the background water quality should be modified to include discharges in Class III areas in addition to discharges that derive their source water from directly upgradient.

RESPONSE: This comment is assumed to relate to Class III-B, which can be expected to have natural water quality that exceeds Class II-A standards for some constituents. Many Class III-A areas are bounded by Class II-A or Class I ground water, and standards would be applied to protect those classification areas and surface water. In Class III-B areas, the criteria are established on an area by area basis and would include consideration of natural water quality. Within a Class III-B area, background water quality above the Class III-B criteria would trigger the provisions of N.J.A.C. 7:9-6.9(a).

737. COMMENT: Merck Manufacturing Division suggested that a paragraph N.J.A.C. 7:9-6.9(a)3, be added to the proposed Ground Water Quality Standards which states that "For Class II-B, Class III or Classification Exception Areas where source control, free product removal and protection of downgradient receptors has been completed and the downgradient water quality exceeds both the background quality and the criteria in N.J.A.C. 7:9-6.7, the constituent standards shall be established as the water quality immediately downgradient of the former discharge source. Ground water quality shall not be degraded further than the downgradient quality."

738. COMMENT: Chemical Industry Council/NJ recommends that a paragraph be added to the proposed N.J.A.C. 7:9-6.9(a) as follows: "For Class II-B, Class III or Classification Exception Areas where source control, free product removal and protection of downgradient receptors has been completed and the downgradient water quality exceeds both the background quality and the criteria in N.J.A.C. 7:9-6.7, the constituent standards shall be established as the water quality immediately downgradient of the former discharge source. Ground water quality shall not be degraded further than the downgradient quality."

RESPONSE: The Department concludes that the Ground Water Quality Standards already achieve the commenters intent. Cleanup decisions will be regulated by the Cleanup Standards (proposed N.J.A.C. 7:26D) and related regulations. They establish the active cleanup requirements for Class II-B. Remaining contaminant levels are subject to passive attenuation with the long-term constituent standard based upon the Class II-A standards. As the Ground Water Quality Standards are applied on a site-specific basis, the phrase "Ground water quality shall not be degraded further than the downgradient quality" does not make sense since any downgradient site will be impacted by discharges from upgradient sites.

N.J.A.C. 7:9-6.9(c)

739. COMMENT: Woodward-Clyde Consultants said that there are differences in the PQLs established under the Department's proposed soil cleanup standards and the proposed Ground Water Quality Standards.

740. COMMENT: New Jersey Health Products Council said that the PQLs for the ground water standards differ from those proposed in the Cleanup Standards.

741. COMMENT: Merck Manufacturing Division said that there appear to be several inconsistencies between PQL values in Table 3 and in the PQLs presented in the Technical Support document of the Cleanup Standards of Contaminated Sites. Examples are bromoform and chloride.

742. COMMENT: PSE&G said that there are discrepancies between both the methodology and philosophy for PQLs in this proposed rule and that of the proposed Cleanup Standards for Contaminated Sites (N.J.A.C. 7:26D) and gave the following examples: 1. In the Ground Water Quality Standards PQLs are rounded to one significant figure, whereas they are unrounded in the Cleanup Standards. 2. There are a number of numerical discrepancies between the two proposed rulemakings. For example:

	GW Quality PQL ppb	Cleanup Standards PQL ppb
Acrolein	50	3.5
Bromodichloromethane	1	4.99
Dalapon	10	65
4,6-Dinitro-o-cresol	60	80
Nitrite (as N)	400	10

743. COMMENT: Chemical Industry Council/NJ found discrepancies between the PQL values in the proposed Ground Water Quality Standards and the values given in the proposed Cleanup Standards.

744. COMMENT: Merck Manufacturing Division said that a side by side comparison between the Ground Water Quality Standards and the Cleanup Standards for Contaminated Sites show discrepancies which are likely attributed to differences in rounding of significant figures. These discrepancies exist in the tables listing the PQLs.

745. COMMENT: Exxon Company said regarding the ground water cleanup standards proposed in N.J.A.C. 7:26D-4 "A comparison of the PQLs listed in the NJGWQS (7:9-6) and the Cleanup Standards (7:26D), however, indicates some inconsistencies. The NJGWQS (N.J.A.C. 7:9-6.9(c)3.i) state that 'PQLs shall be rounded to one significant figure using standard methods.' For example, the PQL for acenaphthene is given as 10 mg/L in the NJGWQS and 12.15 mg/L in the Cleanup Standards. Further, some PQLs differ by orders of magnitude. For example, the PQL for acrolein is given as 50 mg/L in the NJGWQS and 3.5 ug/L in the Cleanup Standards. It is recommended that the Department round PQLs to one significant figure and that the values in Table 6-2 of the Cleanup Standards be replaced with the PQLs listed in Table 3 of the NJGWQS to be consistent with the statement in the Technical Basis and Background document."

RESPONSE: The order of priority for selecting the PQL used in the standards is listed in N.J.A.C. 7:9-6.9(c)3ii(1) through (5) of the Ground Water Quality Standards. A detailed explanation of each area was made available in the Basis and Background Document for the proposed Ground Water Quality Standards, November 14, 1991. The rounding method used is described by Miller & Miller, 1984. Apparent discrepancies between the Ground Water Quality Standards and the Cleanup Standards have been clarified by placing all PQLs in the Ground Water Quality Standards. The Department intends that the Cleanup Standards will incorporate these PQLs by reference. Table 3 of the proposed Ground Water Quality Standards has been incorporated into Table 1 in the final adoption of the Ground Water Quality Standards for further clarification.

746. COMMENT: New Jersey Business and Industry Association questioned whether PQLs contained in the proposed Ground Water Quality Standards were consistent with PQLs which have been developed by Federal agencies.

747. COMMENT: Conestoga-Rovers & Associates Limited said regarding the ground water cleanup standards proposed in N.J.A.C. 7:26D-4 "... that on the basis of both current Federal and State analytical methods, Practical Quantification Limits of 0.5 ug/L in groundwater samples are not achievable for all Arochlors. Typically, the higher-chlorinated Arochlors (1254 and 1260) can not routinely be detected and reported below 1 ug/L. Therefore, current available analytical methodology may prevent attainment of NJDEPE's proposed standard for PCBs in ground water."

748. COMMENT: Environmental Testing And Certification Corp. said regarding the ground water cleanup standards proposed in N.J.A.C. 7:26D-4 "The term: Practical Quantitation Limit (PQL) is no longer

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referenced in USEPA methodology. Furthermore, the term has never been applied to 500 series or 600 series methods. The statistically based definition in the rule was developed years after the concept was proposed for SW-846 analysis of industrial wastes. The term was needed because of the extreme variability of industrial matrices. In essence, PQL factors are based on guesstimates which do not have a place in rules of this type."

RESPONSE: The Department's PQLs are consistent with most of the PQLs proposed by USEPA in 40 CFR Part 141 (56 FR 3526, January 30, 1991). The exceptions occur when the Department had already determined a PQL for the New Jersey A-280 Drinking Water Program. The A-280 PQL was chosen over the USEPA PQL for consistency with the A-280 program. The order of priority of the PQLs used in the Ground Water Quality Standards is listed in N.J.A.C. 7:9-6.9(c)3ii(1) through (5) of the Standards. A detailed explanation of each area was made available in the "Basis and Background Document" for the proposed Ground Water Quality Standards, November 14, 1991.

749. COMMENT: Browning-Ferris Industries took issue with the use of PQLs to measure compliance with the Ground Water Quality Standards saying that the Ground Water Quality Standards should not be set at levels that are not achievable by current laboratory practice but rather that the Department build analytical detection limits into its concept of lifetime cancer risk.

750. COMMENT: Browning-Ferris Industries said that it is unfair to use criteria where enforcement levels vary with changes in the analytical art. Since the issue of analytical variability and of the inherent uncertainty in analytical results have not been squarely addressed, enforcement levels should not depend on the current state of the science of analytical chemistry.

751. COMMENT: Chemical Industry Council/NJ recommends that in those cases where the water quality criteria is of a lower concentration than the relevant PQL, the PQL should become the constituent standard.

752. COMMENT: CITGO Asphalt Refining said that the proposed Ground Water Quality Standards should state the PQLs revised downwards will not be applied retroactively to completed or in progress corrective actions under any regulatory program.

753. COMMENT: Exxon Company recommended that in cases where the water quality criteria is of a lower concentration than relevant PQL, the PQL shall become the constituent standard.

754. COMMENT: PPG Industries recommended that the Department verify that the PQL for each chemical is below the concentration necessary to protect human health and the environment, however quantitation below that level should not be necessary.

755. COMMENT: Kerby, Cooper, English pointed out that pursuant to proposed N.J.A.C. 7:9-6 a PQL is a moving target, under which a party may become a violator through an advance in analytical chemistry, rather than through any conduct of the party. Kerby, Cooper, English recommended that the Department should require notification to the regulated community when any PQL is lowered, and should provide for a reasonable time period for affected parties to take appropriate and economically practical steps to adjust to the new PQL.

756. COMMENT: Cohen, Shapiro, Polisher et al. said regarding the ground water cleanup standards proposed in N.J.A.C. 7:26D-4 "The Practical Quantitation Limit (PQL) is the lowest concentration of a contaminant that can be reliably quantified. If a standard is lower than the PQL, there will never be any confidence that the goal has been achieved or that remediation has been completed. Consequently, the cleanup level for a parameter should never be lower than the PQL. This concept is explicitly ratified in Subchapter 6 [see N.J.A.C. 7:26D-6.10(b)1.] and should be clearly applied to the development of ground water standards. There must be a means of acknowledging such limitations, both in setting cleanup standards as well as in determining compliance."

757. COMMENT: Citgo Petroleum said regarding the ground water cleanup standards proposed in N.J.A.C. 7:26D-4 "The cleanup standards provided in Table 4-1 are in several cases below the Practical Quantitative Levels (PQLs). The recently proposed Ground Water Standards provided PQLs as an alternative to the cleanup standard when the PQL is greater than the cleanup standards. It is unclear whether PQLs are allowed to be applied in a similar manner under these proposed standards. Therefore, the Department should better define this issue."

758. COMMENT: NAIOP-NJ Chapter said regarding the ground water cleanup standards proposed in N.J.A.C. 7:26D-4 "NAIOP-NJ Chapter continues to express its concern about the use of PQLs. As analytical methods improve, these PQLs may change. Additionally, the PQL levels need to recognize that there may be some variation given a site-specific test matrix. It should also be clear that once a cleanup is done to a then-existing PQL, cleanup need not be redone if the PQL in fact changes. These need to be addressed throughout the regulations and in 7:26D-6.10 in particular."

RESPONSE: The Ground Water Quality Standards identify the PQL as the enforceable standard where a constituent standard is of lower concentration than the relevant PQL. This is in recognition that the PQL represents the lowest concentration of a constituent that can be reliably measured on a routine basis. The constituent standard however remains the level which is protective of designated uses of ground water and reflects New Jersey's antidegradation policy. As analytical techniques improve the Department will adjust PQLs closer to its relevant constituent standard, to better protect designated uses. This will be done through rulemaking; accordingly, there will be public notice and an opportunity to comment. New PQLs will be implemented through the regulatory programs and will become enforceable when incorporated into a discharge permit or cleanup oversight document.

759. COMMENT: American Industrial Health Council said regarding the ground water cleanup standards proposed in N.J.A.C. 7:26D-4 "... the definition of practical quantitation limits (PQLs) must be subject to rigorous testing to ensure that these limits can be met. Since detection limits are method and matrix specific, it is important that these factors be taken into account in establishing final PQL values for cleanup criteria."

760. COMMENT: Chemical Land Holdings said the Department derived PQLs are based on MDL studies in reagent water. Since these PQLs are to be used as the basis of enforceable regulatory standards, it would be more appropriate to base these PQLs on precision and accuracy studies using actual ground water. Chemical Land Holdings recommended that a new PQL study be performed using ground water tested at Department-certified laboratories.

761. COMMENT: NJ Petroleum Council said regarding the ground water cleanup standards proposed in N.J.A.C. 7:26D-4 "The 500 series is appropriate for polished drinking water but not contaminated ground water. We propose that USEPA 600 series tests be used to determine PQLs, rather than the expensive and inappropriate 500 series."

762. COMMENT: Kerby, Cooper, English said regarding the ground water cleanup standards proposed in N.J.A.C. 7:26D-4 "The PCLs listed in the 500 series methods often cannot be achieved in normal laboratory settings when performed on field samples. The interlaboratory determinations that are used by the EPA to establish PQLs are performed under ideal laboratory circumstances that do not necessarily reflect normal operating conditions. Additionally, the analysis of groundwater samples can present a greater analytical challenge than accounted for in the PQL calculations. Naturally occurring substances, that interfere with analyses, increase the actual achievable detection levels. Recommendation: The PQL factors should be based on the consideration of realistic laboratory operating conditions and practical matrix interference problems encountered during the analysis of routine groundwater samples."

763. COMMENT: Kerby, Cooper, English said regarding the ground water cleanup standards proposed in N.J.A.C. 7:26D-4 "The EPA 500 series methods are inappropriate for groundwater determinations. (S 7:26D-6.10(b)1ii). The Department indicated that the EPA 500 series methods are the first preference for determining the practical quantitation levels (PQLs) for groundwater. The 500 series methods were developed for the analysis of drinking water. Unlike drinking water, groundwater as a matrix is likely to contain sediment and humic materials that will interfere with analyses, particularly those involving extractions. These groundwater matrix issues are not considered in developing the PQLs for drinking water methods. Additionally, those methods do not provide adequate clean-up procedures. The detection levels indicated in the 500 series methods cannot be achieved routinely for groundwater samples. Therefore, the Department's preference for using the 500 series methods for groundwater samples is inappropriate. Recommendation: The Department's first preference for selection of methodologies for determining PQLs for the analysis of groundwater should be methods that are better suited for groundwater such as USEPA 600 series or USEPA Contact Laboratory Protocol methods."

764. COMMENT: Chevron USA said regarding the ground water cleanup standards proposed in N.J.A.C. 7:26D-4 "MDLs and PQLs are matrix and sample specific. The 500 series methods were developed for the analysis of drinking water prior to distribution. They are very sensitive methods because they were intended for the analysis of essentially

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treated and finished sources of drinking water. Also, the MDLs and PQLs are based on the reported analysis of laboratory pure water. The 600 series methods were developed for the analysis of water and waste water samples. The 600 series methods are the methods required by the Department for the analysis of ground water samples. Additionally, the USEPA SW846 methods are for the most part based on the 600 series methods. Analytical constraints as defined in this rule should be based on the methods routinely used for analysis of that matrix, the 600 series methods for ground water, not the most sensitive method available. The 500 series methods may indeed be the most sensitive methods available for the analysis of clean water, yet for the analysis of ground water, they may be no more sensitive than the 600 series methods."

765. COMMENT: Exxon Company said regarding the ground water cleanup standards proposed in N.J.A.C. 7:26D-4: "Use of USEPA 500 series tests to establish PQLs is not proper or recommended. The 500 series is for polished drinking water and is therefore not suitable for use with contaminated ground water testing. Further, only a limited number of laboratories are capable or certified to run the 500 series. Recommend that the Department delete the words 'most sensitive' and replace with 'most appropriate' and abandon its use of 500 series and establish PQLs using USEPA 600 series methods."

RESPONSE: USEPA found no significant difference in the precision and accuracy for analytes in reagent water and ground water in the interlaboratory study for Method 505 (56 FR 3550, January 30, 1991). Additionally, USEPA has not observed sample matrix effects when analyzing ground water samples using Methods 502.1, 502.2, 503.1, 524.1 and 524.2 (Section 10 of EPA Methods 502.1, 502.2, 503.1, 524.1 and 524.2). The Department therefore believes reagent water, drinking water and ground water are equivalent matrices and that a new PQL study is not necessary.

766. COMMENT: Chemical Land Holdings said that many of the methods on Table 3 of the proposed Ground Water Quality Standards are not common, practical or routinely performed by the contract laboratory community.

RESPONSE: The Department listed the methods that are not currently routinely practiced by the NJ certified laboratory community in section I.4 of the Basis and Background document for the proposed Ground Water Quality Standards. For those PQLs derived from methods 507, 515.1, 525.1 and 531.1 a multiplier of 10x was used. The Department agrees there are very few laboratories certified by the State to perform analyses by these methods. However, the USEPA published a final rule for drinking water (56 FR 3526) on January 30, 1991 which requires the use of these methods effective July 30, 1992. The Department believes the laboratory community has had sufficient time to comment on these methods and that proficiency with these methods will become more common as the methods are more frequently used.

767. COMMENT: NAIOP-NJ Chapter said that many PQLs are below levels which are detectable using analytical methodologies routinely required by the Department (that is, 624/625).

RESPONSE: Waste water methods (624/625) are not the only methods routinely required by the Department. The PQLs now listed in Table 1 are not below the MDLs of the most sensitive and commonly used 500 series methods. Graphite furnace atomic absorption spectroscopy analyses is a common method for metals that can achieve the PQLs now listed in Table 1.

768. COMMENT: ENSR Consulting and Engineering said that based on the experience of their chemists the following PQLs are more reasonable than the ones listed in Table 3 of the proposed Ground Water Quality Standards:

Suggested PQLs

Compound	Table 3 PQL	Suggested PQL
Cadmium	2	5
Copper	10	25
1,2 dichlorobenzene	5	10
1,3 dichlorobenzene	5	10
1,4 dichlorobenzene	5	10
2,4 dinitrophenol	40	50
Dinoseb	2	5
Alpha-Endosulfan	0.02	0.05
beta-Endosulfan	0.04	0.05
Nickel	20/10	40
Pentachlorophenol	1	5
Sodium	400	1000

RESPONSE: The proposed PQL values have been used as calibration points by state laboratory chemists successfully. In developing these PQLs, the Department surveyed chemists from multiple state certified laboratories to determine the PQLs which could be achievable by most (but not necessarily all) laboratories. The Department believes the PQLs are reasonable and can be consistently achieved.

769. COMMENT: Exxon Company said the proposed Practical Quantification Levels (PQLs) which for many substances are lower than the actual PQL measured in the laboratory, are a major concern. Exxon Company said that a greater concern is many of the proposed Ground Water Quality Standards are lower than the relevant PQL. For example: Benzene has an actual measured PQL of 1.6 ppb as stated in the Basis and Background document. The proposed PQL is 1.0 ppb and the proposed ground water quality standard is 0.2 ppb which is eight times lower than what is measurable in a laboratory.

RESPONSE: The ground water quality standards are protective of designated uses and not related to the ability of analytical methods to measure the value. The Department recognizes the limitations of the analytical methods and will use the PQL as the regulatory level for monitoring and enforcement until the state of the analytical art improves to achieve lower PQLs. (See the Basis and Background document published with the Ground Water Quality Standards proposal, Section IIIE). New Jersey Safe Drinking Water legislation has set the maximum contamination limit (MCL) for benzene at 1.0 ug/L. Therefore the PQL is set at one ug/L. Method 501/2.2 can routinely obtain a PQL of 1.0 ug/L. PQLs are reported to one significant figure. In the majority of the cases where the proposed PQL is lower than the actual PQL the value is due to rounding.

770. COMMENT: Mobil Oil Corporation said that the term "Treatment Works" as used in the discussion of PQLs in summary of the proposed Ground Water Quality Standards (page 184 of the January 21st New Jersey Register) should be further defined. Mobil Oil Corporation said that if the Department's intent is to include industrial waste water treatment systems or remediation projects, then the system should be designed and constructed to meet the PQL or quality criteria, whichever is higher. Mobil Oil Corporation said that as currently described, "Treatment Works" must be designed to meet benzene levels of .2 ppb for instance, even though technology will not permit accurate measurement at such levels.

771. COMMENT: Ruetgers-Nease asked what was the purpose of the extra expense for obtaining treatment equipment to achieve the level specified in the constitutent criterion when the PQL will be used to determined cleanup levels.

772. COMMENT: JCP&L said that since the Department's PQL policy does not negate responsibility of dischargers to design, construct and operate treatment works so as to meet the constituent standards, even though the PQL will be used to determine compliance, this requires the regulated community to design and construct a treatment system which can perform to standards that **cannot** be reliably measured at the time the system is designed. JCP&L said that this requirement is an unfair burden on the regulated community as it is not technically feasible and not based on sound engineering practice. JCP&L recommends that the Department should consider "a grandfathering of" established PQL on existing permitted discharges.

RESPONSE: The term "treatment works" as it appears in the Summary to the proposed Ground Water Quality Standards was used in a manner consistent with the meaning of that term as defined in NJPDES regulations (N.J.A.C. 7:14A). A distinction must be made between a constituent standard and an effluent limit, and between the measurement of constituents in effluent versus their measurement at a compliance monitoring point. Situations may exist where the constituent standard at the compliance point is below the applicable PQL, but the effluent limit (back-calculated to account for attenuation and loading) may be above a PQL for effluents. NJPDES permits for discharges to surface water have encountered this situation numerous times, and the policy used in that program is adopted here also.

773. COMMENT: NAIOP-NJ Chapter said Table 3 contains many constituents for which PQLs are not available and that no rationale was presented to explain why PQLs were not available or developed for certain constituents. NAIOP-NJ Chapter recommended that the Department should develop PQLs for all constituents or else the Department's use of a regulatory system based upon PQLs is fatally flawed.

RESPONSE: The PQLs from Table 3 have been incorporated into Table 1 of the final adoption. Eleven compounds in Table 1 do not have PQLs because data are not available. Eight of the compounds are

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pesticides. The Department intends to propose PQLs when method detection limit data become available. The Department does not agree that a lack of data for eleven compounds flaws that process for determining PQLs. Most sites will not encounter the 11 compounds, and some of the compounds may have criteria that exceed the PQL to be derived.

774. COMMENT: Chevron USA said that several of the proposed PQLs listed in Table 3 do not conform to the selection criteria detailed in the November 14, 1991 document "Basis and Background for the Ground Water Quality Standards."

RESPONSE: The Department has not identified PQLs which do not conform to the selection criteria in the Basis and Background document that was published with the Ground Water Quality Standards.

775. COMMENT: Chevron USA said that the PQL for benzene does not conform to the criteria for rounding off to one significant figure and should have been rounded up to two ug/L.

RESPONSE: The Department used the study by Oxenford, et al. "Determination of Practical Quantitation Levels for Organic Compounds in Drinking Water," 1989 for benzene and other VOCs.

776. COMMENT: Chevron USA said that the PQL for alpha-BHC (beta-HCH) does not conform to the criteria for rounding off to g/L.

RESPONSE: The PQL does conform to the rounding rules as described by Miller & Miller, 1984.

777. COMMENT: Chevron USA said the proposed PQL for cadmium (total) listed in Table 3 as two ug/L does not conform to the criteria for establishing PQLs detailed in 24 N.J.R. 191, N.J.A.C. 7:9-6.9(c)3ii and that using the criteria that PQL for cadmium should be based on five times the median MCL for the surveyed laboratories 5× 1.5 ug/L or the EPA published PQL for cadmium 4.5 ug/L.

RESPONSE: The PQL for cadmium was obtained from 40 CFR 141, Table 16 (56 FR 3526, January 30, 1991).

778. COMMENT: Chevron USA said that the PQL for chloride does not conform to the criteria for rounding off to one significant figure and should have been rounded up to 3,000 ug/L.

RESPONSE: The PQL does conform to the rounding rules as described by Miller & Miller, 1984 and is correctly presented as 2000 ug/L in Table 3 of the Basis and Background for the Ground Water Quality Standards. However due to a typographical error the PQL for chloride appeared as 3000 ug/L in Table 3 of the proposed Ground Water Quality Standards. This typographical error has been corrected in the final adoption.

779. COMMENT: Chevron USA said that the PQL for 4.4′-DDD does not conform to the criteria for rounding off to one significant figure and should be 0.05 ug/L.

RESPONSE: The PQL does conform to the rounding rules as described by Miller & Miller, 1984.

780. COMMENT: Chevron USA said that the PQL for dibenz(a,h)anthracene does not conform to the criteria for rounding off to one significant figure and should be 30 ug/L.

RESPONSE: The PQL does conform to the rounding rules as described by Miller & Miller, 1984.

781. COMMENT: Chevron USA said that the PQL for 1,2-dichlorobenzene does not conform to the criteria for rounding off to one significant figure and should be 10 ug/L.

RESPONSE: The Department used the study by Oxenford, et al. "Determination of Practical Quantitation Levels for Organic Compounds in Drinking Water," 1989 for VOCs.

782. COMMENT: Chevron USA said that the PQL for 1,2-dichloroethane does not conform to the criteria for rounding off to one significant figure and should be 4 ug/L.

RESPONSE: The Department used the study by Oxenford, et al. "Determination of Practical Quantitation Levels for Organic Compounds in Drinking Water," 1989 for VOCs.

783. COMMENT: Chevron USA said that the PQL for 2,4-dinitrophenol does not conform to the criteria for rounding off to one significant figure and should be 50 ug/L.

RESPONSE: The PQL does conform to the rounding rules as described by Miller & Miller, 1984.

784. COMMENT: Chevron USA said that the PQL for alpha-endosulfan 1,2-dichloroethane does not conform to the criteria for rounding off to one significant figure and should be 0.03 ug/L.

RESPONSE: The PQL does conform to the rounding rules as described by Miller & Miller, 1984.

785. COMMENT: Chevron USA said that the PQL for beta-endosulfan does not conform to the criteria for rounding off to one significant figure and should be 0.05 ug/L.

RESPONSE: The PQL does conform to the rounding rules as described by Miller & Miller, 1984.

786. COMMENT: Chevron USA said that the PQL for Endrin does not conform to the criteria for rounding off to one significant figure and should be 0.05 ug/L.

RESPONSE: The PQL does conform to the rounding rules as described by Miller & Miller, 1984.

787. COMMENT: Chevron USA said that the PQL for mercury (total) does not conform to the criteria for selection and should have been based on the USEPA PQL of one ug/L.

RESPONSE: The PQL for mercury is from Table 16 of 40 CFR 141 (56 FR 3526, January 30, 1992).

788. COMMENT: Chevron USA said that the PQL for oil and grease does not conform to the criteria for rounding off to one significant figure and should be 30,000 ug/L.

RESPONSE: The PQL does conform to the rounding rules as described by Miller & Miller, 1984.

789. COMMENT: Chevron USA said that the PQL for petroleum hydrocarbons does not conform to the criteria for rounding off to one significant figure and should be 3,000 ug/L.

RESPONSE: The PQL does conform to the rounding rules as described by Miller & Miller, 1984.

790. COMMENT: Chevron USA said that the PQL for polychlorinated biphenyls does not conform to the criteria for rounding off to one significant figure and should be one ug/L.

RESPONSE: The Department used the study by Oxenford, et al. "Determination of Practical Quantitation Levels for Organic Compounds in Drinking Water," 1989 for PCBs.

791. COMMENT: Chevron USA said that the PQL for silver does not conform to the criteria for rounding off to one significant figure and should be three ug/L.

RESPONSE: The PQL does conform to the rounding rules as described by Miller & Miller, 1984.

792. COMMENT: Chevron USA said that the PQL for toxaphene does not conform to the criteria for selection and should be based on the USEPA PQL of five ug/L.

RESPONSE: The PQLs for toxaphene is from Table 24 of 40 CFR 141 (56 FR 3526, January 30, 1991).

793. COMMENT: Chevron USA said that the PQL for 1,1,1-trichloroethane does not conform to the criteria for rounding off to one significant figure and should be two ug/L.

RESPONSE: The Department used the study by Oxenford, et al. "Determination of Practical Quantitation Levels for Organic Compounds in Drinking Water," 1989 for 1,1,1-trichloroethane.

N.J.A.C. 7:9-6.9(c)2

794. COMMENT: Chevron USA recommended that the phrase "... unless new interim generic criteria are also derived" be added to proposed N.J.A.C. 7:9-6.9(c)2.

RESPONSE: No new interim generic criteria are planned. However, the Department has altered the wording to allow the use of provisions in N.J.A.C. 7:9-6.9(c)3iii for the derivation of PQLs for constituents with interim generic criteria.

N.J.A.C. 7:9-6.9(c)3

795. COMMENT: Chemical Land Holdings said that if the method of determining an MDL has acknowledged underestimating tendencies, so too will the PQL be an underestimate. Therefore that Department should prove its comments which indicate that it recognizes this criticism but does not consider the error to be great enough to significantly affect the MDL.

RESPONSE: The Department recognizes the MDL is an estimate. If data were available to make an exact determination of the MDL then this same data would be used to determine PQLs. The MDL is based on the best available information.

796. COMMENT: Browning-Ferris Industries said that allowing a PQL-based standard instead of an MDL-based standard does not diminish the inherent variability found in making a measurement of a given sample at any concentration level.

797. COMMENT: Institute for Responsible Environmental Policy said that the Department should recognize the natural variability found in quantitative chemistry in setting PQLs.

RESPONSE: The Department recognizes the presence of systematic and determinate errors in making quantitative measurements. Every laboratory reported value has accuracy and precision variability as-

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sociated with it whether explicitly described or not. The PQLs, however, shall be used as regulatory values and are required to be fixed.

N.J.A.C. 7:9-6.9(c)3i

798. COMMENT: Exxon Company said that there are inconsistencies in the methodology used to round actual PQLs measured by the laboratories to the proposed PQL (one significant digit) in the Ground Water Quality Standards.

For example:

N.J.A.C. 7:9-6 Table 3
Ground Water Practical Quantification Levels

(ug/L)	Actual	Proposed
carbofuran	4.5	7
cadmium	4.5	2
chloride	2500	3000
petroleum hydrocarbons	2500	2000
dinoseb	1.9	2
1,1,1-Trichloroethane	1.9	1

RESPONSE: The PQL for carbofuran is from Table 18 and the PQL for cadmium is from Table 16 of 40 CFR 141 (56 FR 3526, January 30, 1991). The PQL for chloride as it appears in Table 3 of the Basis and Background for the Ground Water Quality Standards is correctly rounded to 2000, consistent with the rounding rules in Miller and Miller (1984). However due to a typographical error the PQL for chloride appeared as 3000 in Table 3 of the proposed Ground Water Quality Standards. This error has been corrected in the adoption. The PQL for petroleum hydrocarbons and dinoseb is consistent with the rounding rules in Miller and Miller (1984). The Department used the study by Oxenford, et al. "Determination of Practical Quantitation Levels for Organic Compounds in Drinking Water," 1989 for 1,1,1-trichloroethane.

799. COMMENT: Chevron USA said in regard to proposed N.J.A.C. 7:9-6.9(c)3ii that rounding down a calculated PQL to one significant figure, when the significant figure is "1", can have a profound effect on the final PQL, and should be reviewed case by case.

RESPONSE: The method used in rounding PQLs was consistent, reference Miller and Miller 1984. The actual (rounded) PQL and the proposed PQL may have been different due to the hierarchy described in the Basis and Background document for determining the proposed PQL.

N.J.A.C. 7:9-6.9(c)3ii

800. COMMENT: Chemical Land Holdings said that many of the PQLs listed on Table 3 are substantially below routine calibration points performed by certified laboratories and that for some of the PQLs the performance of a calibration point at or below the PQL is not routine and will certainly require extraordinary attention. Chemical Land Holdings therefore recommended that use of a 10-times multiplier will be more realistic and consistent with the Department's definition of a PQL, which specifies that a PQL can routinely be achieved with no extraordinary attention.

801. COMMENT: Chemical Land Holdings commented that the Department's proposal to use a five-times multiplier of the MDL to calculate all PQLs is contrary to the USEPA policy of using a ten-times multiplier. Chemical Land Holdings recommended that the Department submit performance evaluation samples to the State-certified laboratories and verify that at least 75 percent of the laboratories can quantitate analytes on the proposed list with plus or minus 40 percent of the PQL. Chemical Land Holdings further recommended that if two State-certified laboratories fail to meet a PQL for the same constituent in the same split sample, there needs to be a mechanism for data acceptance and conformance to the proposed ground water quality standards, which does not leave the regulated entity in default.

802. COMMENT: Chemical Land Holdings said the Department's comment that it reviewed information provided by laboratories on the low calibration point to ensure that some laboratories quantitate to the PQL indicates that most laboratories could not quantitate to the PQL.

RESPONSE: The Department agrees that some laboratories do not currently quantitate to the proposed PQL values. This does not mean they are unable to calibrate to the PQL. Based on discussions with practicing chemists on calibrating to the PQL, the Department has determined that if the laboratories were required to calibrate to the PQL they would. It may require the laboratories to start calibration curves at lower points and not go as high. Furthermore, the proposed multiplier of five times the MDL is consistent with USEPA's promulgated rules: "If EPA desires a level of measurement precision and accuracy that is high, the PQL is set slightly higher (on the order of 10 times the MDL); whereas if the Agency desires a slightly lower level of precision and accuracy (in exchange for reduced health risks), EPA will set the PQL level somewhat lower (on the order of 5 times the MDL), but EPA believes measurements can be made between the PQL and the MDL" (57 FR 31806, July 17, 1992). The Department desires the reduced health risks and has set the PQL at five times the MDL.

803. COMMENT: Chemical Land Holdings said "The limits that are provided in the published analytical methods are those that were derived during the development of the method. It is not scientifically justifiable for the Department to supersede these limits, except in the case where the Department has validated analytical data which have determined limits that are higher than the limits published in the analytical methods."

RESPONSE: Advances in analytical instrumentation since the methods were developed have made it possible for laboratories to achieve lower MDLs than those published with the methods. The MDLs obtained by the Department were calculated using the same procedures as in the published analytical methods. Since the procedures are the same, the Department is justified in using the later data to calculate PQLs because they are more representative of what can be currently achieved by the laboratory community.

804. COMMENT: Chemical Land Holdings commented that the population of Department-certified laboratories used to calculate some of the MDLs was very small. Chemical Land Holdings felt that basing enforceable standards on such a small population of data points is not appropriate. In addition Chemical Land Holdings said that the Department's election to use the median value will result in one-half the laboratories not being able to meet the MDL and calculated PQL. Chemical Land Holdings recommended the values be subjected to the Dixon test for outliers and then select the highest MDL that is not disqualified as an outlier.

805. COMMENT: Chevron USA said that 12 of the proposed constituent PQLs were based on the median MDL values from only two of three laboratories and may not accurately reflect values which can be reliably achieved by the methodologies.

806. COMMENT: Kerby, Cooper, English said regarding the ground water cleanup standards proposed in N.J.A.C. 7:26D-4: "The Department proposes to use detection limit data developed in interlaboratory studies. However, there is no provision for a statistically based elimination of outlier data that may be due to laboratory errors or anomalies. Without a statistically based approach to determining the PQLs, the resulting PQLs could be unrealistic."

807. COMMENT: Carpenter Technology Corp. said regarding the ground water cleanup standards proposed in N.J.A.C. 7:26D-4: "Carpenter Technology Corp. objects to the use of median MDLs in part (b)1.ii(3), because by definition these reflect limits of analytical precision attainable by at most half of the Department certified laboratories on a consistent basis. Use of a high percentile, such as the upper 80th, would give the Department's laboratory certification program and MDL studies much more credibility."

RESPONSE: The Department agrees that in some cases the number of laboratories was small. However, it was inappropriate for the Department to avoid regulating a constituent because of the size of the interlaboratory database. The Department could have multiplied the MDL published with the method by five, but believes PQLs calculated from current interlaboratory MDL data is more representative of the laboratory community's capabilities. The Department agrees that half of the laboratory MDLs are greater than the interlaboratory MDL. However, this does not mean that half the laboratory community is unable to quantitate at the PQL. The Department's discussions with practicing chemists during the interlaboratory MDL survey indicate that if the laboratories were required to quantitate at the PQL they could. This may require modifications in existing practice, but these modifications should not require extraordinary measures for most laboratories. The Department believes its use of the median interlaboratory MDL value is more equitable than USEPA's practice of using the mean interlaboratory MDL value to calculate the PQL. In cases where data clusters at the low end of the scale, the PQL will be artificially lowered based on the performance of a few laboratories. The Department agrees the interlaboratory data needs to be screened for outliers and will explore the use of other statistical methods including the Dixon Q test on the new data received from the laboratories.

808. COMMENT: Chemical Land Holdings said that it is not appropriate to select methods that are not practical and common, such

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as the use of GFAA methods for Cu, Cr, Ag, and Ni specified in Table 3. These metals are routinely analyzed by ICP with more than sufficient sensitivity with respect to MCLs and PQLs. Chemical Land Holdings recommended that for copper, chromium, nickel, and silver, the PQLs should be based on the more common ICP methodology.

RESPONSE: The Department believes GFAA analysis for Cu, Ni, Cr and Ag is common and practical. The Department currently has over 100 laboratories certified for Cu, Cr, Ni and Ag analysis by GFAA.

809. COMMENT: Chemical Land Holdings said that most laboratories are not equipped to perform analyses by Methods 524.2, 515.1, 504, 505, 531.1 and 508 listed in Table 3 and several of these methods are not currently in use by the contract laboratory community.

810. COMMENT: PSE&G said regarding the ground water cleanup standards proposed in N.J.A.C. 7:26D-4: "Currently, there is no listing of laboratories which are certified for all the 500, 600 and SW-846 series analytical methods which are proposed for the new PQLs. All analytical laboratories are not certified for all of the 500 series methods, once these ground water PQLs are promulgated, lead time would be required to subcontract laboratories which are capable of this level of work (low PQLs). Clarify whether specific analytical methods in the New Jersey Register will be used unconditionally or will equivalent methods be permitted."

RESPONSE: The Department agrees that there are very few laboratories certified by the State to perform analyses by these methods. However, the USEPA published a final rule for drinking water (56 FR 3526) on January 30, 1991 which requires the use of these methods effective July 30, 1992. The Department believes the laboratory community has had sufficient time to comment on these methods and to develop proficiency with these methods.

811. COMMENT: Chemical Industry Council/NJ recommended against the use of USEPA 500 series test methods saying that the 500 series is for polished drinking water and is therefore not suitable for use with contaminated ground water testing.

812. COMMENT: Chemical Industry Council/NJ said that the USEPA 500 Series analytical methods are designed for polished drinking water and are therefore not appropriate for use with contaminated ground water testing. Therefore Chemical Industry Council/NJ recommends that the Department specify the use of USEPA 600 Series Methods in determining PQLs pursuant to N.J.A.C. 7:9-6.9(c)3ii.

813. COMMENT: Exxon Company recommended using only USEPA 600 series methods to determine Practical Quantification Limits in N.J.A.C. 7:9-6.9(c)3.ii.

814. COMMENT: Chevron USA said that all PQLs for ground water should be developed and based on the 600 series methods since facilities are required to use the 600 series methods for routine monitoring.

815. COMMENT: Exxon Company said that the Department's provision for allowing an alternative PQL given matrix interference, compliance considerations, and nondetection due to masking effects is a very effective approach. Similar concerns have been expressed by the American Petroleum Institute (API) with regard to USEPA PQL levels. However, use of USEPA 500 series tests to establish PQLs is not proper or recommended. The 500 series is for polished drinking water and is therefore not suitable for use with contaminated groundwater testing, where the 500 series methods are available.

816. COMMENT: New Jersey Petroleum Council said regarding the ground water cleanup standards proposed in N.J.A.C. 7:26D-4: "The 500 series is appropriate for polished drinking water but not contaminated ground water. We propose that USEPA 600 series tests be used to determine PQLs, rather than the expensive and inappropriate 500 series."

817. COMMENT: Environmental Testing And Certification Corp. said regarding the ground water cleanup standards proposed in N.J.A.C. 7:26D-4: "The department makes the assumption that groundwater matrices are very similar to drinking waters. Hence, drinking water methods are applicable for groundwater samples. In general, this assumption is true for the majority of groundwater in the state. However, it is not true for groundwaters underlying contaminated sites. These matrices are dramatically different than drinking water and pose special analytical difficulties which cannot be resolved using drinking water methodology. Drinking water methods are intended for the measurement of trace quantities of contaminants in drinking water and have a linear dynamic calibration range with relatively low upper limit concentrations. Employing methods with this type of dynamic range limitation is not appropriate for the analysis of samples at the high concentrations likely to be encountered in contaminated groundwater. The standards for several listed compounds exceed the linear range capability of the methods that would be used for their analysis by several orders of magnitude. If dilution is employed, analytical detection limits for lower concentration standards would become elevated by the dilution factor which would result in an inability to determine if the standard had been achieved for the lower concentration compound."

818. COMMENT: Exxon Company said regarding the ground water cleanup standards proposed in N.J.A.C. 7:26D-4: "Exxon Company concurs with the Department's provision for allowing an alternate PQL given matrix interference, compliance considerations, or nondetection due to masking effects. Similar concerns have been expressed by the American Petroleum Institute (API) with regard to USEPA PQL levels. However, use of USEPA 500 series tests to establish PQLs is not proper or recommended. The 500 series is for polished drinking water and is therefore not suitable for use with contaminated ground water testing. Recommend that the Department abandon its use of 500 series and establish PQLs using USEPA 600 series methods."

RESPONSE: The Department believes the 500 series methods are suitable for ground water matrices. It is appropriate to use the PQLs determined for the method that is routinely used in monitoring and, therefore, the Department rejects the concept of using 600 series PQLs for the Ground Water Quality Standards.

819. COMMENT: Waste Management of NA suggested that the approaches presented in the following Gibbons' paper for calculation of MDLs and PQLs be incorporated into the Department's final ground water quality standards: Gibbons, R.D., Grams, N.E., Jarke, F.H., and Stoub, K.P., 1991a. Practical quantitation limits. In: Chemometrics and Intelligent Laboratory Systems. (in press)

RESPONSE: The Department is currently sponsoring a study that investigates other methods to determine PQLs. At the time of writing these responses, the study and review of the mentioned article is incomplete. In order to be as timely and responsive as possible the Department has selected a procedure for determining PQLs that is known to be achievable by numerous, but not necessarily all, State-certified laboratories for nearly all of the constituents. When data were lacking for some constituents conservative estimates were made.

N.J.A.C. 7:9-6.9(c)3iii

820. COMMENT: Chemical Land Holdings said that the process by which a discharger may demonstrate the need for an alternate matrix specific PQL should be specified by the Department.

821. COMMENT: Environ Corporation said regarding the ground water cleanup standards proposed in N.J.A.C. 7:26D-4: "Guidance has not been provided for appropriate action if the PQL based standard cannot be achieved using existing methodology due to matrix interference."

RESPONSE: The process for establishing an alternate PQL is set forth at N.J.A.C. 7:9-6.9(c)3iii.

822. COMMENT: Chemical Industry Council/NJ said the Department's provision for allowing an alternative PQL given matrix interference, compliance considerations, and non-detection due to masking effects is a very effective approach.

RESPONSE: The Department agrees.

823. COMMENT: Shell Oil Company said regarding the ground water cleanup standards proposed in N.J.A.C. 7:26D-4: "The document states that it is possible for the person responsible for conducting the remediation to propose an alternative PQL by submitting rigorous supporting information from site-specific samples to the NJDEPE. Does this mean that it will be necessary to go through this involved procedure every time there is a site contaminated with petroleum products from the diesel range and heavier? This would be unnecessarily cumbersome, and defeats one of their stated goals, which is to expedite clean-ups. They need to address this issue, since petroleum contamination is not a rare occurrence."

RESPONSE: PQLs only become important when ground water is being sampled for low levels of contamination. If site-specific matrix interferences are responsible for a laboratory's inability to detect the listed PQLs then the procedure for establishing a site-specific alternative PQL will apply.

824. COMMENT: Environmental Testing And Certification Corp. asked regarding the ground water cleanup standards proposed in N.J.A.C. 7:26D-4: "Where would the PQL for program specific compounds not listed in the methods or the standard be found?"

825. COMMENT: PSE&G said regarding the ground water cleanup standards proposed in N.J.A.C. 7:26D-4: "The low PQLs that are

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proposed will most likely require revisions on a site by site basis due to dilution of samples. This would require planning on a case-by-case basis with the NJDEPE."

826. COMMENT: GE Corporate Environmental Programs recommended that for the purposes of determining contravention of standards, the Department should consider establishing alternative PQLs on the basis of sample quantification limits in a real matrix by the required analytical methods cited in these proposed standards and where the generic PQLs cannot be met due to matrix interference. GE Corporate Environmental Programs said that the Department should allow the use of a PQL based on quantification limits determined in a site-specific matrix.

RESPONSE: The Department has made provision for this in N.J.A.C. 7:9-6.9(c)3iii.

N.J.A.C. 7:9-6.9(c)4

827. COMMENT: Applied Wastewater Technology asked where is the intended sampling point to be for bioassays conducted pursuant to the proposed N.J.A.C. 7:9-6.9(c)4. In a related question, Applied Wastewater Technology asked whether or not the Department will allow the discharger to account for the natural attenuation in soils in conducting the bioassay/bioaccumulation assay.

RESPONSE: The specific method of calculating the impact of a discharge to ground water on surface water quality will be determined by the applicable regulatory programs. The selection of monitoring locations, parameters and methods will be made by the applicable regulatory programs on a site by site basis.

828. COMMENT: Dupont-Chambers Works said that there are not standardized or approved methods for conducting bioassays or bioaccumulative assays as called for in the proposed N.J.A.C. 7:9-6.9(c)4 and that before such tests are required, regulatees should have the opportunity to comment on their specific procedures to ensure that they will yield useful data.

RESPONSE: The Department has promulgated criteria and procedures for bioassay testing and analysis at N.J.A.C. 7:18-6.1.

829. COMMENT: Ruetgers-Nease said that the proposed Ground Water Quality Standards state that "bioassays or bioaccumulation assays may be required" to assist the Department in determining Practical Quantitative Limits. However, the criteria for triggering these types of tests are not clearly described in the proposed regulations.

830. COMMENT: NAIOP-NJ Chapter said with respect to proposed N.J.A.C. 7:9-6.9(c)4 the Ground Water Quality Standards should clarify exactly when and under what conditions "more sensitive analytical techniques" would be required.

RESPONSE: Surface water is protected pursuant to the Ground Water Quality Standards by ensuring that the ground water discharges at a site will not contravene surface water quality standards by the time it migrates to surface water. Therefore, attenuation is accounted for. Bioassays would then be used as a surrogate for measurement of the appropriate constituent standard, where that standard is less than the PQL.

The Department's Procedures for Processing Petitions and Decision Making

831. COMMENT: PSE&G said that with regard to the procedure for obtaining a reclassification, if the Department denies a petition, it should be required to set forth in writing its reasons for doing so. PSE&G recommended that the Department provide the basis for rejecting each element of the petition, for example, its "hydrogeologic analyses" or its choice of "best available demonstrated technology." PSE&G said this would provide a record for appeal or an amended petition, as well as building a record of Departmental consistency to be used in future rulemakings.

832. COMMENT: NAIOP-NJ Chapter said that the Ground Water Quality Standards should set forth what will happen to pending petitions for reclassification.

833. COMMENT: Chemical Industry Council/NJ asked how the need to reclassify an area will be determined and what procedures must be followed for that determination.

834. COMMENT: ENSR Consulting and Engineering said that the petition process outlined in N.J.A.C. 7:9-6.10 identifies the procedures for filing a petition, but does not describe the decision process.

RESPONSE: Any interested person may seek to have a ground water area reclassified by filing a petition with the Department. As stated in the Ground Water Quality Standards at N.J.A.C. 7:9-6.10(c), petitions for reclassification of ground water will be reviewed by the Department in compliance with N.J.S.A. 52:14B-4 which requires the Department to provide a written rationale for the denial of a petition. The Department intends to evaluate each petition on the basis of the criteria described in the Ground Water Quality Standards and provide a written evaluation of any petition on the basis of those criteria.

835. COMMENT: Chemical Industry Council/NJ recommended that the Department should propose to augment the public petitioning process for reclassification of ground water, by making use of its existing database of sites to identify areas which exceed some threshold of site density of identified ground water contamination incidents.

836. COMMENT: Exxon Company said that the Department should propose to augment the public petitioning process for reclassification of ground water, by making use of its existing database of sites (for example, CERCLIS and ECRA sites where ground water contamination has been detected), to identify areas which exceed some threshold of site density of identified ground water contamination incidents. A conservative assignment of Class II-B to the impacted aquifer in the vicinity of those sites and surrounding areas, potentially designated on the basis of zoning or other documented land-use assignments, could then be made.

RESPONSE: The Department does not at present have a comprehensive data base of sites with information on the reclassification criteria. Although information of this type may be in the possession of the Department there is presently no practical way of assembling and analyzing this information for the purposes which the commenters suggest. The Department may in the future propose a Class II-B reclassification in connection with a publicly-funded cleanup. In the meantime, private parties, to whom the benefits of Class II-B classification will accrue, may petition the Department for reclassification.

837. COMMENT: Princeton University asked what is the exact process for reclassification of ground water and what are the governing processes.

RESPONSE: The process for reclassification of ground water is through the mechanism of a rule change. The procedure for effecting such a rule change is fully explained in the Ground Water Quality Standards at N.J.A.C. 7:9-6.10.

838. COMMENT: NAIOP-NJ Chapter recommended that if a private entity successfully petitions for reclassification to an area of special ecological significance, the regulations should provide that a deed restriction memorializing the reclassification be recorded so that any subsequent purchaser or user of the property is placed on notice of the reclassification and can evaluate the impact that the classification will have on the intended use of the property.

RESPONSE: Adequate public notice of ground water area reclassifications will be given as part of the reclassification process; accordingly, the Department believes that it is not necessary to require a deed restriction on private property based on the classification of ground waters beneath that property.

Procedures For Filing a Petition For Reclassification

839. COMMENT: New Jersey Business and Industry Association requested clarification on the procedures for filing a petition for reclassification of ground water.

RESPONSE: Any interested person may seek to have a ground water area reclassified by filing a petition with the Department of Environmental Protection and Energy. Such a petition will be handled by the Department as a petition for rulemaking, that is a request to amend the Ground Water Quality Standard regulations (N.J.A.C. 7:9-6 et seq.). As such these petitions will be handled according to the Department's Rules of Practice and Procedure (N.J.A.C. 7:1-1.2). These rules specify certain requirements for the form of the petition document and set up procedures and schedules for the Department's processing of the petition. Because of the great interest shown for the reclassification of ground waters to Class II-B Classification Areas in particular, the Department developed a guidance document to assist interested parties in filing such petitions.

840. COMMENT: Dupont-Chambers Works said that a fair and reasonable period of time to petition for reclassification should be included in the proposed Ground Water Quality Standards.

RESPONSE: There is no time limit for filing petitions for reclassification. Petitions may be filed at any time. In the meantime, the Ground Water Quality Standards are not self-executing but will be implemented through the applicable regulatory programs. There will necessarily be some time lag before these standards are incorporated into existing oversight documents through these programs. Furthermore, sufficient flexibility is provided to the applicable regulatory programs through the

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application of Classification Exception Areas and Alternate Concentration Limits to prevent unnecessary application of overly stringent standards.

841. COMMENT: Newport said that the procedures outlined by the Department for reclassification of ground water are overly cumbersome and that a less cumbersome administrative procedure designed to allow the Department in its executive capacity to reclassify areas while at the same time protecting the rights of affected property owners should be sufficient.

842. COMMENT: Saul, Ewing, Remick, Saul Inc. said that it can be expected that the proposed N.J.A.C. 7:9-6.10 process will rarely be exercised because the petitioner is obligated to undertake a considerable expense an extensive analysis of a region's ground water which will primarily benefit entities other than itself.

843. COMMENT: New Jersey Business and Industry Association said that the requirements set forth to reclassify ground water are onerous and would place a significant burden upon the petitioner to develop sufficient information over a significant portion of one or more geologic units or formations.

RESPONSE: Since classifications of ground water areas is accomplished through rulemaking, reclassification is necessarily a process of amending adopted rules. The Department may only amend adopted rules through rulemaking pursuant to New Jersey's Administrative Procedure Act (APA), N.J.S.A. 52:14B-1 et seq. The Department has no authority to amend rules through its executive authority outside of that process. Interested parties must weigh the effort of compiling the information necessary to demonstrate the case for a reclassification with the benefits of having a ground water area reclassified. The Department believes that criteria required for achieving a reclassification are reasonably balanced between protecting public health and the environment and allowing legitimate petitions for reclassifications to be successful.

844. COMMENT: Chevron USA said that a mechanism should be provided to consider Class II-B and Class III areas which have not yet been mapped to prevent the unnecessary application of the Class II-A standards prior to these areas being officially classified.

RESPONSE: The Department has added language to N.J.A.C. 7:9-6.5(f) to clarify the original intent of the proposed Ground Water Quality Standards that the descriptive criteria of Class III areas may be verified administratively by the Department for any site of interest. That is, interested parties may present data to the Department demonstrating that the narrative criteria for Class III applies to a given area for verification by the Department. This process is administrative, not rulemaking in nature. In the case of potential Class II-B areas sufficient flexibility is provided to the applicable regulatory programs through the application of Classification Exception Areas and ACLs to prevent unnecessary application of overly stringent standards.

845. COMMENT: ENSR Consulting and Engineering said "The references to the petition process occur in Proposed N.J.A.C. 7:9-6.5(e) and 7:9-6.5(d). These sections identify the option for the reclassification of II-A ground water to II-B and the reclassification of any class ground water to a I-A through the petition process identified in 7:9-6.10. ENSR Consulting and Engineering request that other reclassification options, if any, be specified in the regulations."

846. COMMENT: Chemical Industry Council/NJ recommended that additional language be added to N.J.A.C. 7:9-6.10 to clarify that a petition can be submitted for any geologic unit or formation.

RESPONSE: Although other reclassification options are not specifically described in the Ground Water Quality Standards they are not excluded. The language of N.J.A.C. 7:9-6.10(b) has been clarified on this point. In addition, as long as the ground water area which is the subject of a petition for reclassification constitutes at least a significant portion of a geologic unit or formation no limitation on the type or area of the unit or formation is implied by the Ground Water Quality Standards.

Eligibility Requirements for Filing a Petition for Reclassification

847. COMMENT: Association of New Jersey Environmental Commissions recommended that any group or person, without restriction, be allowed to file a petition to have a ground water area reclassified pursuant to the proposed N.J.A.C. 7:9-6.10.

848. COMMENT: Rutgers Environmental Law Clinic said the definition of "interested person" given in proposed N.J.A.C. 7:9-6.10 precludes environmental groups or non-resident concerned citizens from requesting that ground waters be reclassified to greater protection, while it permits polluters to seek less ground water protection. Rutgers Environmental Law Clinic commented that this subsection is an unreasonable and arbitrary restriction on concerned citizens' rights to petition the government to protect the environment we all share. Rutgers Environmental Law Clinic suggested that in light of the fact that environmental groups may have a level of expertise that is required to meaningfully petition for a reclassification, and the fact that areas of the greatest environmental sensitivity generally also have the fewest residents, it is ludicrous for the Department to prohibit public input as is proposed here.

849. COMMENT: NJ PIRG said that the Department's proposed procedures for reclassification of ground waters is unnecessarily narrow in its determination of who may petition for reclassification. NJ PIRG recommended that any individual or group be allowed to request a change in classification.

RESPONSE: N.J.A.C. 7:9-6.10(b) does not limit "interested parties" to those specified but specifically states that "interested parties shall include, but not be limited to:" those specified. Other parties that are interested in obtaining a ground water area reclassification are free to petition the Department for reclassification of any ground water area.

850. COMMENT: Middlesex County Planning Board said in regard to proposed N.J.A.C. 7:9-6.10(d) that the term "property owned by a single person" is unclear. Middlesex County Planning Board recommends that since a "single person" may be a governmental entity an exception for government as well as conservation groups should be made.

851. COMMENT: NAIOP-NJ Chapter said since there could very well be a situation where a "significant portion of one or more geologic units or formations" is owned by a single person, that person should have the ability to petition for a reclassification rather than be forced to seek a classification exception.

852. COMMENT: Chemical Industry Council/NJ recommended deleting from proposed N.J.A.C. 7:9-6.10(d) the following "In no event shall a reclassification area consist only of an area underlying property owned by a single person, an area affected only by one discharge, or an area affected only by a set of discharges owned or controlled by a single person." Chemical Industry Council/NJ found this language to be arbitrary and said that a single person may own a substantial area which would otherwise qualify for reclassification.

853. COMMENT: CITGO Asphalt Refining said that proposed N.J.A.C. 7:9-6.10(d) which prohibits reclassifications for areas underlying property of a single person is arbitrarily restrictive. CITGO Asphalt Refining recommends that the proposed Ground Water Quality Standards be rewritten to allow reclassification based on the factors present in an area or site.

854. COMMENT: Dupont-Chambers Works said that under the proposed Ground Water Quality Standards identical facilities will be subject to potentially disparate remedial expenses and time frames simply by virtue of their geographic position relative to other sites. Whereas a site in a Class II-B area may be permitted to discharge contaminants in excess of standards, the same site, if not surrounded by other dischargers, would be required to recall any contaminated ground water, no matter how little standards are exceeded and no matter how remote the receptors, to prevent pollutants from migrating beyond the source unit. Dupont-Chambers Works recommended that the preclusion of a sole site reclassification without regard to the size of the facility or other substantive facts be deleted from the proposed Ground Water Quality Standards.

855. COMMENT: PSE&G said that the restriction on reclassification of property being used by a single property owner (24 NJR 192) is arbitrary and unnecessary, and unrelated to the criteria governing reclassification.

856. COMMENT: Chevron USA said that the stipulation that single property reclassification areas in proposed N.J.A.C. 7:9-6.10(d) appears to be arbitrary and capricious and should be deleted.

857. COMMENT: Exxon Company recommended deleting the following phrase from N.J.A.C. 7:9-6.10(d), "In no event shall a reclassification area consist only of an area underlying property owned by a single person, an area affected only by one discharge, or an area affected only by a set of discharges owned or controlled by a single person." Exxon Company said that this is an arbitrary statement by the Department and could lead to capricious decisions. Ownership restrictions should not be placed on reclassification of ground water, as a single person may own a substantial area which would otherwise qualify for reclassification.

RESPONSE: The restriction on single owner reclassifications is consistent with the Department's intent to make classifications regional in nature and not based on localized infringements from pollution sources. However, as pointed out by one of the commenters, government entities as single owners of large tracts may seek reclassification in accordance

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with N.J.A.C. 7:9-6.5(d)1i(2) to have a ground water area designated Class I-A. The single owner restriction would then prevent such a reclassification, which was certainly not the intent of the Department and is in conflict with the cited provision. The Department therefore agrees that N.J.A.C. 7:9-6.10(g) should be clarified and has incorporated revisions in the adoption of this provision to allow for single owners but to preserve the restriction for areas affected only by one discharge, or an area affected only by a set of discharges owned or controlled by a single person.

858. COMMENT: Dupont-Chambers Works said that many from the regulated community would be disqualified from reclassification due to the absence of certain criteria such as extensive exceedances of standards on a regional scale and that such persons should not be penalized solely on the basis of being located away from other sites.

RESPONSE: The applicable regulatory programs have sufficient flexibility through the mechanisms of Classification Exception Areas, ACLs and other provisions to work with isolated single site discharges to allow fair but effective regulation of such discharges.

Requirements for a Petition to Apply a Less Stringent Classification

859. COMMENT: NJ PIRG said that the procedure for reclassification as described in proposed N.J.A.C. 7:9-6.10(g) is vague and does not require the Department to find that the petitioner meets specified criteria. NJ PIRG recommended that the language in N.J.A.C. 7:9-6.10(g) be amended to reflect that a reclassification request can be granted only if all of the four proposed criteria are met.

RESPONSE: The Department agrees that language is needed to clarify the Department's intent in this regard, that the petitioner must demonstrate and the Department must find that all the stated criteria are met before a reclassification petition is approved. N.J.A.C. 7:9-6.10(g) has been modified accordingly.

860. COMMENT: Exxon Company recommended reversing and recodifying N.J.A.C. 7:9-6.10(g)1 and (g)2 to clarify logic saying that if a petitioner for a reclassification shows that the exceedance cannot be remedied, within the given constraints, it should be reclassified to Class II-B. Ground waters that can be restored, within the given constraints, must meet all three of the remaining criteria to be considered for reclassification.

RESPONSE: All four of the criteria must be demonstrated for a successful petition; therefore, the order in which they are presented is not important.

861. COMMENT: GE Corporate Environmental Programs said that until the Department proposes Class II-B areas, the regulated community can not evaluate the appropriateness of these provisions or the procedures for reclassification of ground water at N.J.A.C. 7:9-6:10, which on their face, appear to place a tremendous burden on the petitioner for reclassification.

862. COMMENT: Chemical Land Holdings said that N.J.A.C. 7:9-6.10(g) may inhibit essentially all small, and many larger businesses from entertaining a legitimate reclassification request since it appears that the Department has intentionally squeezed the regulated community into submission.

RESPONSE: It was not the Department's intent to unnecessarily restrict the circumstances under which successful petitions for reclassification can be made, but only to strike a balance between protecting human health and the environment and the legitimate interest seeking reclassification. Pursuant to the stated policy of the Water Pollution Control Act, the Ground Water Quality Standards are aimed at maintaining and restoring potable use. The Department feels the final regulation strikes this balance and provides added clarity by which the regulated community can judge the appropriateness of the process to their particular circumstance. Although the Department recognizes that development of a petition for Class II-B reclassification may be costly, most of the benefits of a Class II-B area accrue to the regulated community. In addition, for small single site problems, alternative concentration limits may be appropriate on a temporary basis.

Significant Risk Criterion Proposed N.J.A.C. 7:9-6.10(g)3

863. COMMENT: Eckenfelder, Inc. said that a better definition of "significant risk" (proposed N.J.A.C. 7:9-6.10(g)3) to downgradient surface waters is needed. The commenter said this would be important for anticipated petitions for reclassification of industrial areas of the State which are often situated adjacent to major river systems.

864. COMMENT: Eckenfelder, Inc. asked in regard to proposed N.J.A.C. 7:9-6.10(g) that clarification be provided as to what precisely constitutes a significant risk to downgradient surface waters or to potentially impacted ecological systems. Eckenfelder, Inc. recommends that the judgment of significant risk be based on the presence or absence of violations of established surface water quality standards.

RESPONSE: Impacts of discharges of ground water on surface water will be judged in accordance with the surface water quality standards N.J.A.C. 7:9-4 et seq. Accordingly changes in surface water quality will be measured or determined by a biological, chemical, physical, analytical method, conducted in accordance with USEPA approved methods as identified in 40 CFR 136 or other analytical methods (for example, mathematical models, ecological indices, etc.) approved by the Department.

Best Available Demonstrated Technology Criterion Proposed N.J.A.C. 7:9-6.10(g)2

865. COMMENT: Chemical Land Holdings stated that the use of best available demonstrated technology in N.J.A.C. 7:9-6.10(g) is excessively imposing and that other jurisdictions have used more reasonable terminology, such as "available and demonstrated or technologically practicable means." Chemical Land Holdings recommends that the Department define best available demonstrated technology as it is used in this context.

866. COMMENT: Chemical Industry Council/NJ recommended that clarification of the term "best available demonstrated technology" used in proposed N.J.A.C. 7:9-6.10(g)2 be provided and that it include economically feasibility and cost benefit analysis.

867. COMMENT: Saul, Ewing, Remick, Saul Inc. said that "best available demonstrated technology" as that term is used in proposed N.J.A.C. 7:9-6.10 needs to be defined in light of recent legislation and that it should be a reasonably definable balance of technology, economics, and demonstrated reliability.

RESPONSE: Since N.J.A.C. 7:9-6.10 is intended for general application for reclassifications to and from any ground water classification areas, not just reclassifications to Class II-B areas, proposed N.J.A.C. 7:9-6.10(g)2 was removed on adoption. N.J.A.C. 7:9-6.5(e)2 sets forth the specific requirements for establishing Class II-B classification. That paragraph incorporates the concept of "technologically practicable means." The Department has provided a definition of that term in N.J.A.C. 7:9-6.4; that definition specifies the Department's intention concerning the definition of available technology. The Department does not intend to conduct cost-benefit analyses in reviewing petitions for Class II-B reclassification since many of the environmental benefits of a particular pollution control or remediation technology can not be defined in economic terms. The definition of "technologically practicable means" does however incorporate the concept of "demonstrated" technology which was in proposed N.J.A.C. 7:9-6.10(g)2.

868. COMMENT: Chemical Industry Council/NJ recommended that proposed N.J.A.C. 7:9-6.10 be reworded as follows: "Remedying the exceedances is technologically impractical or economically infeasible using best demonstrated commercially available remedial technology; . . ."

869. COMMENT: Exxon Company recommended rewording N.J.A.C. 7:9-6.10(g)2 as follows: "The exceedances cannot be remedied using best available demonstrated technology;" to read, "Remedying the exceedances is technologically impractical or economically infeasible using best demonstrated commercially available remedial technology; or" to be consistent with N.J.A.C. 7:9-6.5(e)2ii.

870. COMMENT: Kerby, Cooper, English said that there is a need to include an economic component and consideration of commercial availability in defining "best available demonstrated technology" (BADT), pursuant to proposed N.J.A.C. 7:9-6.10(g)2.

871. COMMENT: Merck Manufacturing Division recommended that language be added to proposed N.J.A.C. 7:9-6.10(g)2 to include that the remedy must not be economically feasible and that the cost is unreasonably disproportionate to be environmental, economic and social benefits.

872. COMMENT: Chevron USA recommended modifying N.J.A.C. 7:9-6.10(g)2 as follows: "It is not technically practicable or economically feasible to remediate the ground water using the best demonstrated commercially available technology;"

RESPONSE: Since N.J.A.C. 7:9-6.10 is intended for general application for reclassifications to and from any ground water classification areas, not just reclassifications to Class II-B areas, proposed N.J.A.C. 7:9-6.10(g)2 was removed on adoption. The appropriate standards for establishing Class II-B classification are set forth at N.J.A.C. 7:9-6.5(e)2. The Department has decided that "economic feasibility" is not an ap-

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propriate test for a classification system or general decisions on the remedy of pollution and should not be included in the Ground Water Quality Standards. As set forth in the Summary to the proposed Ground Water Quality Standards, the Department's focus will be on technological feasibility. In many cases, "economic" is misused to mean "fiscal" in that a technology is considered more costly than a responsible party can afford. Another meaning of "economic" is used by some commenters to compare financial costs and benefits. Many of the benefits of clean ground water are not financial in nature, but rather involve the restoration of a public resource that should not have been contaminated in the first place. The New Jersey Water Pollution Control Act and other legislation have established a clear mandate to restore the integrity of ground water resources. Therefore, the Department has decided on a simpler test: whether or not a technology is available that is capable of substantially cleaning up the ground water. A definition of "technologically practicable means" has been provided in N.J.A.C. 7:9-6.4 to clarify the Department's concept of technological feasibility. The language of N.J.A.C. 7:9-6.5(e)2 has also been clarified on this point. This will be the standard for judging whether or not Class II-B reclassification is appropriate for a given area.

873. COMMENT: New Jersey Builders Association said that the criterion listed in proposed N.J.A.C. 7:9-6.10(g)2 (BADT) should be deleted since three other criteria must still be satisfied in order to apply for a less stringent classification to a ground water area.

RESPONSE: The inclusion of a bench mark technology criterion for approval of a petition to apply a less stringent Ground Water Classification allows the Department to better judge whether cleanup of contaminated ground water is feasible before applying a less stringent standard. This is consistent with the Department's policy of preferring remediation to reclassification. However, since N.J.A.C. 7:9-6.10 is intended for general application for reclassifications to and from any ground water classification areas, not just reclassifications to less stringent ground water classification areas, proposed N.J.A.C. 7:9-6.10(g)2 was removed on adoption.

Surface Water Impact Criterion Proposed N.J.A.C. 7:9-6.10(g)3

874. COMMENT: Ekenfelder, Inc. asked what would be done when surface water quality standards are currently not attained and ground water can be shown to be contributing some small fraction of the constituents that are in violation of the standards in the surface water.

875. COMMENT: Eckenfelder, Inc. said that the most likely candidate areas for reclassification to Class II-B are the State's historic industrial areas which are adjacent to major rivers. Eckenfelder, Inc. said that ground water contamination plumes from these sites can be thought of in a steady-state condition since they have migrated to the nearby surface water body and are discharging into it (and in most cases probably have been for many decades). Eckenfelder, Inc. suggested that it would be a relatively simple matter to show that there is no potential for ground water within this candidate reclassification area migrating to other ground water classification areas. However, Eckenfelder, Inc. pointed out that the demonstration that the ongoing discharge of contaminants to the surface water system poses no significant risk to public health or the ecological system will likely not be as simple. Eckenfelder, Inc. recommended that where water bodies meet all applicable water quality standards that such a finding in and of itself be a sufficient demonstration of the criterion that there be no significant risk to downgradient surface waters.

876. COMMENT: Eckenfelder, Inc. said that when the total maximum daily load of chemicals of concern in the ground water naturally discharging to an impaired water body are compared to the total maximum daily load of the chemicals in the water body, the ground water discharges can be shown to be insignificant. Eckenfelder, Inc. recommended that the discharge of ground water to a given segment of an estuary shoreline or freshwater river be estimated through conventional, established, ground water modeling procedure, which would assume a constant flow through time. Eckenfelder, Inc. said that in this way the ground water contaminant load, which will naturally attenuate through time, can be entered into a conventional multiple source waste load allocation model for estuaries or freshwater. In evaluating such a mass balance Eckenfelder, Inc. recommends that the discharge from ground waters be treated as a non-point discharge. Eckenfelder, Inc. recommended that a mass-balance analysis be done aimed at identifying to what extent the ongoing discharge of contaminated ground water contributes to the non-attainment of a particular surface water quality standard.

RESPONSE: Impacts of discharges of ground water on surface water will be judged in accordance with the surface water quality standards N.J.A.C. 7:9-4 et seq. Accordingly changes in surface water quality will be measured or determined by a biological, chemical, physical, or analytical method, conducted in accordance with USEPA approved methods as identified in 40 CFR 136 or other analytical methods (for example, mathematical models, ecological indices, etc.) approved by the Department.

Significant Portion of a Geologic Unit Criterion For Reclassification, Proposed N.J.A.C. 7:9-6.10(d)

877. COMMENT: New Jersey Health Products Council said that the Department should define what a significant portion of one or more geologic units or formations are pursuant to N.J.A.C. 7:9-6.10(d).

878. COMMENT: New Jersey Business and Industry Association said that the term "significant portion" as it is used in proposed N.J.A.C. 7:9-6.10 needs to be defined.

879. COMMENT: NAIOP-NJ Chapter said that the Ground Water Quality Standards should clarify what constitutes a "significant portion of one or more geologic units or formations."

880. COMMENT: New Jersey Builders Association asked how does the Department define "a significant portion" of one or more geologic units or formations pursuant to proposed N.J.A.C. 7:9-6.10(d).

RESPONSE: The phrase "significant portion of one or more geologic units or formations" is used in keeping with the Department's policy that classifications are to be regional in nature and do not reflect localized conditions. No specifications for this term are given since the great variety of geologic conditions throughout New Jersey require that this criteria be evaluated using best professional judgment on a case by case basis.

Rights of Ground Water Users Effected by a Reclassification Petition

881. COMMENT: Middlesex County Planning Board said that nowhere in the proposed Ground Water Quality Standards are the rights of those making withdrawals clearly protected and that legal notification of a petition to reclassify pursuant to proposed N.J.A.C. 7:9-6.10 should be given to all ground water users with the area or class to be affected.

RESPONSE: Since reclassifications are done through the rulemaking process, public notice and comment are built into the process in accordance with the Administrative Procedures Act. The Department agrees that additional notification is called for to assure that all affected ground water users receive adequate notice of a proposed change in classification of their ground water resource. The Department therefore has added language to N.J.A.C. 7:9-6.10 requiring petitioners for a less stringent classification to provide public notice of the petition, by mail and by publication in local newspapers, to those using ground water in the subject area, as well as local authorities and other interested persons.

Summary of Changes on Adoption:

The Department has determined to adopt the proposed new rules and repeal with the following changes:

1. The Department made a number of minor grammatical and technical changes to either correct printing errors or clarify minor technical points.

2. The Department added a statement to clarify the scope of the subchapter at N.J.A.C. 7:9-6.1(c). The statement clarifies that the ground water quality standards shall be the primary basis for setting numerical criteria used in deriving limits on discharges to ground water by the Department's applicable programs. By identifying the Ground Water Quality Standards as the primary basis of these derivations the Department acknowledges that the implementing regulations of the applicable regulatory programs may contain additional provisions which are applicable to the derivation of limits on discharges to ground water and/or ground water cleanup standards.

3. In N.J.A.C. 7:9-6.2(b), the Department added the phrase "by the applicable regulatory program" to further clarify that the Ground Water Quality Standards are not self-executing but are implemented through the Department's regulatory programs.

4. In N.J.A.C. 7:9-6.2(b), the Department replaced the word "meet" with "achieve compliance" to clarify the intent of this provision.

5. In N.J.A.C. 7:9-6.4, the Department has added a definition of the phrase "applicable regulatory program" to provide clarification as to which programs will utilize the Ground Water Quality Standards for developing regulatory provisions.

6. In N.J.A.C. 7:9-6.4, the Department has clarified the definition of the phrase "background water quality" by providing reference to methodology for determining background ground water quality.

7. In N.J.A.C. 7:9-6.4, the Department has added the phrase "or the required range of levels or concentrations" to the definition of "consti-

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tuent standard" to clarify that some constituent standards may be presented as acceptable ranges of values as opposed to a single value.

8. In N.J.A.C. 7:9-6.4, the Department has added a definition of the phrase "conventional water supply treatment" to clarify the meaning of this term as it is used in the Ground Water Quality Standards.

9. In N.J.A.C. 7:9-6.4, the Department has added a definition of the phrase "extensive exceedance" to clarify the meaning of this term as it is used in the Ground Water Quality Standards.

10. In N.J.A.C. 7:9-6.4, the Department has modified the definition of the term "ground water" by replacing the phrase "zone of saturation (below the water table) where the pore spaces are filled with water" with the phrase "saturated zone". This, in conjunction with the addition of the definition for the term "saturated zone," also in N.J.A.C. 7:9-6.4, clarifies the intent of the Department to include all zones of saturation in the definition of ground water.

11. In N.J.A.C. 7:9-6.4, the Department has added a definition of the term "organoleptic effect" to clarify the meaning of this term as it is used in the Ground Water Quality Standards.

12. In N.J.A.C. 7:9-6.4, the Department has added a definition of the term "PQL" to clarify that this abbreviation stands for practical quantitation level.

13. In N.J.A.C. 7:9-6.4, the Department has added a citation to regulations which clarify the definition of "practical quantitation level."

14. In N.J.A.C. 7:9-6.4, the Department has added a definition of "saturated zone" to clarify the meaning of this term as it is used in the Ground Water Quality Standards.

15. In N.J.A.C. 7:9-6.4, the Department has added a description of how to determine the "natural location" to clarify the definition of "synthetic organic chemicals."

16. In N.J.A.C. 7:9-6.4, the Department has added a definition of the term "technologically practicable means" to clarify that term as it is used in the Ground Water Quality Standards.

17. In N.J.A.C. 7:9-6.4, the Department has eliminated the description of the "saturated zone" as it appeared in the definition of the term "unsaturated zone." This, in conjunction with the addition of the definition for the term "saturated zone," also in N.J.A.C. 7:9-6.4, clarifies the intent of the Department to include all zones of saturation in the definition of ground water.

18. In N.J.A.C. 7:9-6.5(d)1ii(5), the Department has added a description of the minimum Class I-A area to clarify that a Class I-A area must be of sufficient size to ensure that the functional requirements for Class I-A (as set forth in N.J.A.C. 7:9-6.5(d)1ii(3) and (4)) will be met."

19. In N.J.A.C. 7:9-6.5(d)2i, the Department has clarified the definition of agricultural designated uses in Class I-PL areas by providing a reference to the Pineland Comprehensive Management Plan which more fully describes such uses.

20. In N.J.A.C. 7:9-6.5(e)2ii, the Department clarified its technology based standard by replacing the phrase "technologically impracticable from an engineering perspective using best available remedial technology" with the phrase technologically practicable means." The language which was eliminated from this section was incorporated into a definition of "technologically practicable means" which has been provided at N.J.A.C. 7:9-6.4.

21. In N.J.A.C. 7:9-6.5(e)2ii(2) and (3), the Department clarified the extent of the area of water supply area subject to the five percent criteria is the "area subject to the petition."

22. In N.J.A.C. 7:9-6.5(e)2v, the Department has added language to clarify the extent to which natural attenuation processes will be expected to restore ground water quality in Class II-B ground water classification areas; to complement N.J.A.C. 7:9-6.5(e)2i, and to acknowledge that there will be sites within proposed Class II-B areas at which active remediation will be necessary to restore ground water quality. Furthermore this section has been changed to provide consistency with and eliminate redundancy between N.J.A.C. 7:9-6.5 and 6.10. Specifically, the phrase "ecological concerns" was removed as these concerns are more explicitly addressed in N.J.A.C. 7:9-6.10.

23. In N.J.A.C. 7:9-6.5(e)2vi, the Department has added a reference to the general reclassification requirements to make clear that the requirements for reclassification to Class II-B are in addition to requirements in N.J.A.C. 7:9-6.10.

24. In N.J.A.C. 7:9-6.5(f)1, the phrase "... and other geologic units having the characteristics of an aquitard," was added by the Department to clarify that list of aquitards preceding the phrase is not all inclusive of all possible aquitards.

25. In N.J.A.C. 7:9-6.5(f)2, the Department has added language to clarify that Class III-A areas may be demonstrated to exist by interested parties and verified by the Department upon examination of available evidence.

26. N.J.A.C. 7:9-6.5(f)4, has added language to clarify that Class III-B areas may be subject to field verification and may be demonstrated to exist by interested parties and verified by the Department upon examination of available evidence.

27. In N.J.A.C. 7:9-6.6(a), the Department has clarified the language describing the use and implementation of Classification Exception Areas.

28. In N.J.A.C. 7:9-6.6(c) and (d), the Department has repositioned the phrase "All other constituent standards shall apply within the Classification Exception Area" to clarify that the exemptions within a Classification Exemption Area are only for designated constituents.

29. In N.J.A.C. 7:9-6.6(d), the Department has added language to clarify the duration of a Classification Exception Area created pursuant to a New Jersey Pollutant Discharge Elimination System permit.

30. N.J.A.C. 7:9-6.7(b)1, the Department has clarified the scope of agricultural exemptions uses in Class I-PL (Preservation Area) areas by providing a reference to the Pineland Comprehensive Management Plan which more fully describes exempted activities.

31. In N.J.A.C. 7:9-6.7(b)1 has clarified the scope of the exemptions for nitrate discharging activities uses in Class I-PL (Protection Area) areas by providing a reference to the Pineland Comprehensive Management Plan which more fully describes exempted activities.

32. In N.J.A.C. 7:9-6.7(c)3, the Department replaced the word "hierarchy" with the phrase "order of priority" which more clearly indicates the intent of the Department to use the reference toxicology information in the listed order.

33. In N.J.A.C. 7:9-6.7(c)6, the Department added the phrase "in accordance with (c) 1, 2, 3, 4, and 5 above to make clear that the process for establishing interim specific criterion is given in the preceding portions of the rule.

34. In N.J.A.C. 7:9-6.8(b), the Department provided language to clarify the application of the antidegradation policy in the case where ground water quality criteria do not exceed background ground water quality. A formula has been added to N.J.A.C. 7:9-6.8(b) to clarify the application of antidegradation policy as it is described in the text of the subsection.

35. In N.J.A.C. 7:9-6.8(c), the Department provided language to clarify the application of the antidegradation policy in the case where ground water quality criteria do exceed background ground water quality.

36. In N.J.A.C. 7:9-6.8(d) and (e), the Department provided language to clarify that the antidegradation policy is not applied to Class III ground waters.

37. In N.J.A.C. 7:9-6.10(d), the Department added the parenthetical phrase "(except in the case of reclassification to and from Class I-A)" in regard to prohibition on single owner reclassification areas to clarify the Department's intent to allow single owner reclassification for this class of ground water and to make this provision consistent with N.J.A.C. 7:9-6.5(d).

38. In N.J.A.C. 7:9-6.10(f) and (g), the Department has clarified its process for the evaluation of petitioners for reclassification.

39. In N.J.A.C. 7:9-6.10(h) and (i), the Department has added language describing the public notice requirements for the filing of petition for reclassification for ground water areas to less stringent reclassification areas.

40. The Department has removed the map labeled "New Jersey Ground Water Classification System Classification of Surficial Ground Water Units" which appeared in the Appendix of the proposal. The map was removed because it was found to be unclear and all the information contained on the map is presented more clearly on Figures 1 through 5 of the adopted Appendix.

41. The Department has consolidated Table 1 and Table 3 into one table (Table 1 of the adoption). The resulting Table 1 contains the specific ground water quality criteria for Class II-A ground water and practical quantitation levels. In addition the Department has added a third column of information showing the higher of the practical quantitation level and the ground water quality criteria. This change was made to provide a clearer more concise reference to the information in the table.

42. The Department has withdrawn the specific ground water quality criteria for the following parameters: Adipates (Di(ethylhexyl)adipae, Benz(a)anthracene, Benzo(a)pyrene (BaP), 3,4-Benzofluoranthene (Benzo(b)fluoranthene), Benzo(k)fluoranthene, Chrysene, Dibenz(a,h)anthracene, 1,2-Dibromo-3-chloropropane (DBCP),

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Dimethyl phthalate, Indeno(1,2,3-cd)pyrene and Silver. The criteria for these parameters will be changed based on the recent toxicological references. The revised criteria for these parameters will be reproposed in a separate rulemaking.

43. The practical quantitation level for chloride was changed from 3000 to 2000 in Table 1. The listing of 3000 was a typographical error in the proposed Table 3, but it was correctly listed as 2000 in the Basis and Background Document which accompanied the proposal.

44. Corrosivity was removed from list of specific ground water quality criteria in Table 1 since the parameters by which corrosivity is measured, such as pH and hardness, are included elsewhere in Table 1.

45. The minimum level for hardness was eliminated from Table 1 since there is no need to regulate the minimum concentration of this parameter.

46. The footnote regarding the Chemical Abstracts Registration Number for chromium was found to be in error and has therefore been eliminated.

47. A footnote has been added to Table 1 to clarify the mean of (Total) as it is applied to metals parameters.

48. A footnote has been added to Table 1 to clarify the meaning of "prevailing safe Drinking Water Act Regulations (N.J.A.C. 7:10-1 et seq.)" as it is applied to microbiological criteria for ground water.

49. Language has been added to the explanatory note on Table 2 which clarifies the determination of carcinogenicity of various synthetic organic chemicals.

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 6. GROUND WATER QUALITY STANDARDS

7:9-6.1 Scope of subchapter

(a) Unless otherwise provided by statute, the following shall constitute the rules of the Department of Environmental Protection and Energy concerning ground water classification, designated uses of ground water, and ground water quality criteria and constituent standards, pursuant to the Water Pollution Control Act (N.J.S.A. 58:10A-1 et seq.) and the Water Quality Planning Act (N.J.S.A. 58:11A-1 et seq.).

(b) This subchapter shall provide the basis for protection of ambient ground water quality, through the establishment of constituent standards for ground water pollutants. These constituent standards are applicable to the development of: ground water protection standards pursuant to the New Jersey Pollutant Discharge Elimination System (NJPDES; N.J.A.C. 7:14A); ground water cleanup standards and compliance levels beyond the boundaries of a contaminated site pursuant to applicable regulatory programs; and other requirements and regulatory actions applicable to discharges that cause or may cause pollutants to enter the ground waters of the State, including nonpoint and diffuse sources regulated by the Department. Other relevant laws through which the Ground Water Quality Standards may be applied include, but are not limited to, the Spill Compensation and Control Act (N.J.S.A. 58:10-23.11 et seq.), the Solid Waste Management Act (N.J.S.A. 13:1E-1 et seq.), the Environmental Cleanup Responsibility Act (N.J.S.A. 13:1K-6 et seq.), the Storage of Hazardous Substances Act (N.J.S.A. 58:10A-21 et seq.), the Realty Improvement ***Sewerage and Facilities*** Act (N.J.S.A. 58:11-23 et seq.), and the Pesticide Control Act of 1971 (N.J.S.A. 13:1F-1 et seq.).

(c) This subchapter shall be the Department's primary basis for setting numerical criteria for limits on discharges to ground water and standards for ground water cleanups.

7:9-6.2 Policies

(a) 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.

(b) Discharges to ground water that subsequently discharges into surface waters shall not be permitted ***by the applicable regulatory program*** if such discharges would cause a contravention of surface water quality standards applicable to those surface waters. That is, those discharges must *[meet]* ***achieve compliance with*** both these standards and the surface water quality standards (N.J.A.C. 7:9-4).

(c) When existing ground water quality does not meet the constituent standards determined pursuant to N.J.A.C. 7:9-6.7, 6.8 and 6.9(a) and (b), due to human activities, the Department shall, after a review of relevant and available scientific and technical data, determine in the context of the applicable regulatory programs the management actions necessary (including, but not limited to, the requirement of remedial actions) to restore or enhance ground water quality pursuant to the policies of this subchapter.

(d) The Department shall not approve discharges or activities posing a significant risk of discharges, within the jurisdiction of and subject to regulation by the Pinelands Commission, that would contravene the rules of the Pinelands Commission with regard to the protection of ground water or surface water quality.

7:9-6.3 Construction

This subchapter shall be liberally construed to permit the Department to implement its statutory functions.

7:9-6.4 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings:

"ACL" means alternative concentration limit.

"Agricultural water" means water used for crop production, livestock, horticulture and silviculture.

"Alternative concentration limit" (ACL) means a constituent standard or narrative description of actions, discharge controls and water quality requirements that is less stringent than the ground water quality requirements of N.J.A.C. 7:9-6.7, 6.8 and 6.9(a) and (b), due to a Departmental determination pursuant to NJPDES ***regulations*** (N.J.A.C. 7:14***A***-6.15(e)2). In order to approve an ACL, the Department must find that the relevant constituent standard(s) cannot be achieved through technologically practicable means.

"Antidegradation" means a policy to ensure that existing ground water quality (that currently is of higher quality than the water quality criteria in N.J.A.C. 7:9-6.7) is not degraded to the criteria by discharges, but rather remains at a better quality ranging from natural quality at the most stringent, to a limited allowance for degradation at the least stringent. "Nondegradation" is the most stringent case of the antidegradation policy. It prohibits any degradation of ground water quality below existing background water quality by a discharge.

"Antidegradation limit" is the numerical expression (in terms of a concentration or level of a constituent in ground water) of the antidegradation policy.

"Applicable regulatory program" means any of the Department's programs which implement the regulations issued pursuant to the statutes cited in N.J.A.C. 7:9-6.1(b) or in any other regulations that specifically cite this subchapter.

"Aquifer" means a saturated geologic formation(s) or unit(s) which is sufficiently permeable to transmit water to a pumping well in usable and economic quantities. The upper level of an unconfined aquifer may vary over time; "aquifer" applies to the full saturated zone at any time.

"Aquitard" means a hydrogeologic confining unit(s) that exhibits limited permeability, bounding one or more aquifers, that does not readily yield water to wells or springs, but may serve as a storage unit for ground water and may release this water to adjacent ground water units or surface waters. Such confining units are ***further*** defined and listed in N.J.A.C. 7:9-6.5(f)1 or may be established through reclassification under N.J.A.C. 7:9-6.10.

"Background water quality" means the *[existing]* concentration of constituents in ground water which is determined to exist directly upgradient of a discharge but not influenced by the discharge*[, as determined using monitoring data as required by the Department]* ***, or is otherwise representative of such concentration of constituents as determined using methods and analyses consistent with the requirements of N.J.A.C. 7:14A-6.15(h)7***.

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"Classification area" means the geographic extent (lateral and vertical) of a geologic formation(s) or unit(s) wherein ground water is classified for designated uses, as described in N.J.A.C 7:9-6.5.

"Classification exception area" means an area within which one or more constituent standards and designated uses are suspended in accordance with N.J.A.C. 7:9-6.6.

"Constituent" means a specific chemical substance (that is, waste, element or compound) or water quality parameter (for example, temperature, odor, color).

"Constituent standard" means the required *[minimum or]* maximum level or concentration ***or the required range of levels or concentrations*** (as applicable) for a constituent in a classification area, as established in N.J.A.C. 7:9-6.7, 6.8 and 6.9(a) and (b). The constituent standards shall be the basis for the Department's regulation of ground water quality effects of past, present or future discharges to ground water or the land surface, pursuant to applicable authorities as defined in N.J.A.C. 7:9-6.1.

"Conventional water supply treatment" means the chemical and physical treatment of ground water supplies for microbiological contaminants and undesirable naturally occurring substances resulting in treated water that meets all the primary and secondary standards for those constituents stipulated by the New Jersey Safe Drinking Water Act regulations (N.J.A.C. 7:10-12).

"Criteria" means ***ground*** water quality criteria.

"Department" means the New Jersey Department of Environmental Protection and Energy.

"Designated use" means a present or potential use of ground water which is to be maintained, restored and enhanced within a ground water classification area, as determined by N.J.A.C. 7:9-6.5. Designated uses may include any human withdrawal of ground water (for example, for potable, agricultural and industrial water), the discharge of ground water to surface waters of the State which support human use or ecological systems, or the direct support of ecological systems.

"Discharge" means an intentional or unintentional action or omission resulting in the releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of a pollutant at any time into the waters of the State, onto land or into wells from which it might flow or drain into said waters, or into waters or onto lands outside the jurisdiction of the State, which pollutant enters the waters of the State. "Discharge" includes, without limitation, the release of any pollutant into a municipal treatment works. *[The flow of pollutants to ground water includes, without limitation, flow through the unsaturated zone, and the movement of pollutants in ground water into new volumes of the saturated zone.]*

"Discharger" means any person, corporation, municipality, government agency or authority or other legal entity, who causes*[, induces]* or allows a discharge, either through action or omission.

"Extensive exceedance", as used in N.J.A.C. 7:9-6.10, means a condition where ground water quality in an area exceeds the criteria of N.J.A.C. 7:9-6.7 for one or more contaminants over the vast majority of the subject area for such contaminant(s) and that such exceedances are not attributable to the past or present discharges of a single discharger or any group of active NJPDES permitted discharges.

"FW1" means those surface fresh waters defined as such in the Surface Water Quality Standards, N.J.A.C. 7:9-4, and shown on maps maintained by the Department.

"Ground water" means the portion of water beneath the land surface that is within the ***saturated*** zone *[of saturation (below the water table) where the pore spaces are filled with water]*.

"Hazardous pollutant" means:

1. Any toxic pollutant;

2. Any substance regulated as a pesticide under the Federal Insecticide, Fungicide and Rodenticide Act, Pub.L.92-516 (7 U.S.C. §136 et seq.);

3. Any substance the use or manufacture of which is prohibited under the Federal Toxic Substances Control Act, Pub.L.94-469 (15 U.S.C. §2601 et seq.);

4. Any substance identified as a known carcinogen by the International Agency for Reseach on Cancer;

5. Any hazardous waste as designated pursuant to section 3 of P.L. 1981, c.279 (N.J.S.A. 13:1E-51) or the "Resource Conservation and Recovery Act," Pub.L.94-580 (42 U.S.C. §5901 et seq.); or

6. Any hazardous substance as defined pursuant to section 3 of P.L. 1976, c.141 (N.J.S.A. 58:10-23.11b).

"Industrial water" means water used for processing, heating or cooling in a manufacturing process.

"Natural Area" means an area of land or water, designated by the Department under N.J.A.C. 7:2-11 and shown on maps maintained by the Office of Natural Lands Management, Division of Parks and Forestry, of the Department, which is owned in fee simple or in which a conservation easement is held by the Department.

"Natural quality" means the concentration or level of constituents which occurs in ground water of a hydrologic unit without the influence of human activity, other than the effects of regional precipitation of air pollutants (for example, acid precipitation). The natural quality for SOCs is established as zero (0.0) except where the SOCs are the result of air transport from outside the State, enter the State from ground water transport of pollutants having their origins in other states, or are created entirely by natural processes. Where natural quality for other constituents is not ascertainable from generally acceptable scientific studies, the lowest concentrations known to exist within the same or a similar hydrologic unit and setting (that is, depth) within the classification area shall be used to represent the natural quality, provided, however, that for pH, corrosivity and hardness, the most representative concentration shall be used.

"NJPDES" means the New Jersey Pollutant Discharge Elimination System (N.J.A.C. 7:14A).

"NJPDES permit action" means a draft or final NJPDES permit, a permit equivalent, or a decision that a discharge is not to be regulated by NJPDES, as determined pursuant to the NJPDES regulations.

"Organoleptic effect" means an offensive taste, foul odor or other adverse aesthetic consequence caused by pollutants in a water supply and rendering the water supply unfit for potable use.

"PQL" means practical quantitation level.

"Pollutant" means any dredged spoil, solid waste, incinerator residue, sewage, garbage, refuse, oil, grease, sewage sludge, munitions, chemical wastes, biological materials, radioactive substance, thermal waste, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal or agricultural or other residue discharged into the waters of the State. "Pollutant" includes both hazardous and nonhazardous pollutants. "Industrial, municipal or agricultural or other residue" specifically included, without limitation, constituents that are not considered wastes (that is, process chemicals) prior to discharge, but which are discharged and may or do degrade natural or existing ground water quality.

"Potable water" means water suitable for household consumption, primarily as drinking water, based upon human health, welfare and aesthetic considerations.

"Practical quantitation level" (PQL) means the lowest concentration of a constituent that can be reliably achieved among laboratories within specified limits of precision and accuracy during routine laboratory operating conditions. "Specified limits of precision and accuracy" are the criteria which have been included in applicable regulations ***including, but not limited to, those regulations listed at N.J.A.C. 7:9-6.9*** or are listed in the calibration specifications or quality control specifications of an analytical method.

"Saturated zone" means the zone in which all the subsurface voids in the rock or soil are filled with water.

"SOC" means Synthetic Organic Chemical.

"Soils" means any naturally occurring or man-made unconsolidated mineral and organic matter on the surface of the earth that has been subjected to and influenced by geologic and environmental factors. "Soils" also includes fill or overburden.

"Source water" means the supply source of water (for example, private wells, public water supply) to a discharger, where the source water becomes part of a discharge.

"Surface water" means water at or above the land's surface which is neither ground water nor contained within the unsaturated zone.

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"Synthetic organic chemicals" (SOCs) means any compounds that contain at least one carbon atom and that result from purposeful chemical synthesis, whether as products, by-products, or waste, or from the purposeful refinement of naturally occurring substances. Where a chemical substance is sometimes found in nature and sometimes synthesized, it shall be considered an SOC only to the extent or in the proportion produced or isolated by human activity. Naturally occurring organic chemicals in their natural location are not considered a pollutant pursuant to the Ground Water Quality Standards. ***An SOC may be considered to be in its natural location, if, by background sampling and modeling, it is shown that such SOC has migrated to that point from the place it naturally occurred.***

"Technologically practicable means" means the best available treatment or remedial technology, from an engineering perspective; "best" means that technology which achieves the most stringent numerical values attainable for a constituent at a contaminated site or for a NJPDES-regulated discharge; "available" means field-demonstrated technology although such technology need not be in common commercial use.

"Toxic pollutant" means any pollutant identified pursuant to the Federal Water Pollution Control Act Amendments of 1972 (Pub.L.92-500, 33 U.S.C. §1251 et seq.), or any pollutant or combination of pollutants, including disease causing agents, which after discharge and upon exposure, ingestion, inhalation or assimilation into any organism, either directly or indirectly by ingestion through *[the]* food chain***s***, will, on the basis of information available to the Department, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions, including malfunctions in reproduction, or physical deformation, in such organisms or their offspring.

"USEPA" means the United States Environmental Protection Agency.

"Unsaturated zone" (vadose zone) means the subsurface volume between the land's surface and the top of a saturated zone *[(water table), where moisture does not fill all the pore spaces in the formation or soil]*.

"Water quality criteria" means the designated levels or concentrations of constitutents that, when not exceeded, will not prohibit or significantly impair a designated use of water. Criteria may be "specific" (listed for each constituent in Table 1), "interim specific" (derived using a standard method, for constituents not listed in Table 1), or "interim generic" (as listed for carcinogenic and non-carcinogenic Synthetic Organic Compounds in Table 2).

"Waters of the State" means the ocean and its estuaries, all springs, streams and bodies of surface or ground water, whether natural or artificial, within the boundaries of this State or subject to its jurisdiction.

"Zone of Contribution" means the volume of a geologic formation or unit that directly contributes ground water to a pumping well over time, or a Well Head Protection Area as defined by the Department pursuant to the Federal Safe Drinking Water Act, Amendments of 1986.

7:9-6.5 Ground water classification system and designated uses

(a) Ground water shall be classified according to the hydrogeologic characteristics of the ground water resource and the designated use(s) which are to be maintained, restored and enhanced within the classification area. Classifications shall be regional in nature and shall not reflect localized infringements on designated uses due to natural quality or pollution incidents. Ground water users should not assume that existing ground water quality everywhere meets the criteria for classification areas established herein, in view of the potential for variations in natural quality or for localized pollution caused by human activity. Additional uses may be made of ground water in any classification area, subject to applicable Department rules, but these uses are not directly protected through this subchapter.

(b) The Department shall preferentially protect the primary designated use for each classification area, and shall protect any secondary designated uses to the extent that such uses are viable using water of sufficient quality for the primary use and that the primary use is not impaired.

(c) There shall be three major classes of ground water, as defined in (d) through (f) below. They are:

Class I	Ground Water of Special Ecological Significance
Class II	Ground Water for Potable Water Supply
Class III	Ground Water With Uses Other Than Potable Water Supply

(d) The primary designated use for Class I ground water shall be the maintenance of special ecological resources supported by the ground water within the classification area. Secondary designated uses shall be potable water, agricultural water and industrial water to the extent that these uses are viable using water of natural quality and do not impair the primary use, such as by altering ground water quality.

1. Class I-A—Exceptional Ecological Areas: Class I-A ground water shall consist of all ground waters within those classification areas, ***listed at (d)1iii below or*** designated by the Department through the reclassification procedure in N.J.A.C. 7:9-6.10, which satisfy either (d)1i or ii below. In addition, ground waters within those areas listed in (d)1iii below are classified as Class I-A ground waters, because the Department has determined that they satisfy the requirements of either (d)1i or ii below. The Department may approve a Class I-A classification area if the ground water within that area:

i. Contributes to the transmittal of ground water to surface water in FW1 watersheds; and

(1) The area involved is under government ownership (fee simple or conservation easement); or

(2) Is owned by a private entity that petitions the Department for reclassification of the property to Class I-A pursuant to N.J.A.C. 7:9-6.10; or

ii. Contributes to the transmittal of ground water to the land surface or to surface water in areas of exceptional ecological value. Areas of exceptional ecological value satisfy the conditions described in (d)1ii(1), (2) or (3) below, and also satisfy the conditions described in both (d)1ii(4) and (5) below:

(1) Support threatened or endangered species as determined by the United States Department of the Interior pursuant to the Endangered Species Act***, 16 U.S.C. 1531 et seq.,*** or by the Department pursuant to the Endangered and Nongame Species Conservation Act***, N.J.S.A. 23:2A-1 et seq***.

(2) Support biotic communities within Natural Areas.

(3) Serve other exceptional ecological values such as being a part of or supporting state, nationally or internationally rare, threatened or endangered habitats where there is a significant risk that ground water pollution would impair or imperil the ecological values.

(4) The quality and transmittal of ground water is essential to the survival or maintenance of the exceptional ecological resource contained within the classification area.

(5) The area involved is ***of sufficient size to provide meaningful control of ground water quality to protect the target resource, based upon the biotic resource and local hydrogeology and is*** under government ownership (fee simple or conservation easement), or is owned by a private entity that petitions the Department for reclassification of the property to Class I-A pursuant to N.J.A.C. 7:9-6.10.

iii. Ground water within the following areas are herein classified as Class I-A:

(1) Watersheds of FW1 surface waters;

(2) The following Natural Areas as designated by the Department pursuant to N.J.A.C. 7:2-11:

Absegami Natural Area
Allamuchy Natural Area
Batsto Natural Area
Bearfort Mountain Natural Area
Bear Swamp East Natural Area
Black River Natural Area
Cape May Point Natural Area

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Cedar Swamp Natural Area
Cheesequake Natural Area
Cook Natural Area
Dryden Kuser Natural Area
Dunnfield Creek Natural Area
Farny Natural Area
Hacklebarney Natural Area
Island Beach Northern Natural Area
Island Beach Southern Natural Area
Ken Lockwood Gorge Natural Area
Manahawkin Natural Area
Oswego River Natural Area
Parvin Natural Area
Ramapo Lake Natural Area
Rancocas Natural Area
Sunfish Pond Natural Area
Swimming River Natural Area
Tillman Ravine Natural Area
Troy Meadows Natural Area
Washington Crossing Natural Area
Wawayanda Hemlock Ravine Natural Area
Wawayanda Swamp Natural Area
Whittingham Natural Area

2. Class I-PL—Pinelands: The classification area for Class I-PL consists of all ground water in the Cohansey and Kirkwood Formations located within the pinelands area as designated by the Pinelands Protection Act, N.J.S.A. 13:18A-1 et seq. (as indicated in figure 1 in the Appendix, incorporated herein by reference), other than those ground water areas classified as Class I-A.

i. Class I-PL (Preservation Area): The primary designated use is the support and preservation of unique and significant ecological resources of the Pinelands, through the restoration, maintenance and preservation of ground water quality in its natural state. Secondary designated uses include compatible*[, indigenous]* agricultural ***uses in conformance with N.J.A.C. 7:50-6 et seq.*** and potable water uses.

ii. Class I-PL (Protection Area): The primary designated use is the preservation of Pinelands plant and animal species and their habitats through the protection and maintenance of the essential characteristics of Pinelands ground water quality. Secondary designated uses include potable and agricultural water.

(e) Class II ground waters have a designated use of the provision of potable ground waters with conventional water supply treatment, either at their current water quality (Class II-A) or subsequent to enhancement or restoration of regional water quality so that the water will be of potable quality with conventional water supply treatment (Class II-B). Both existing and potential potable water uses are included in the designated use.

1. Class II-A shall consist of all ground water of the State, except for ground water designated in Classes I, II-B or III. The primary designated use for Class II-A ground water shall be potable water and conversion (through conventional ***water supply*** treatment, mixing or other similar technique) to potable water. Class II-A secondary designated uses include agricultural water and industrial water.

2. Specific Class II-B areas, designated uses and constituent standards will be established through rule or through reclassification pursuant to N.J.A.C. 7:9-6.10. The designated uses of Class II-B areas generally may include any reasonable use (other than potable use). Designated uses of Class II-B ground water shall not exacerbate existing ground water pollution or impede the ability to enhance or restore the quality of the ground water so that it will be potable or convertible to potable use with conventional ***water supply*** treatment, mixing or other similar techniques. Class II-B shall consist only of ground waters:

i. That exhibit extensive exceedance of one of more of the ground water quality criteria in N.J.A.C. 7:9-6.7(c) within the proposed Class II-B area, due to past discharges of ground water pollutants;

ii. Where restoration of the ground water, where polluted, *[is technologically impracticable from an engineering perspective using best available remedial technology]* ***cannot be achieved using technologically practicable means***;

iii. Where the conditions listed in (e)2(1) through (4) below exist within the proposed Class II-B area, and there is no indication in the projections of the Department, public water supply systems serving the area, or municipalities of the area that those conditions will cease to exist within the next 25 years:

(1) No public community water supply well or Zone of Contribution for such a well exists;

(2) Less than five percent of the potable water supply for the *[overall]* area ***subject to the petition*** is derived from ground water from within the ***proposed Class II-B*** area;

(3) Less than five percent of the potable water supply for any municipality (or portion thereof***)***) within the Class II-B area*[)]* is derived from ground water from within the ***proposed Class II-B*** area; and

(4) No significant concentration of domestic water supply wells exists;

iv. Where no significant risk of pollution migration into Class I or II-A areas exists; *[and]*

v. Where a reliance on natural attenuation processes ***can be relied on over the vast majority of the area*** for the restoration of ground water quality ***for criteria identified pursuant to (e)2i above and*** does not pose a significant risk to public health***, safety*** *[or]* ***and*** welfare *[or ecological systems.]****; and***

vi. Where the reclassification requirements of N.J.A.C. 7:9-6.10 are met.

3. Class II-B Classification Areas—(Reserved)

(f) The Class III ground waters are not suitable for potable water due to natural hydrogeologic characteristics or natural water quality. Class III includes geologic formations or units that are aquitards or have a natural quality that is unsuitable for conversion to potable water (for example, saline ground water).

1. Class III-A ground water consists of ***ground water in*** those aquitards that are described below. The primary designated use for Class III-A ground water is the release or transmittal of ground water to adjacent classification areas and surface water, as relevant. Secondary designated uses in Class III-A include any reasonable uses. Class III-A ground water includes portions of the saturated zones (that meet the criteria below) of the Woodbury Formation, Merchantville Formation, Marshalltown Formation, Navesink Formation, Hornerstown Formation, aquitard formations of the Potomac-Raritan-Magothy aquifer system and the Kirkwood aquifer system, *[and]* portions of the glacial moraine and glacial lake deposits, ***and other geologic units having the characteristics of an aquitard,*** excepting Class I areas. These ***named*** aquitards (excluding glacial units) outcrop approximately in municipalities depicted in Figure 2 in the Appendix. *[Aquitards included within Class III-A]* ***Class III-A areas shall have the following characteristics***:

i. Average at least 50 feet in thickness within the Class III-A area;

ii. Have a typical hydraulic conductivity of approximately 0.1 ft/day or less within the Class III-A area; and

iii. Have an areal extent within the Class III-A area of at least 100 acres.

2. Any interested party may provide evidence to the Department to demonstrate that an area meets the descriptive criteria of Class III-A. Upon review and verification of such evidence the Department may provide concurrence that the Class III-A classification applies to the area of interest.

*[2.]****3.*** Class III-B ground water consists of all geologic formations or units which contain ground water having natural ***concentrations*** or regional ***concentrations*** (through the action of salt-water intrusion) *[concentrations]* exceeding 3,000 mg/l Chloride or 5,000 mg/l Total Dissolved Solids, or where the natural quality of ground water is otherwise not suitable for conversion to potable uses. The designated uses for Class III-B ground water consist of any reasonable uses for such ground water other than potable water, using water of existing quality. The classification area includes ground water in parts of formations as indicated in Figures 3 through 5 in the Appendix.

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4. Class III-B areas are subject to field verification wherever necessary. Areas not indicated on the maps may also qualify as Class III-B, subject to Department concurrence through an applicable regulatory program. The precise borders of Class III-B areas shall be confirmed using site specific data in the context of applicable regulatory programs. ***Any interested party may provide evidence to the Department to demonstrate that an area meets the descriptive criteria of Class III-B. Upon review and verification of such evidence the Department may provide concurrence that the Class III-B classification applies to the area of interest.***

7:9-6.6 Exceptions to the classification system

(a) The Department may establish a Classification Exception Area *[where]* ***only when*** the Department determines that constituent standards for a given classification are not being met or will not be met in a localized area due to: natural quality; localized effects of a discharge approved through a NJPDES permit action; pollution caused by human activity within a contaminated site as defined by the Department in the context of an applicable regulatory program ***(for example, Site Remediation Program Oversight Document)***; or an ACL as approved by the Department pursuant to NJPDES. *[The]* ***In the context of an applicable regulatory program, the*** Department shall determine or describe appropriate boundaries for each Classification Exception Area ***and include the written description of the boundaries in the appropriate oversight document or permit action along with*****[, and]* ***specifications as to which*** *[the]* constituents *[to which]* the exception applies. *[Violations of constituent standards for which the above considerations do not apply shall not constitute a valid purpose for a Classification Exception.]* ***Classification Exception Areas may only be established when constituent standards are not being met or will not be met due to the conditions set forth above and shall not be established for the purpose of sanctioning violations of constituent standards.***

(b) Where natural quality for any constituent contravenes the criteria established in N.J.A.C 7:9-6.7 such that the primary designated use is not viable within a limited area, the Department may establish a Classification Exception Area within which the Department shall define appropriate designated uses and constituent standards, based upon the natural quality. Such Classification Exception Areas shall remain in effect as long as the primary designated use of the original classification area is not viable using ground water at natural quality.

(c) Where the Department defines, through a NJPDES permit action, an area of temporary noncompliance with specific constituent standards related to the localized effects of a permitted discharge, the ground water within that area of noncompliance shall be a Classification Exception Area for those constituents only. ***All other constituent standards shall apply within the Classification Exception Area.*** All designated uses in these Classification Exception Areas will be suspended during the life of the Classification Exception Area. Constituent standards of the surrounding classification area shall apply at the perimeter of the Classification Exception Area for the specified constituents. *[All other constituent standards shall apply within the Classification Exception Area.]* The Classification Exception Area shall have the same life as the approved NJPDES permit action, after which the original classification, designated uses and constituent standards shall apply.

(d) Where a discharge has resulted or will result in localized ground water quality that contravenes one or more constituent standards, the Department may define that area as a Classification Exception Area for specified constituents pursuant to (or in accordance with) a NJPDES permit action or a Department-approved remedial action in the context of an applicable regulatory program. ***All other constituent standards shall apply within the Classification Exception Area.*** All designated uses in each Classification Exception Area will be suspended during the life of the Classification Exception Area. Constituent standards of the surrounding classification area shall apply at the perimeter of the Classification Exception Area for the specified constituents.

[All other constituent standards shall apply within the Classification Exception Area.] The Department shall restrict or require the restriction of potable ground water uses within any Classification Exception Area where there is or will be an exceedance of the Primary Drinking Water Quality Standards (in N.J.A.C 7:10). ***Where the Department defines the Classification Exception Area through a NJPDES permit action, the Classification Exception Area shall have the same life as the approved NJPDES permit action, after which the original classification, designated uses and constituent standards shall apply. Other*** *[The]* regulatory action***s*** creating the Classification Exception Area shall specify the longevity of the exception, after which the original classification, designated uses and constituent standards shall be applicable.

7:9-6.7 Ground water quality criteria

(a) Ground water quality criteria for Class I-A areas shall be the natural quality for each constituent. Class I-A is a nondegradation classification where natural quality shall be maintained or restored. The Department shall not approve any discharge to ground water nor approve any human activity which results in a degradation of natural quality within a Class I-A classification area.

(b) Ground water quality criteria for Class I-PL are as follows:

1. Within Class I-PL (Preservation Area), ground water quality criteria shall be the natural quality for each constituent. Class I-PL (Preservation Area) is a nondegradation classification in which natural quality shall be maintained or restored. The Department shall not approve any discharge or any other activity which would result in the degradation of natural quality within a Class I-PL (Preservation Area) classification area. However, the provisions of this paragraph (b)1 shall not apply to *[indigenous agricultural]* activities ***that are in conformance with N.J.A.C. 7:50-6 et seq*.**

2. Ground water quality criteria for Class I-PL (Protection Area) shall be the *[existing]* ***background*** water quality. The Department shall not approve any discharge or any other activity which would result in the degradation of background water quality in the Class I-PL (Protection Area) classification area. However, the provisions of this paragraph (b)2 shall not apply to ***activities that are in conformance with N.J.A.C. 7:50-6 et seq.*** *[agricultural activities, nor shall they be deemed to prohibit to discharges or activities that would result in ground water having a concentration of nitrate (N-NO3) of 2.0 milligrams per liter (mg/l) or less, where those discharges or activities are otherwise consistent with the Class I-PL (Protection Area) criteria.]*

3. The Department shall not approve any discharge to ground water within the Class I-PL classification area which results in a violation of the Surface Water Quality Standards applicable to the Pinelands National Reserve, as established in N.J.A.C. 7:9-4 or successor rules.

(c) Ground water quality criteria for Class II-A are as follows:

1. Specific criteria for ground water quality in Class II-A areas are listed in Table 1 in the Appendix.

2. Where a specific criterion is not listed for a constituent in Table 1, the Department may establish interim specific criteria for Class II-A ground water based upon the weight of evidence available regarding each constituent's carcinogenicity, toxicity, public welfare or organoleptic effects, as appropriate for the protection of the potable water use. Interim specific criteria may be established ***on a*** case by case ***basis*** using the methods listed in (c)3 below, which are the same methods applied to the development of the specific criteria in Table 1. Interim specific criteria shall be replaced with specific criteria as soon as reasonably possible by rule.

3. Interim specific criteria may be derived by the Department for any constituent, in accordance with the methodologies in (c)5 below, and using the risk assessment approach in (c)4 below. The Department shall maintain and make available to the public a listing of all interim specific criteria and the supplemental information used in their derivation.

i. The human health-based criteria are derived from the toxicity factor (carcinogenic potency slope or Reference Dose), the exposure assumptions for drinking water and a relative source contribution factor (for non-carcinogens) which is used to account for the contribution from other sources of exposure including air and food. The Department assumes a 20 per cent relative source contribution factor when sufficient quantitative data are not available on the contribu-

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tion of each source of exposure. Data sources for carcinogenic potency slope or Reference Dose shall be used in the following *[hierarchy]* ***order of priority***:

(1) Information which forms the basis for drinking water standards adopted by the Department pursuant to the Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq.;

(2) The United States Environmental Protection Agency (USEPA) Integrated Risk Information System (IRIS) data base;

(3) The USEPA's Health Effects Assessment Summary Tables (HEAST);

(4) The Department may develop health-based criteria which differ from those based on the sources cited in (c)3i (1) through (3) above if warranted by convincing scientific evidence. For contaminants which are not addressed in the sources cited in (c)3i (1) through (3) above, the Department may develop health-based criteria based on review of pertinent scientific data.

ii. The final calculations are rounded to one significant figure for deriving the criteria for each chemical.

4. The risk assessment approach for derivation of the health-based criteria for each contaminant will be determined by its strength of evidence (see 50 FR 46880, 46884-86 (1985), National Primary Drinking Water Regulations, Volatile Synthetic Organic Chemicals, and any successor documents) for human carcinogenicity, the risk levels given below, and the exposure assumptions and models listed in (c)3 above.

i. For contaminants classified in Group A or Group B, the Class II-A criteria are calculated from the potency factor based on additional lifetime cancer risk of 1×10^{-6}.

ii. For contaminants classified in Group C, the Class II-A criteria are calculated by application of an additional uncertainty factor of 10 to the chronic reference dose. If no reference dose is available from the sources cited in (c)3i above, the Class II-A criteria are calculated from the potency factor or unit risk factor based on additional lifetime cancer risk of 1×10^{-5}.

iii. For contaminants classified in Group D or Group E, the Class II-A criteria are calculated from the chronic reference dose.

iv. For lead, the Department has determined that a Class II-A criterion of five ug/L is appropriate as a conservative application of the regulations of the United States Environmental Protection Agency seeking a maximum concentration of five ug/L in drinking water subsequent to treatment.

[v. For polycyclic aromatic hydrocarbons classified in Group A or Group B, the general risk assessment approach given in (c)4i above applies except that the potency factor used for benzo(a)pyrene and dibens(a.h)anthracene will be that of benzo(a)pyrene, while other such polycyclic aromatic hydrocarbons will use a potency factor of one-tenth that of benzo(a)pyrene.]

5. The following equations shall be used for the derivation of interim specific criteria for each constituent:

i. For Carcinogens:

$$\text{Criterion} = \frac{(1 \times 10^{-6}) \times 70 \text{ kg} \times 1000 \text{ ug/mg}}{q_1^* \ (\text{mg/kg/day})^{-1} \times (2 \text{ L/day})}$$

Where:

1×10^{-6}	=	upper bound lifetime excess cancer risk (1×10^{-5} used for Group C chemicals lacking RfD)
70 kg	=	assumed weight of average adult
q_1^*	=	carcinogenic potency factor $(\text{mg/kg/day})^{-1}$
2 L/day	=	assumed daily water consumption
q_1^*	=	Risk/Dose

$$q_1^* \ (\text{mg/kg/day})^{-1} = \frac{1 \times 10^{-6}}{\text{animal dose (mg/kg/day)} \times (W_A/W_H)^{1/3}}$$

Where:

1×10^{-6}	=	risk level
animal dose	=	dose to experimental animals predicted to result in 1×10^{-6} risk
$(W_A/W_H)^{1/3}$	=	factor for extrapolating from animals to humans based on body surface area
W_A	=	assumed weight of animal: for mice – 0.03 kg; for rats – 0.35 kg
W_H	=	assumed weight of human = 70 kg; For mice $(W_A/W_H)^{1/3} = 0.075$; For rats $(W_A/W_H)^{1/3} = 0.17$

ii. For non-carcinogens:

$$\text{Criterion} = \frac{\text{RfD (mg/kg/day)} \times 70 \text{ kg} \times 1000 \text{ ug/mg} \times \text{RSC}}{2 \text{ L/day}}$$

Where:

RFD	=	Reference Dose
70 kg	=	assumed weight of average adult
RSC	=	relative source contribution
2 L/day	=	assumed daily water consumption

6. Where no specific criterion exists for a Synthetic Organic Chemical, the interim generic criteria for Synthetic Organic Chemicals in Table 2 in the Appendix shall apply until an interim specific criterion has been established ***in accordance with (c)1, 2, 3, 4, and 5 above***.

(d) The ground water quality criteria for Class II-B ground waters shall be the Class II-A criteria.

[(e) Ground water quality criteria for Class III areas are as follows:]

*[1.]****(e)*** The ground water quality criteria for Class III-A ***areas*** shall be the criteria of the most stringent classification for vertically or horizontally adjacent ground waters that are not Class III-A, unless the Department concludes (in the context of an applicable regulatory program) that there is no significant potential for the migration of ground water pollutants to that classification area. If there is significant potential for pollutant migration, the criteria shall be those of the classification area determined to be downgradient of the Class III-A area. *[Otherwise]* ***If there is no significant potential for pollutant migration***, criteria shall be determined for such Class III-A areas on a case by case basis in the context of applicable regulatory programs. In each case ***where there is no significant potential for pollutant migration***, the criteria shall be *[the least]* ***no more*** stringent *[criteria that will]* ***than necessary to*** ensure that there will be no:

*[i.]****1.*** Impairment of existing uses of the ground water;

*[ii.]****2.*** Resulting violation of Surface Water Quality Standards;

*[iii.]****3.*** Release of pollutants to the ground surface, structures or air in concentrations that pose a threat to human health;

*[iv.]****4.*** Reasonable potential for a change in hydraulic gradient that could cause pollutants to migrate from the Class III-A area to any classification area other than Class III.

*[2.]****(f)*** The ground water quality criteria for Class III-B ***areas*** shall be determined on an area by area basis in response to case by case needs, in the context of applicable regulatory programs. In each case, the criteria shall be *[the least]* ***no more*** stringent *[criteria that will]* ***than necessary to*** ensure that there will be no:

*[i.]****1.*** Impairment of existing uses of ground water;

*[ii.]****2.*** Resulting violation of Surface Water Quality Standards;

*[iii.]****3.*** Release of pollutants to the ground surface, structures or air in concentrations that pose a threat to human health;

*[iv.]****4.*** Violation of constituent standards for downgradient classification areas to which there is a significant potential for migration of ground water pollutants.

*[(f)]****(g)*** Where ground water that receives pollutants from a discharge(s) subsequently flows to surface waters, the Department shall regulate such discharges as necessary so as not to exceed the Surface Water Quality Standards applicable to that body of surface water. The discharger may request application of only the ground water quality standards by showing, to the satisfaction of the Department, and in the context of the applicable regulatory procedure, that the flow of ground water pollutants into the surface water will not cause a violation of the Surface Water Quality Standards.

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*[(g)]***(h)*** For constituents for which specific or interim specific criteria have been derived, the Department may evaluate potential toxicological interactions between or among contaminants in ground water by the sum of the risk levels of contaminants with health-based criteria that are based on carcinogenic risk, and by utilizing the hazard index approach described in the USEPA Guidelines for the Health Risk Assessment of Chemical Mixtures (51 FR 34014 (1986), and any subsequent revisions) for noncarcinogens. Additional actions and more stringent criteria may be required when either of the following conditions exists:

1. The total risk level for all Group A or Group B contaminants present in ground water exceeds 1×10^{-4}; or

2. There is a Hazard Index of greater than one for noncarcinogenic effects.

*[(h)]***(i)*** The Department shall regulate discharges for compliance with each specific, interim specific and generic criterion applicable to the discharge pursuant to this section.

7:9-6.8 Antidegradation policy

(a) The Department shall protect from significant degradation ground water which is of better quality than the criteria in N.J.A.C. 7:9-6.7. Antidegradation limits shall be used as the basis for the development of constituent standards applicable to discharges, as modified by N.J.A.C. 7:9-6.9(a) and (b). Where the concentration of a constituent at background water quality currently contravenes the criteria in N.J.A.C. 7:9-6.7, no further degradation of ground water quality shall be allowed for that constituent.

(b) *[Antidegradation]* ***For constituents whose concentrations in background water quality are less than the ground water quality criteria in N.J.A.C. 7:9-6.7 (excluding those constituents whose criteria are expressed as a range of concentrations), the antidegradation*** limits shall be determined*[, for the regulation of a discharge, as the]* ***by adding to*** background water quality concentration *[plus a percentage of]* the difference between the ***ground water quality*** criterion and the background water quality concentration ***times the following percentages for each of the corresponding classes of ground water as follows***[, for each constituent. The following percentages shall be used]*:

Class I-A	0%
Class I-PL	0%
*[Class II-A	50%
Class II-B	100% (See (c) below)
Class III	Not applicable]*

***The calculation of antidegradation limits may be represented by the following formula:**

$$\text{Constitutent Standard} = BWQ + (GWQC - BWQ) \times \%$$

where BWQ is the background water quality for a given constituent, GWQC is the ground water quality criterion and % is the antidegradation factor given above.*

(c) The antidegradation limit***s*** for Class II-B *[is]* ***are*** equal to the Class II-B criteria stated in N.J.A.C. 7:9-6.7(d). ***Where the concentration of a constituent at background water quality currently contravenes the criteria, no further degradation of ground water quality shall be allowed for that constituent.**

(d) The antidegradation limits for Class III-A are equal to the Class III-A criteria established pursuant to N.J.A.C. 7:9-6.7(e).

(e) The antidegradation limit for Class III-B is equal to the Class III-B criteria established pursuant to N.J.A.C. 7:9-6.7(f).*

7:9-6.9 Constituent standard modifications and practical quantitation levels

(a) When constituents at background water quality exceed the criteria in N.J.A.C. 7:9-6.7, the Department shall consider the following modifications in the development of constituent standards in the context of applicable regulatory programs:

1. For discharges that derive their source water from directly upgradient of the discharge, the constituent standards shall not be more stringent than the background water quality (that is, the source water quality);

2. For other discharges:

i. In areas where the criteria for the constituent are exceeded within the area due to natural quality, the constituent standards shall be established as the background water quality.

ii. In other areas, the constituent standards shall be established such that the volume and concentration of ground water exceeding the criteria are not increased by discharges.

(b) The Department may define Classification Exception Areas as provided for in N.J.A.C. 7:9-6.6 within which the provisions of N.J.A.C. 7:9-6.7, 6.8 and (a) above do not apply regarding specified constituents.

(c) Where a constituent standard (the criterion as adjusted by the antidegradation policy and applicable criteria exceptions); is of a lower concentration than the relevant PQL (Table *[3]***1*** in the Appendix), the Department shall not (in the context of an applicable regulatory program) consider the discharge to be causing a contravention of that constituent standard so long as the concentration of the constituent in the affected ground water is less than the relevant PQL.

1. Where interim specific criteria are derived by the Department, interim PQLs shall also be derived for those constituents as appropriate.

2. No PQLs other than those listed in Table *[3]***1*** in the Appendix are applicable to or shall be derived for interim generic criteria.

3. Selection and derivation of PQLs shall be as follows:

i. PQLs shall be rounded to one significant figure using standard methods.

ii. PQLs listed in Table *[3]***1*** were, and additional PQLs shall be, derived or selected for each constituent using the most sensitive analytical method providing positive constituent identification from (c)3ii (1) through (5) below, in that order of preference:

(1) PQLs for a specific constituent and analytical method using the USEPA 500 series methods, which PQLs were derived through scientific studies conducted by the Department in support of the Safe Drinking Water Program;

(2) PQLs for a specific constituent and analytical method using the USEPA 500 series or 600 series methods (in order of preference, and provided that the method is currently in use by Department-certified laboratories), which PQLs were adopted by the USEPA in support of the Safe Drinking Water Program;

(3) PQLs derived by multiplying times a factor of five, a median, Interlaboratory Method Detection Limit (MDL). The Interlaboratory MDL is derived from verified MDL data from Department-certified laboratories for the USEPA 500 series or 600 series methods (in order of preference);

(4) PQLs derived by multiplying times a factor of 10, the MDL published by EPA for a specific constituent and analytical method for the USEPA 500 series or 600 series methods (in order of preference);

(5) PQLs for aqueous matrices published by EPA in "Test Method for Evaluating Solid Waste," Publication SW846, Third Edition, November 1986, and successor publications, incorporated herein by reference.

iii. The Department may approve an alternative PQL. An alternative PQL shall be approved when the evidence (in the context of an applicable regulatory program) establishes that:

(1) Based upon site-specific, ground water matrix considerations, a PQL listed in Table *[3]***1*** for a constituent is not valid;

(2) An alternative PQL is more appropriate for that constituent with regard to compliance with this subchapter;

(3) The alternative PQL has been determined through rigorous laboratory analysis using methods appropriate to the site-specific ground water matrix and constituent(s), including, without limitation, the derivation of an MDL using the methodology specified by Appendix B of 40 CFR Part 136; and

(4) The alternative PQL does not result in nondetection of any target constituent due to masking effects of other target constituents, non-target constituents, or natural substances.

iv. The approval of an alternative PQL shall be applicable to the regulation of ground water quality affected by the discharge for

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which it is derived, and its approval and utilization shall be subject to the same procedural requirements as any other aspect of the regulatory decision.

4. Where ground water pollutants affect surface water quality within the meaning of N.J.A.C. 7:9-6.7*[(f)]****(g)***, more sensitive analytical techniques such as bioassays or bioaccumulation assays may be required by the Department.

7:9-6.10 Procedures for reclassification of ground water

(a) Reclassification of ground water areas shall be accomplished through rulemaking in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

(b) Any interested person may seek to have *[a]* ***any*** ground water area reclassified by filing a petition with the Department. For the purposes of this subsection, interested persons shall include, but not be limited to:

1. Any State, county or municipal governmental entity with jurisdiction over the area that is proposed for reclassification; and

2. Any person residing or discharging in the area that is proposed for reclassification.

(c) Petitions shall comply with and shall be reviewed in compliance with N.J.S.A. 52:14B-4 and N.J.A.C. 7:1-1.2.

(d) For purposes of this subsection, ground water areas subject to petition for reclassification shall constitute at least a significant portion of one or more geologic units or formations. In no event shall a reclassification area consist only of an area underlying property owned by a single person ***(except in the case of reclassification to and from Class I-A)***, an area affected only by one discharge, or an area affected only by a set of discharges owned or controlled by a single person.

(e) In setting forth the reasons for its petition, the petitioner shall describe the proposed reclassification area (both lateral and vertical), and shall include appropriate ground water quality and hydrogeologic analyses, as well as statements regarding the environmental, economic and social impacts of the proposed reclassification.

(f) In *[determining whether]* ***order*** to grant a petition to propose a rule amendment to apply a more stringent classification to a ground water area, the Department *[shall consider whether]* ***must find that*** the petitioner has established that the subject area has the characteristics of the more stringent classification.

(g) In *[determining whether]* ***order*** to grant a petition to propose a rule amendment to apply a less stringent classification to a ground water area, the Department *[shall consider whether]* ***must find that*** the petitioner has established that:

1. The designated use cannot be maintained in the subject area *[because of the widespread exceedance of one or more of the criteria set forth in N.J.A.C. 7:9-6.7 within the subject area]*;

[2. The exceedances cannot be remedied using the best available demonstrated technology;]

*[3.]****2. Based upon an analysis of background water quality of constituent standards in downgradient areas and of ground water flow vectors and gradients, contaminant attentuation, flow barriers and potential for induced movement, the*** *[The]* reclassification will not result in significant risk *[or]* ***of the following:***

i. *[impairment]* ***Impairment*** to existing uses of ground water*[, to]* ***or significant potential for pollutant migration to*** downgradient classification areas***;***

ii. Degradation of *[to]* downgradient surface water*[s]* ***quality in violation of the surface water quality standards;***

iii. Degradation of *[to]* the ***quality of*** source water for public water supply wells ***in violation of the provisions of N.J.A.C. 7:9-6.7, 6.8 and 6.9;***, or

iv. Significant threats to public health, safety and welfare; and

*[4.]****3.*** The subject area has the characteristics of the less stringent classification.

(h) The petitioner shall provide public notice of the petition by mailing a copy of a summary of the petition, including all subsequent amendments, to:

1. All owners of residences or facilities identified by local health officials or by the petitioner during the preparation of the petition as operators of wells in the subject area;

2. The mayor or governing body, and the planning board and environmental commission of all municipalities in which any part of the subject area is located;

3. All public water systems utilizing ground or surface water from the subject area;

4. All local or county health agencies with jurisdiction over any part of the subject area; and

5. Any other interested party who requests a copy of the petition summary in writing to either the Department or the petitioner.

(i) The petitioner shall cause public newspaper notice of the petition to be published, in two daily, and one weekly, newspapers (if available) that are distributed in the municipalities of the subject area, which notice shall include a brief summary of the petition.*

7:9-6.11 Severability

If any provision of this subchapter or any application of any such provision is held to be invalid, such invalidity shall not affect any other provision or application, and to this end, the provisions of this subchapter are declared to be severable.

*[TABLE 1
SPECIFIC GROUND WATER QUALITY CRITERIA: CLASS II-A

Constituent	CASRN	Criteria (ug/L)*
Acenaphthene	83-32-9	400
Acetone	67-64-1	700
Acrylamide	79-06-1	0.008
Acrylonitrile	107-13-1	0.06
Adipates (Di(ethylhexyl)adipate)	103-23-1	5,000
Alachlor	15972-60-8	0.43
Aldicarb sulfone	1646-88-4	2
Aldrin	309-00-2	0.002
Aluminum	7429-90-5	50 to 200
Ammonia		500
Anthracene	120-12-7	2000
Antimony	7440-36-0	2
Arsenic (Total)	7440-38-2	0.02
Asbestos	1332-21-4	$7x10^6$f/L>10um[a]
Atrazine	1912-24-9	3
Barium	7440-39-3	2,000
Benz(a)anthracene	56-55-3	0.03
Benzene	71-43-2	0.2
Benzidine	92-87-5	0.0002
Benzyl Alcohol	100-51-6	2000
Benzo(a)pyrene (BaP)	50-32-8	0.003
3,4-Benzofluoranthene (Benzo(b)fluoranthene)	205-99-2	0.03
Benzo(k)fluoranthene	207-08-9	0.03
Beryllium	7440-41-7	0.008
alpha-BHC (alpha-HCH)	319-84-6	0.006
beta-BHC (beta-HCH)	319-85-7	0.2
gamma-BHC (gamma-HCH/Lindane)	58-89-9	0.2
Bis(2-chloroethyl) ether	111-44-4	0.03
Bis(2-chloroisopropyl) ether	39638-32-9	300
Bis(2-ethylhexyl) phthalate	117-81-7	3
Bromodichloromethane (Dichlorobromomethane)	75-27-4	0.3
Bromoform	75-25-2	4
Butylbenzyl phthalate	85-68-7	100
Cadmium	7440-43-9	4
Carbofuran	1563-66-2	40
Carbon tetrachloride	56-23-5	0.4
Chlordane	57-74-9	0.01
Chloride	16887-00-6	250,000
Chlorobenzene	108-90-7	5

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Chloroform	67-66-3	6
2-Chlorophenol	95-57-8	40
Chlorpyrifos	2921-88-2	20
Chromium (Total)	7440-47-3^	100
Chrysene	218-01-9	0.03
Color		10 color units
Copper	7440-50-8	1,000
Corrosivity		Non-corrosive
Cyanide	57-12-5	200
2,4-D	94-75-7	70
Dalapon	75-99-0	200
4,4'-DDD (p,p'-TDE)	72-54-8	0.1
4,4'-DDE	72-55-9	0.1
4,4'-DDT	50-29-3	0.1
Demeton	8065-48-3	0.3
Dibenz(a,h)anthracene	53-70-3	0.003
Dibromochloromethane (Chlorodibromomethane)	124-48-1	10
1,2-Dibromo-3-chloropropane (DBCP)	96-12-8	0.002
Di-n-butyl phthalate	84-74-2	900
1,2-Dichlorobenzene	95-50-1	600
1,3,Dichlorobenzene	541-73-1	600
1,4-Dichlorobenzene	106-46-7	75
3,3'-Dichlorobenzidine	91-94-1	0.08
1,1-Dichloroethane	75-34-3	70
1,2-Dichloroethane	107-06-2	0.3
1,1-Dichloroethylene	75-35-4	1
cis-1,2-Dichloroethylene	156-59-2	10
trans-1,2-Dichloroethylene	156-60-5	100
2,4-Dichlorophenol	120-83-2	20
1,2-Dichloropropane	78-87-5	0.5
1,3-Dichloropropene (cis and trans)	542-75-6	0.2
Dieldrin	60-57-1	0.002
Diethyl phthalate	84-66-2	5,000
2,4-Dimethylphenol	105-67-9	100
Dimethyl phthalate	131-11-3	7,000
2,4-Dinitrophenol	51-28-5	10
2,4-Dinitrotoluene/2,6-Dinitrotoluene mixture	121-14-2	0.05
Di-n-octyl phthalate	117-84-0	100
Dinoseb	88-85-7	7
1,2-Diphenylhydrazine	122-66-7	0.04
Diquat	85-00-7	20
Endosulfan	115-29-7	0.4
alpha-Endosulfan (Endosulfan I)	959-98-8	0.4
beta-Endosulfan (Endosulfan II)	33213-65-9	0.4
Endosulfan sulfate	1031-07-8	0.4
Endothall	145-73-3	100
Endrin	72-20-8	2
Epichlorohydrin	106-89-8	4
Ethylbenzene	100-41-4	700
Ethylene dibromide	106-93-4	0.0004
Fluoranthene	206-44-0	300
Fluorene	86-73-7	300
Fluoride	16984-48-8	2000
Foaming agents (ABS/LAS)		500
Glyphosate	1071-83-6	700
Hardness (as $CaCO_3$)		50< H<250mg/L
Heptachlor	76-44-8	0.008
Heptachlor epoxide	1024-57-3	0.004
Hexachlorobenzene	118-74-1	0.02
Hexachlorobutadiene	87-68-3	1
Hexachlorocyclopentadiene	77-47-4	50
Hexachloroethane	67-72-1	0.7
Hydrogen sulfide	7783-06-4	20
Indeno(1,2,3-cd)pyrene	193-39-5	0.03
Iron	7439-89-6	300
Isophorone	78-59-1	100
Lead (Total)	7439-92-1	5
Malathion	121-75-5	200
Manganese	7439-96-5	50
Mercury (Total)	7439-97-6	2
Methoxychlor	72-43-5	40
Methyl bromide (bromomethane)	74-83-9	10
Methyl chloride (chloromethane)	74-87-3	30
Methyl ethyl ketone	78-93-3	300
Methylene chloride	75-09-2	2
4-Methyl-2-pentanone	108-10-1	400
Mirex	2385-85-5	0.01
Nickel (Soluble salts)	7440-02-0	100
Nitrate (as N)	14797-55-8	10,000
Nitrate and Nitrite (as N)		10,000
Nitrite (as N)	14797-65-0	1,000
Nitrobenzene	98-95-3	3
N-Nitrosodimethylamine	62-75-9	0.0007
N-Nitrosodiphenylamine	86-30-6	7
N-Nitrosodi-n-propylamine	621-64-7	0.005
Odor		3[b]
Oil & Grease and Petroleum Hydrocarbons (PHC)		None Noticeable
Oxamyl	23135-22-0	200
PCBs (Polychlorinated biphenyls)	1336-36-3	0.02
Pentachlorophenol	87-86-5	0.3
pH		6.5-8.5
Phenol	108-95-2	4000
Picloram	1918-02-1	500
Pyrene	129-00-0	200
Selenium (Total)	7782-49-2	50
Silver	7440-22-4	20
Simazine	122-34-9	1
Sodium	7440-23-5	50,000
Styrene	100-42-5	100
Sulfate	14808-79-8	250,000
Taste		None Noticeable
TCDD (2,3,7,8-Tetrachlorodibenzo-p-dioxin)	1746-01-6	0.0000002
1,1,1,2-Tetrachloroethane	630-20-6	10
1,1,2,2-Tetrachloroethane	79-34-5	2
Tetrachloroethylene	127-18-4	0.4
Thallium	7440-28-0	0.5
Toluene	108-88-3	1,000
Total dissolved solids (TDS)		500,000
Toxaphene	8001-35-2	0.03
2,4,5-TP	93-72-1	50
1,2,4-Trichlorobenzene	120-82-1	9
1,1,1-Trichloroethane	71-55-6	30
1,1,2-Trichloroethane	79-00-5	3
Trichloroethylene	79-01-6	1
2,4,5-Trichlorophenol	95-95-4	700
2,5,6-Trichlorophenol	88-06-2	3
Vinyl chloride	75-01-4	0.08
Xylenes (Total)	1330-20-7	40
Zinc	7440-66-6	5,000
Microbiological criteria, Radionuclides & Turbidity		prevailing Safe Drinking Water Act Regulations (N.J.A.C. 7:10-1 et seq.)

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Explanation of Terms

a = Asbestos criterion is measured in terms of fibers/L longer than 10 micrometers (f/L> 10 um)
b = Odor Threshold Number
* = Criteria are expressed as ug/L unless otherwise noted.

ug = micrograms
mg = milligrams
L = liter
f = fibers
∧ = CASRN of chromium VI
H = Hardness]*

*TABLE 1
SPECIFIC GROUND WATER QUALITY CRITERIA—CLASS II-A AND PRACTICAL QUANTITATION LEVELS

Constituent	CASRN	Ground Water Quality Criteria*	Practical Quantitation Levels (PQLs)*	Higher of PQLs and Ground Water Quality Criteria (ug/L)*
Acenaphthene	83-32-9	400	10	400
Acenapthylene	208-96-8	NA	10	NA
Acetone	67-64-1	700	NA	700
Acrolein	107-02-8	NA	50	NA
Acrylamide	79-06-1	0.008	NA	0.008
Acrylonitrile	107-13-1	0.06	50	50
Adipates (Di(ethylhexyl)adipate)	103-23-1	[5,000]	6	[5,000]
Alachlor	15972-60-8	0.43	2	2
Aldicarb sulfone	1646-88-4	2	3	3
Aldrin	309-00-2	0.002	0.04	0.04
Aluminum	7429-90-5	[50 to] 200	200	200
Ammonia		500	200	500
Anthracene	120-12-7	2000	10	2000
Antimony	7440-36-0	2	20	20
Arsenic (Total)	7440-38-2	0.02	8	8
Asbestos	1332-21-4	7×10^6f/L>10um[a]	10^5f/L>10um[a]	7×10^6f/L>10um[a]
Atrazine	1912-24-9	3	1	3
Barium	7440-39-3	2,000	200	2000
Benz(a)anthracene	56-55-3	[0.03]	10	[10]
Benzene	71-43-2	0.2	1	1
Benzidine	92-87-5	0.0002	50	50
Benzyl Alcohol	100-51-6	2000	NA	2000
Benzo(a)pyrene (BaP)	50-32-8	[0.003]	20	[20]
3,4-Benzofluoranthene (Benzo(b)fluoranthene)	205-99-2	[0.03]	10	[10]
Benzo(ghi)perylene	191-24-2	NA	20	NA
Benzo(k)fluoranthene	207-08-9	[0.03]	2	[2]
Beryllium	7440-41-7	0.008	20	20
alpha-BHC (alpha-HCH)	319-84-6	0.006	0.02	0.02
beta-BHC (beta-HCH)	319-85-7	0.2	0.04	0.2
gamma-BHC (gamma-HCH/Lindane)	58-89-9	0.2	0.2	0.2
Bis(2-chloroethyl) ether	111-44-4	0.03	10	10
Bis(2-chloroisopropyl) ether	39638-32-9	300	10	300
Bis(2-ethylhexyl) phthalate	117-81-7	3	30	30
Bromodichloromethane (Dichlorobromomethane)	75-27-4	0.3	1	1
Bromoform	75-25-2	4	0.8	4
Butylbenzyl phthalate	85-68-7	100	20	100
Cadmium	7440-43-9	4	2	4
Carbofuran	1563-66-2	40	7	40
Carbon tetrachloride	56-23-5	0.4	2	2
Chlorobenzene	108-90-7	[5]4	2	[5]4
Chlordane	57-74-9	0.01	0.5	0.5
Chloride	16887-00-6	250,000	[3000]2000	250,000
Chloroform	67-66-3	6	1	6
4-Chloro-3-methyl (o-chloro-m-cresol)	59-50-7	NA	20	NA
2-Chlorophenol	95-57-8	40	20	40
Chlorpyrifos	2921-88-2	20	0.2	20
Chromium (Total)	7440-47-3[∧]	100	10	100
Chrysene	218-01-9	[0.03]	20	[20]
Color		10 CU	20 CU	20 CU
Copper	7440-50-8	1,000	1,000	1,000
[Corrosivity		Non-corrosive	NA	Non-corrosive]
Cyanide	57-12-5	200	40	200

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2,4-D	94-75-7	70	5	70
Dalapon	75-99-0	200	10	200
4,4'-DDD (p,p'-TDE)	72-54-8	0.1	0.04	0.1
4,4'-DDE	72-55-9	0.1	0.04	0.1
4,4'-DDT	50-29-3	0.1	0.06	0.1
Demeton	8065-48-3	0.3	NA	0.3
Dibenz(a,h)anthracene	53-70-3	[0.003]	20	[20]
Dibromochloromethane (Chlorodibromomethane)	124-48-1	10	1	10
1,2-Dibromo-3-chloropropane (DBCP)	96-12-8	[0.002]	2	[2]
Di-n-butyl phthalate	84-74-2	900	20	900
1,2-Dichlorobenzene	95-50-1	600	5	600
1,3,Dichlorobenzene	541-73-1	600	5	600
1,4-Dichlorobenzene	106-46-7	75	5	75
3,3'-Dichlorobenzidine	91-94-1	0.08	60	60
1,1-Dichloroethane	75-34-3	70	NA	70
1,2-Dichloroethane	107-06-2	0.3	2	2
1,1-Dichloroethylene	75-35-4	1	2	2
cis-1,2-Dichloroethylene	156-59-2	10	2	10
trans-1,2-Dichloroethylene	156-60-5	100	2	100
2,4-Dichlorophenol	120-83-2	20	10	20
1,2-Dichloropropane	78-87-5	0.5	1	1
cis-1,3-Dichloropropene	10061-01-5	NA	5	NA
trans-1,3-Dichloropropene	10061-02-6	NA	7	NA
1,3-Dichloropropene (cis and trans)	542-75-6	0.2	NA	.02
Dieldrin	60-57-1	0.002	0.03	0.03
Diethyl phthalate	84-66-2	5,000	10	5,000
2,4-Dimethylphenol	105-67-9	100	20	100
Dimethyl phthalate	131-11-3	[7,000]	10	[7000]
4,6-Dinitro-o-cresol	534-52-1	NA	60	NA
2,4-Dinitrophenol	51-28-5	10	40	40
2,4-Dinitrotoluene/2,6-Dinitrotoluene mixture	121-14-2	0.05	10	10
2,6-Dinitrotoluene	606-20-2	NA	10	NA
Di-n-octyl phthalate	117-84-0	100	NA	100
Dinoseb	88-85-7	7	2	7
1,2-Diphenylhydrazine	122-66-7	0.04	NA	0.04
Diquat	85-00-7	20	NA	20
Endosulfan	115-29-7	0.4	NA	0.4
alpha-Endosulfan (Endosulfan I)	959-98-8	0.4	0.02	0.4
beta-Endosulfan (Endosulfan II)	33213-65-9	0.4	0.04	0.4
Endosulfan sulfate	1031-07-8	0.4	0.08	0.4
Endothall	145-73-3	100	NA	100
Endrin	72-20-8	2	0.04	2
Epichlorohydrin	106-89-8	4	NA	4
Ethylbenzene	100-41-4	700	5	700
Ethylene dibromide	106-93-4	0.0004	0.05	0.05
Fluoranthene	206-44-0	300	10	300
Fluorene	86-73-7	300	10	300
Fluoride	16984-48-8	2000	500	2000
Foaming agents (ABS/LAS)		500	0.5	500
Glyphosate	1071-83-6	700	NA	700
Hardness (as $CaCO_3$)		[50<H<]250mg/L	10 mg/L	250 mg/L
Heptachlor	76-44-8	0.008	0.4	0.4
Heptachlor epoxide	1024-57-3	0.004	0.2	0.2
Hexachlorobenzene	118-74-1	0.02	10	10
Hexachlorobutadiene	87-68-3	1	1	1
Hexachlorocyclopentadiene	77-47-4	50	10	50
Hexachloroethane	67-72-1	0.7	10	10
Hydrogen sulfide	7783-06-4	20	NA	20
Indeno(1,2,3-cd)pyrene	193-39-5	[0.03]	20	[20]
Iron	7439-89-6	300	100	300
Isophorone	78-59-1	100	10	100
Lead (Total)	7439-92-1	5	10	10
Malathion	121-75-5	200	5	200
Manganese	7439-96-5	50	6	50
Mercury (Total)	7439-97-6	2	0.5	2

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Methoxychlor	72-43-5	40	10	40
Methyl bromide (bromomethane)	74-83-9	10	2	10
Methyl chloride (chloromethane)	74-87-3	30	2	30
Methyl ethyl ketone	78-93-3	300	NA	300
3-Methyl-4-chlorophenol	59-50-7	NA	20	NA
Methylene chloride	75-09-2	2	2	2
4-Methyl-2-pentanone	108-10-1	400	NA	400
Mirex	2385-85-5	0.01	NA	0.01
Nickel (Soluble salts)	7440-02-0	100	10	100
Nitrate (as N)	14797-55-8	10,000	400	10,000
Nitrate and Nitrite (as N)		10,000	NA	10,000
Nitrite (as N)	14797-65-0	1,000	400	1,000
Nitrobenzene	98-95-3	3	10	10
N-Nitrosodimethylamine	62-75-9	0.0007	20	20
N-Nitrosodiphenylamine	86-30-6	7	20	20
N-Nitrosodi-n-propylamine	621-64-7	0.005	20	20
Odor		3[b]	NA	3[b]
Oil & Grease and Petroleum Hydrocarbons (PHC)		None Noticeable	NA	None Noticeable
Oxamyl	23135-22-0	200	20	200
PCBs (Polychlorinated biphenyls)	1336-36-3	0.02	0.5	0.5
Pentachlorophenol	87-86-5	0.3	1	1
pH		6.5-8.5	NA	6.5-8.5
Phenanthrene	85-01-8	NA	10	NA
Phenol	108-95-2	4000	10	4000
Picloram	1918-02-1	500	1	500
Pyrene	129-00-0	200	20	200
Selenium (Total)	7782-49-2	50	10	50
Silver	7440-22-4	[20]	2	[20]
Simazine	122-34-9	1	0.8	1
Sodium	7440-23-5	50,000	400	50,000
Styrene	100-42-5	100	5	100
Sulfate	14808-79-8	250,000	5000	250,000
Taste		None Objectionable [Noticeable]	NA	None Objectionable [Noticeable]
TCDD (2,3,7,8-Tetrachlorodibenzo-p-dioxin)	1746-01-6	0.0000002	0.01	0.01
1,1,1,2-Tetrachloroethane	630-20-6	10	NA	10
1,1,2,2-Tetrachloroethane	79-34-5	2	1	2
Tetrachloroethylene	127-18-4	0.4	1	1
2,3,4,6-Tetrachlorophenol	58-90-2	NA	10	NA
Thallium	7440-28-0	0.5	10	10
Toluene	108-88-3	1,000	5	1,000
Total dissolved solids (TDS)		500,000	10,000	500,000
Toxaphene	8001-35-2	0.03	3	3
2,4,5-TP	93-72-1	50	5	50
1,2,4-Trichlorobenzene	120-82-1	9	1	9
1,1,1-Trichloroethane	71-55-6	30	1	30
1,1,2-Trichloroethane	79-00-5	3	2	3
Trichloroethylene	79-01-6	1	1	1
2,4,5-Trichlorophenol	95-95-4	700	10	700
2,5,6-Trichlorophenol	88-06-2	3	20	20
Vinylchloride	75-01-4	0.08	5	5
Xylenes (Total)	1330-20-7	40	2	40
m&p-Xylenes	NA	NA	2	NA
o-Xylene	NA	NA	1	NA
Zinc	7440-66-6	5,000	30	5,000
Microbiological criteria[m], Radionuclides & Turbidity	Prevailing Safe Drinking Water Act Regulations (N.J.A.C. 7:10-1 et seq.)			

Explanation of Terms:

* = Ground Water Quality Criteria and PQLs are expressed as ug/L unless otherwise noted. Table 1 criteria are all maximum values unless clearly indicated as a range for which the minimum value is to the left and the maximum value is to the right.

PQL—Practical Quantitation Level as defined in N.J.A.C. 7:9-6.4

CASRN—Chemical Abstracts System Registration Number

NA = not available for this constituent

a = Asbestos criterion is measured in terms of fibers/L longer than 10 micrometers (f/L>10 um)

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ug = micrograms, L = liter, f = fibers, CU = Standard Cobalt Units
b = Odor Threshold Number, mg = milligrams, H = Hardness
(Total) means the concentration of metal in an unfiltered sample following treatment with hot dilute mineral acid (as defined in "Methods for Chemical Analysis of Water & Wastes", EPA-600/4-79-020, March 1979) or other digestion defined by the analytical method. However samples that contain less than 1 nephlometric turbidity unit (NTU) and are properly preserved, may be directly analyzed without digestion.
m = Pursuant to prevailing Safe Drinking Water Act Regulations any positive result for fecal coliform is in violation of the MCL and is therefore an exceedance of the ground water quality criteria.*

TABLE 2
INTERIM GENERIC GROUND WATER QUALITY CRITERIA

Interim Generic Criteria—Synthetic Organic Chemicals (SOC)*

Constituent	Water Quality Criteria
SOCs with evidence of carcinogenicity lacking specific or interim specific criteria	5 ug/l each 25 ug/l total
SOCs lacking evidence of carcinogenicity lacking specific or interim specific criteria	100 ug/l each 500 ug/l total

*SOCs are identified as having "evidence of carcinogenicity" or "lacking evidence of carcinogenicity" based upon available scientific evidence. ***Chemicals are classified as carcinogens or noncarcinogens for the purposes of risk assessment according to the weight of evidence utilized by USEPA in the National Primary Drinking Water Regulations (50 FR 46880-46901 (1985)).***

*[TABLE 3
PRACTICAL QUANTITATION LEVELS
FOR SELECTED CONSTITUENTS

Constituent	CASRN	PQL (ug/L)*
Acenaphthene	83-32-9	10
Acenapthylene	208-96-8	10
Acrolein	107-02-8	50
Acrylamide	79-06-1	NA
Acrylonitrile	107-13-1	50
Adipates (Di(ethylhexyl)adipate)	103-23-1	6
Alachlor	15972-60-8	2
Aldicarb sulfone	1646-88-4	3
Aldrin	309-00-2	0.04
Aluminum	7429-90-5	200
Ammonia	7764-41-7	200
Anthracene	120-12-7	10
Antimony	7440-36-0	20
Arsenic (Total)	7440-38-2	8
Asbestos	1332-21-4	100,000f/L<10um
Atrazine	1912-24-9	1
Barium	7440-39-3	200
Benz(a)anthracene	56-55-3	10
Benzene	71-43-2	1
Benzidine	92-87-5	50
Benzo(a)pyrene (BaP)	50-32-8	20
3,4-Benzofluoranthene (Benzo(b)fluoranthene)	205-99-2	10
Benzo(ghi)perylene	191-24-2	20
Benzo(k)fluoranthene	207-08-9	20
Beryllium	7440-41-7	20
alpha-BHC (alpha-HCH)	319-84-6	0.02
beta-BHC (beta-HCH)	319-85-7	0.04
gamma-BHC (gamma-HCH/Lindane)	58-89-9	0.2
Bis(2-chloroethyl) ether	111-44-4	10
Bis(2-chloroisopropyl) ether	39638-32-9	10
Bis(2-ethylhexyl) phthalate	117-81-7	30
Bromodichloromethane (Dichlorobromomethane)	75-27-4	1
Bromoform	75-25-2	8.0
Butylbenzyl phthalate	85-68-7	20
Cadmium (total)	7440-43-9	2
Carbofuran	1563-66-2	7
Carbon tetrachloride	56-23-5	2
Chlordane	57-74-9	0.5
Chloride	16887-00-6	3000
Chlorobenzene	108-90-7	2
Chloroform	67-66-3	1
4-Chloro-3-methyl (o-chloro-m-cresol)	59-50-7	20
2-Chlorophenol	95-57-8	20
Chlorpyrifos	2921-88-2	0.2
Chromium (Total)	7440-47-3^	10
Chrysene	218-01-9	20
Color (Platinum-Cobalt Units)	NA	20
Copper	7440-50-8	10
Corrosivity	NA	NA
Cyanide	57-12-5	40
2,4-D	94-75-7	5
Dalapon	75-99-0	10
4,4'-DDD (p,p'-TDE)	72-54-8	0.04
4,4'-DDE	72-55-9	0.04
4,4'-DDT	50-29-3	0.06
Demeton	8065-48-3	NA
Dibenz(a,h)anthracene	53-70-3	20
Dibromochloromethane (Chlorodibromomethane)	124-48-1	1
1,2-Dibromo-3-chloropropane (DBCP)	96-12-8	2
Di-n-butyl phthalate	84-74-2	20
1,2-Dichlorobenzene	95-50-1	5
1,3-Dichlorobenzene	541-73-1	5
1,4-Dichlorobenzene	106-46-7	5
3,3'-Dichlorobenzidine	91-94-1	60
1,2-Dichloroethane	107-06-2	2
1,1-Dichloroethylene	75-35-4	2
cis-1,2-Dichloroethylene	156-59-2	2
trans-1,2-Dichloroethylene	156-60-5	2
2,4-Dichlorophenol	120-83-2	10
1,2-Dichloropropane	78-87-5	1
1,3-Dichloropropene (cis and trans)	542-75-6	NA
cis-1,3-Dichloropropene	10061-01-5	5
trans-1,3-Dichloropropene	10061-02-6	7
Dieldrin	60-57-1	0.03
Diethyl phthalate	84-66-2	10
2,4-Dimethyl phenol	105-67-9	20
Dimethyl phthalate	131-11-3	10
4,6-Dinitro-o-cresol	534-52-1	60
2,4-Dinitrophenol	51-28-5	40
2,4-Dinitrotoluene	121-14-2	10
2,6-Dinitrotoluene	606-20-2	10
Dinoseb	88-85-7	2
1,2-Diphenylhydrazine	122-66-7	NA
Diquat	85-00-7	NA
Endosulfan	115-29-7	NA
alpha-Endosulfan (Endosulfan I)	959-98-8	0.02
beta-Endosulfan (Endosulfan II)	33213-65-9	0.04
Endosulfan sulfate	1031-07-8	0.08

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Endothall	145-73-3	NA
Endrin	72-20-8	0.04
Epichlorohydrin	106-89-8	NA
Ethylbenzene	100-41-4	5
Ethylene dibromide	106-93-4	0.05
Fluoranthene	206-44-0	10
Fluorene	86-73-7	10
Fluoride	16984-48-8	500
Foaming agents (ABS/LAS)		0.5
Glyphosate	1071-83-6	NA
Hardness (as $CaCO_3$)		10
Heptachlor	76-44-8	0.4
Heptachlor epoxide	1024-57-3	0.2
Hexachlorobenzene	118-74-1	10
Hexachlorobutadiene	87-68-3	1
Hexachlorocyclopentadiene	77-47-4	10
Hexachloroethane	67-72-1	10
Hydrogen sulfide	7783-06-4	NA
Indeno(1,2,3-cd)pyrene	193-39-5	20
Iron	7439-89-6	100
Isophorone	78-59-1	10
Lead (Total)	7439-92-1	10
Malathion	121-75-5	5
Manganese	7439-96-5	6
Mercury (Total)	7439-97-6	0.5
Methoxychlor	72-43-5	10
Methyl bromide (bromomethane)	74-83-9	2
Methyl chloride (chloromethane)	74-87-3	2
3-Methyl-4-chlorophenol	59-50-7	20
Methylene chloride	75-09-2	2
Mirex	2385-85-5	NA
Nickel (Soluble salts)	7440-02-0	10
Nitrate (as N)	14797-55-8	400
Nitrite (as N)	14797-65-0	400
Nitrobenzene	98-95-3	10
N-Nitrosodimethylamine	62-75-9	20
N-Nitrosodiphenylamine	86-30-6	20
N-Nitrosodi-n-propylamine	621-64-7	20
Odor		NA
Oil & Grease		20000
Petroleum Hydrocarbons (PHC)		2000
Oxamyl	23135-22-0	20
PAHs (Polynuclear aromatic hydrocarbons)		NA
PCBs (Polychlorinated biphenyls)	1336-36-3	0.5
Pentachlorophenol	87-86-5	1
pH		NA
Phenanthrene	85-01-8	10
Phenol	108-95-2	10
Phosphorus	7723-14-0	80
Picloram	1918-02-1	1
Pyrene	129-00-0	20
Selenium (Total)	7782-49-2	10
Silver	7440-22-4	2
Simazine	122-34-9	0.8
Sodium	7440-23-5	400
Styrene	100-42-5	5
Sulfate	14808-79-8	5000
Taste		NA
TCDD (2,3,7,8-Tetrachlorodibenzo-p-dioxin)	1746-01-6	0.01
1,1,2,2-Tetrachloroethane	79-34-5	1
Tetrachloroethylene	127-18-4	1
2,3,4,6-Tetrachlorophenol	58-90-2	10
Thallium	7440-28-0	10
Toluene	108-88-3	5
Total dissolved solids (TDS)		10000
Toxaphene	8001-35-2	3
2,4,5-TP	93-72-1	5
1,2,4-Trichlorobenzene	120-82-1	1
1,1,1-Trichloroethane	71-55-6	1
1,1,2-Trichloroethane	79-00-5	2
Trichloroethylene	79-01-6	1
2,4,5-Trichlorophenol	95-95-4	10
2,4,6-Trichlorophenol	88-06-2	20
Vinyl chloride	75-01-4	5
Xylenes (Total)	1330-20-7	2
m&p-Xylenes	NA	2
o-Xylene	NA	1
Zinc	7440-66-6	30
Microbiological criteria,		NA
Radionuclides &		NA
Turbidity		NA

Explanation of Terms

* PQL—Practical Quantitation Level as defined in N.J.A.C. 7:9-6.3.
ug = micrograms
L = liter
f = fibers
^ = CASRN of chromium VI
NA = Practical Quantitation Level not available for this constituent.]*

Editor's Note: Appendix "New Jersey Groundwater Classification System—Classification of Surgical Ground Water Units" has been deleted from the adoption.

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APPENDIX

Figure 1

New Jersey Ground Water Classification System

Class I-PL - New Jersey Pinelands

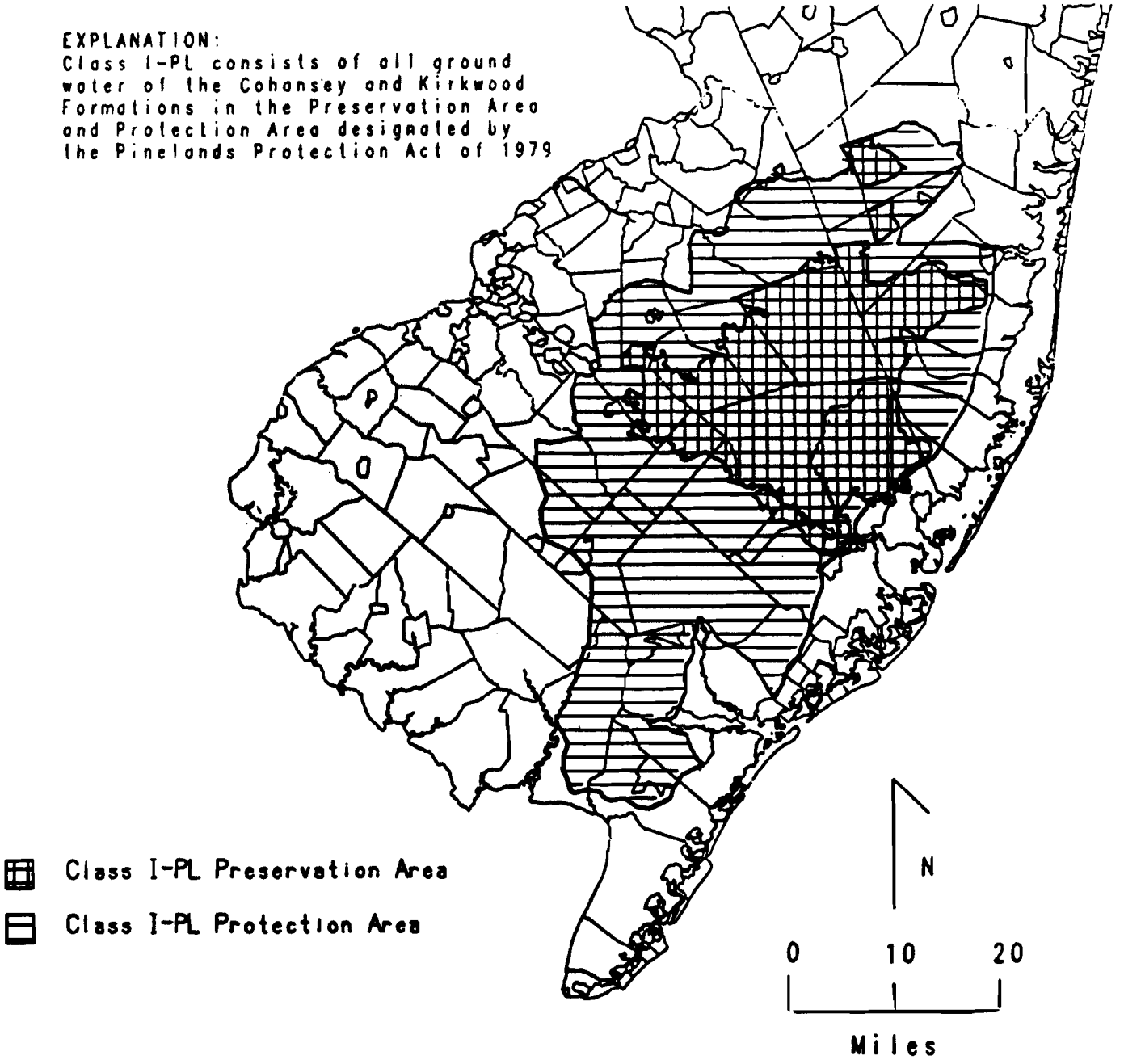

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FIGURE 2

New Jersey Ground Water Classification System

Class IIIA - Aquitards of the New Jersey Coastal Plain

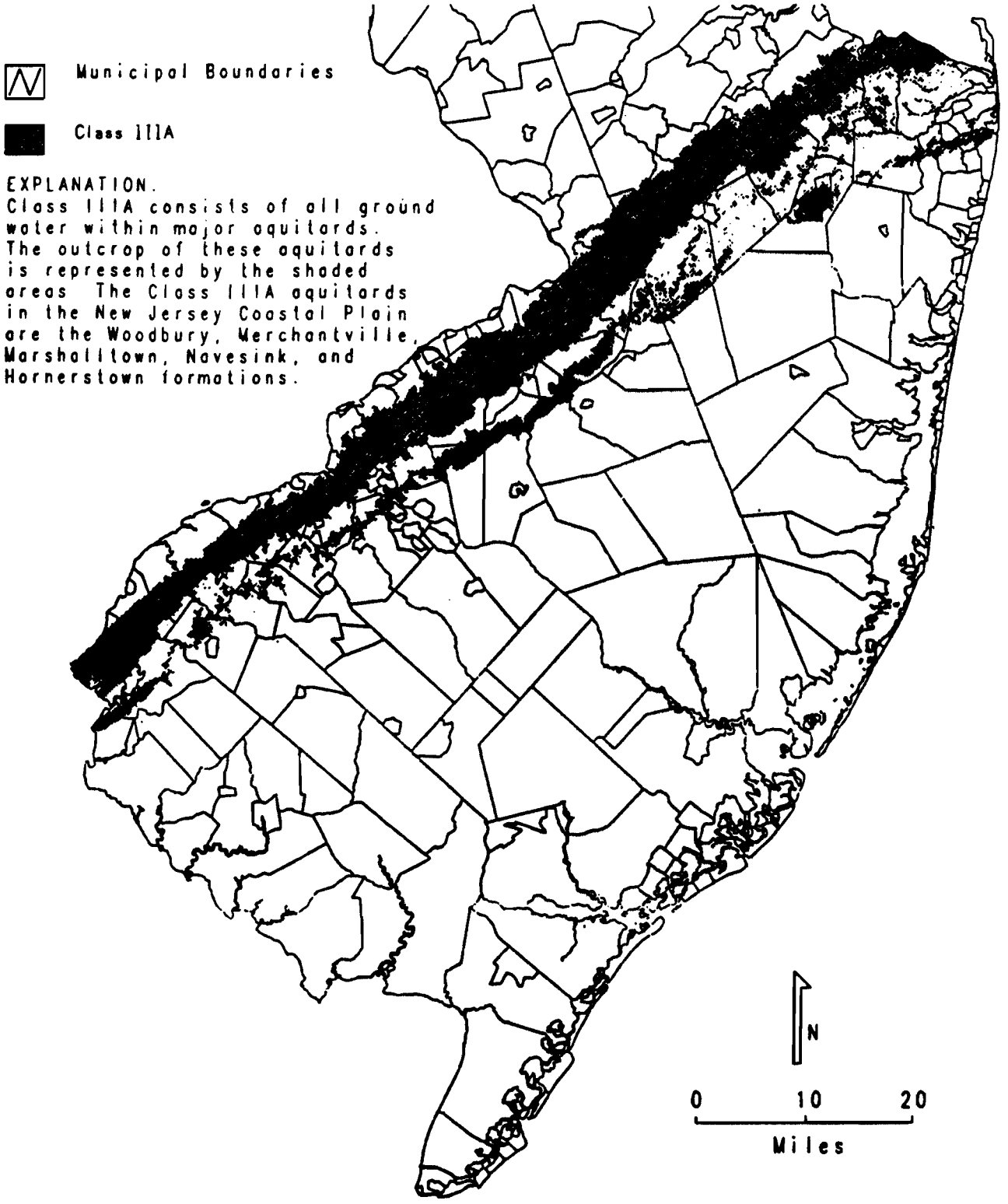

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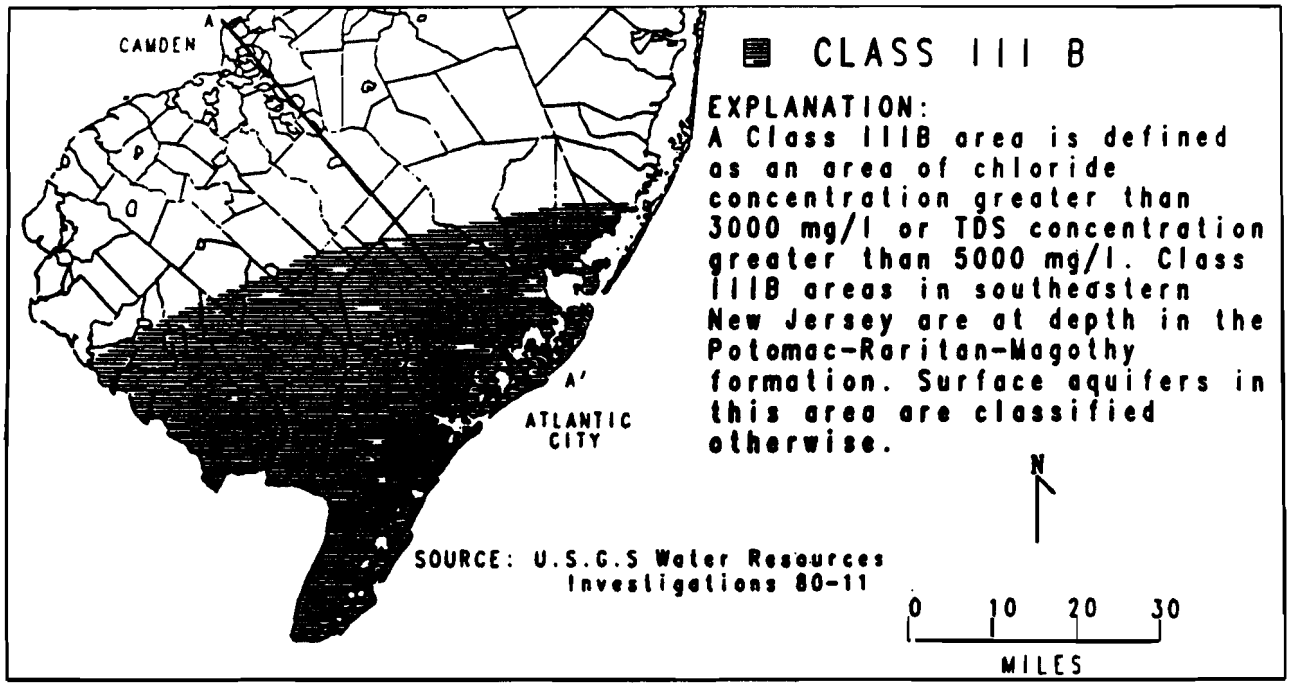
FIGURE 3

NEW JERSEY GROUND WATER CLASSIFICATION SYSTEM

CLASS IIIB

CRETACEOUS POTOMAC-RARITAN-MAGOTHY FORMATION



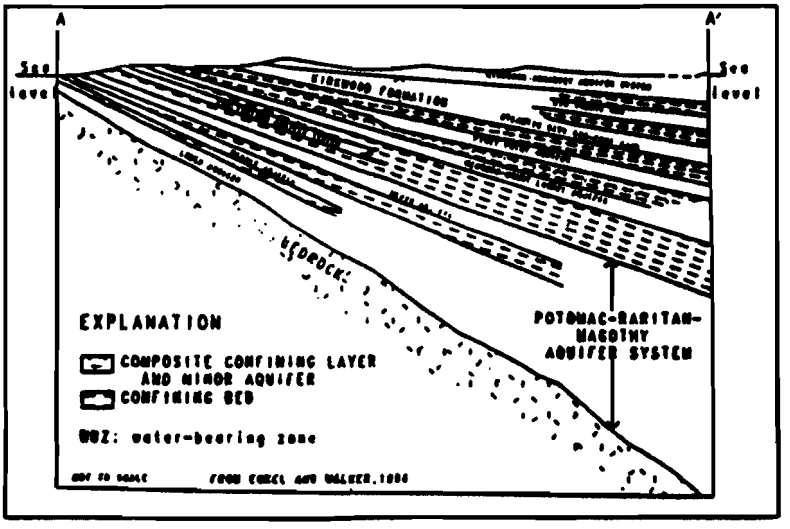


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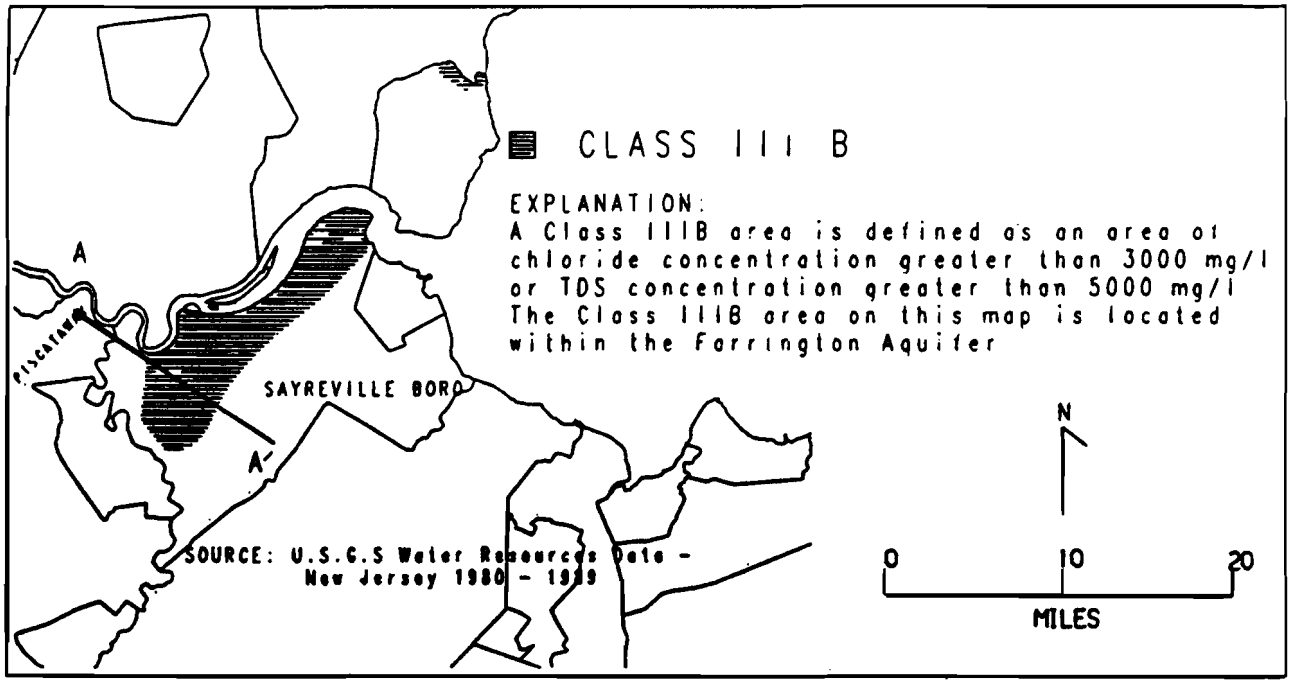
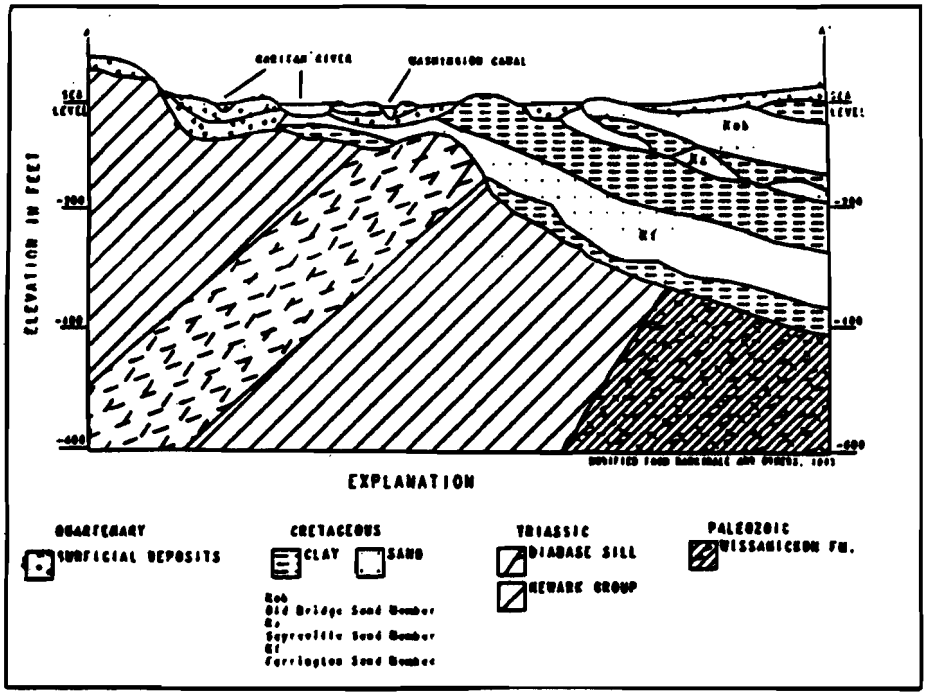
FIGURE 4

NEW JERSEY GROUND WATER CLASSIFICATION SYSTEM

CLASS IIIB

FARRINGTON AQUIFER





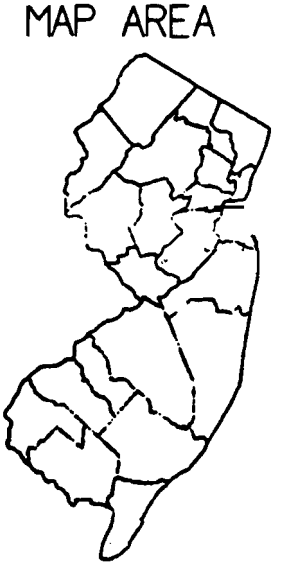


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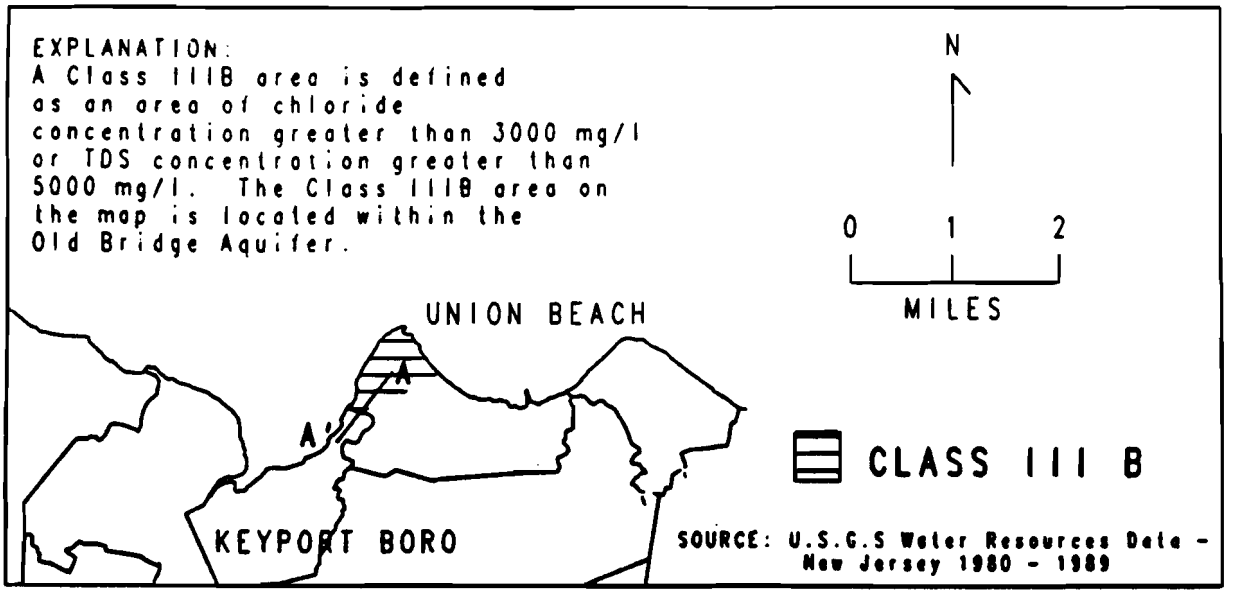
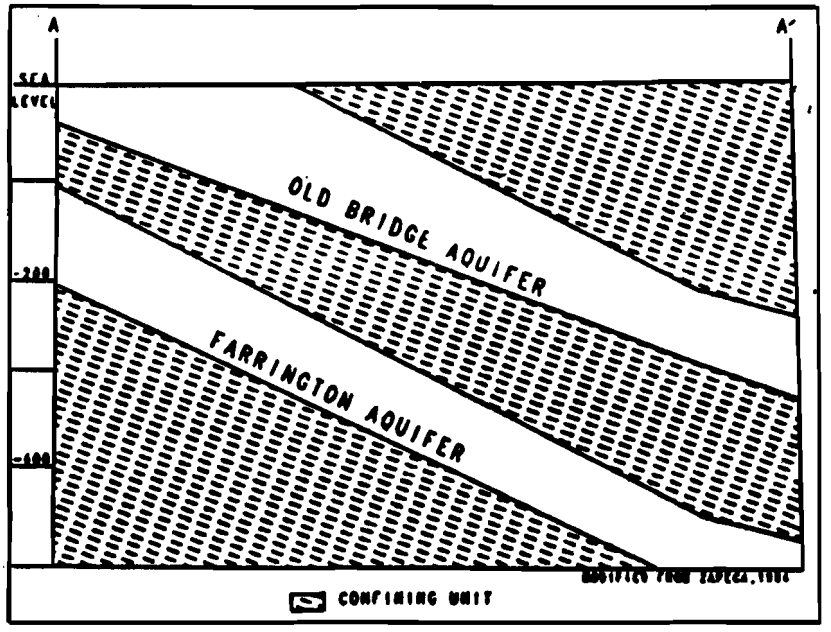
FIGURE 5

NEW JERSEY GROUND WATER CLASSIFICATION SYSTEM

CLASS IIIB
OLD BRIDGE AQUIFER





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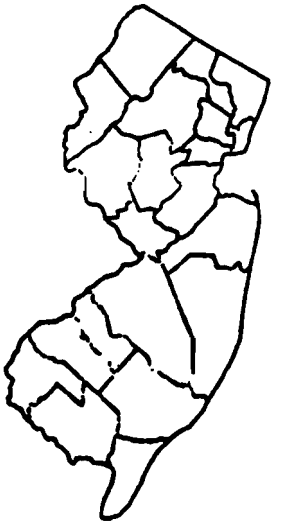

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(a)

ENVIRONMENTAL REGULATION

New Jersey Pollutant Discharge Elimination System Statewide Water Quality Management Planning

Adopted Amendments: N.J.A.C. 7:14A-1.2, 1.3, 1.8, 1.9, 2.1, 2.3, 2.4, 2.5, 2.8, 2.9, 2.12, 3.11, 3.13, 3.14, 5.17, 6.15, 7.2, 7.3, 8.1, 8.4, 8.5, 8.9, 8.11, 9.6, 9.8, 10.3, 10.5, 10.7, 10.9, 10.10, 10.11, 11.1, 11.2, 11.3, 12.1, 12.2, 11.5, 12.7, 12.8, 12.9, 12.11, 12.12, 12.14, 12.21, 12.23, 12.25, 12.26, 13.1, 13.2, 13.4, 13.5, 14.2, 14.4, 14.5 14.6; 7:15-1.1, 1.5, 2.2, 3.1, 3.2, 3.4, 3.6, 3.8, 3.9, 4.3, 5.4, 5.6, 5.8, 5.14, 5.17, 5.18, 5.22, and 5.23

Adopted New Rule: N.J.A.C. 7:14A-13.10

Adopted Repeals: N.J.A.C. 7:14A-13.6, 14.3 and Appendix F; 7:15-4.1

Proposed: February 3, 1992 at 24 N.J.R. 344(b).

Adopted: December 29, 1992 by Scott A. Weiner, Commissioner, Department of Environmental Protection and Energy.

Filed: January 4, 1993 as R.1993 d.59, **with substantive and technical changes** not requiring public notice and comment (see N.J.A.C. 1:30-4.3(c)).

Authority: N.J.S.A. 58:10A-1 et seq., 58:11A-1 et seq., 58:11-49 et seq., 58:10-23.11 et seq., 58:11-64 et seq., 13:1D-1 et seq., 13:1E-1 et seq., 58:4A-5 et seq., 58:4A-4.1 et seq., 58:12A-1 et seq.

DEPE Docket Number: 02-92-01.

Effective Date: February 1, 1993.

Expiration Date: June 2, 1994, N.J.A.C. 7:14A;
October 2, 1994, N.J.A.C. 7:15.

Summary of Public Comments and Agency Responses:

The Department of Environmental Protection and Energy (Department) proposed the amendments on February 3, 1992. A public hearing was held on April 1, 1992 at Rutgers University, New Brunswick, New Jersey. The written comment period closed on April 3, 1992. The following is a list of persons who submitted written comments or gave testimony at the hearing:

Written comments received

1. Barry Berdahl—Ciba-Geigy Corporation, Toms River
2. Norman Berens—New Jersey Laboratories
3. Michael Brinker—Joint Meeting of Essex and Union Counties (JMEUC)
4. Daniel Caramagno—Schering-Plough Corporation
5. Amy Climo—BP Oil Company
6. Jack Coughlin—Township of East Brunswick
7. Thomas Detweiler—Chemical Industry Council of New Jersey (CIC/NJ)
8. Sandra Grenci—Rahway Valley Sewerage Authority (RVSA)
9. Ellen Gulbinsky—Association of Environmental Authorities (AEA)
10. Richard Hampson—Garden State Paper Company, Inc.
11. John Hnat—Dupont Chambers Works
12. Jeannie Jenkins—New Jersey Public Interest Group (NJPIRG)
13. Arnold C. Lakind—Szaferman, Lakind, Blumstein, Watter, and Blader
14. Angelo Morresi—Givaudan-Roure Corporation
15. Russell Nerlick—Western Monmouth Utilities Authority (WMUA)
16. Dennis Palmer—Camden County MUA
17. G. Oliver Papps—New Jersey Petroleum Council
18. Carmine Perrapato—Passaic Valley Sewerage Commissioners (PVSC)
19. Dave Rabbe—Chemical Land Holdings, Inc.
20. Thomas Severino—Unisys Corporation
21. Stacey Starkman—Merck Manufacturing Division, Merck and Co. Inc.
22. William Sullivan—Rutgers Environmental Law Clinic (RELC)
23. Mark Zehner—Saul, Ewing, Remick, and Saul for Chemical Waste Management of New Jersey

Public Testimony

A. Russell Nerlick—Western Monmouth Utilities Authority (WMUA)
B. Richard Lulla—Killam Associates
C. Jean Matteo—Hackensack Water Company
D. William Sullivan—Rutgers Environmental Law Clinic (RELC)
E. Jeannie Jenkins—New Jersey Public Interest Research Group (NJPIRG)
F. Frank D'Ascensio—Passaic Valley Sewerage Commissioners (PVSC)

The Department wishes to advise the public that it is presently preparing a comprehensive revision to N.J.A.C. 7:14A and has published a Notice of Opportunity for Interested Party Review (IPR) elsewhere in this issue of the New Jersey Register. This undertaking was initiated in response to the many comments the Department has received on this program from various interested parties, permittees, and the Department's own staff and management. In this regard, some of the Department's responses in this rule adoption make reference to the IPR. Although the Department has not incorporated comments made on sections of the rule that were not a part of the Department's proposal of February 3, 1992, or if such changes were deemed to be significant pursuant to N.J.A.C. 1:30-4.3, the Department greatly appreciates and values all of the comments offered by the public, and where indicated in the responses, will be fully considering all such concerns and recommendations before formally proposing future amendments to the NJPDES rule.

COMMENT 1: The New Jersey Petroleum Council and the Chemical Industry Council of New Jersey commented that the Department should revise N.J.A.C. 7:14A-1.8(a)8 by deleting the phrase "... upon written request of the permittee...". The commenters asserted that a permittee should not have to request the return of his money (for NJPDES Significant Indirect Users (SIU) that no longer qualify as a SIU pursuant to N.J.A.C. 7:14A-10.5(g)), but rather receive an automatic refund from the Department.

RESPONSE 1: The Department does not agree with the commenter's suggestion to delete the phrase "... upon written request of the permittee..." in N.J.A.C. 7:14A-1.8(a)8. This requirement is necessary to ensure that adequate documentation is on file for refund transactions when the program is audited. The submission of a written request will also ensure that the Department is able to process refund requests promptly to the appropriate entities.

COMMENT 2: The Chemical Industry Council of New Jersey (CIC/NJ) commented that regulatory fees have become a burden not only on its members but on the manufacturing base of the State's economy in general. CIC/NJ has conducted a study which shows that seven facilities pay 54 percent of the total $8 to 10 million NJPDES budget. Additionally, that study pointed out that three companies pay $750,000 for each year of a five year permit amounting to a five year permit fee of $3,750,000 per company and a $11,250,000 total. CIC/NJ believes that these fees are arrived at through a complex formula which unfairly punishes one class of discharger more severely than another. Since, in theory, the formula is designed to make the polluter pay, a company that reduces its discharge should see a fee reduction; however, in reality this has not happened. The CIC/NJ cited one case in which a member industry cut production by 50 percent, yet the Department raised their fee by 55 percent. The CIC/NJ recommends that the Department revise the NJPDES fee program so that it is based upon justifiable costs, subject to audit procedures, and equitable to all industries subject to the NJPDES program.

RESPONSE 2: The Department acknowledges that the NJPDES fee system needs to be re-evaluated. In fact, the Commissioner has convened a task force chaired by former State Senator and Appropriations Committee Chairman Laurence Weiss and comprised of representatives from the Public Affairs Research Institute of New Jersey, the New Jersey Association of Counties, the Office of Legislative Services, municipal authorities, industry, local government, and environmental groups for this purpose. The NJPDES Fee Task Force will be reviewing how the Department funds NJPDES permitting and related activities such as monitoring and enforcement, and how these costs should be distributed. The Department acknowledges that annual NJPDES fees for 62 percent of the permitted facilities were less than $1,000 and plans to propose amendments to the minimum fee schedule to better distribute the basic costs associated with the NJPDES permit program in February, 1993.

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COMMENT 3: The Western Monmouth Utilities Authority commented that since flooding conditions may cause wastewater overflows in conveyance systems, the NJPDES rules should provide a definition for when transmission facilities are adequate.

RESPONSE 3: The NJPDES rules presently provide a definition for adequate conveyance capacity at N.J.A.C. 7:14A-1.9.

COMMENT 4: The Joint Meeting of Essex and Union Counties (JMEUC) and the Association of Environmental Authorities commented that the definitions for "average weekly discharge limitation" and "average monthly discharge limitation" in N.J.A.C. 7:14A-1.9 should clarify that pH is not included in the definitions because pH cannot be averaged. The JMEUC, Passaic Valley Sewerage Commissioners, and the Association of Environmental Authorities commented that the definitions should allow for an exception if 24-hour recorders are used to continuously record parameters such as pH and LEL.

RESPONSE 4: The Department does not believe the definitions for "average weekly discharge limitation" and "average monthly discharge limitation" require additional clarification. Since pH values cannot be averaged using an arithmetic mean and lower explosive limits (LELs) should not be averaged for safety reasons, the permittees should only report the minimum and maximum analytical value obtained during the reporting period, as indicated in the Discharge Monitoring Report Manual (revised 1991). If the manual conflicts with the NJPDES permit, the permit takes precedence. The use of 24 hour recorders does not necessitate the averaging of pH values. 40 CFR § 401.17, which sets forth requirements for the continuous monitoring of pH, does not allow averaging pH values.

The Department also notes that the subject definitions were widely discussed during the Department's Discharge Monitoring Report guidance seminars which were conducted throughout the State in 1991. A copy of the manual developed during these seminars may be obtained from the Wastewater Facilities Regulation Program, CN-029, Trenton, New Jersey 08625.

COMMENT 5: The Western Monmouth Utilities Authority (WMUA), Joint Meeting of Essex and Union Counties, the Association of Environmental Authorities, and the Rahway Valley Sewerage Authority commented that a calendar week should be retained in the definition for "average weekly discharge limitation" as expressed in N.J.A.C. 7:14A-1.9 rather than the proposed seven day consecutive period. They further commented that it is possible that one high reading could result in seven separate violations by causing seven different averages to be above the weekly limit. Chemical Land Holdings commented that permittees subject to daily monitoring should be allowed to determine weekly averages by using the same repeated seven-day cycle (for example, Monday through Sunday). The WMUA suggested that using a calendar week in the definition will reduce the number of calculations from 28 to 31 (depending on the month) to a maximum of five, thereby reducing the workload of both the permittee and the Department (who must review the averages to assess compliance). Finally, WMUA commented that this proposed change will result in 365 weekly averages rather than 52 averages which should provide an adequate indication of permit compliance.

RESPONSE 5: Although retaining the previous definition referencing the calendar week may reduce the number of calculations, the Department believes that the average weekly discharge limitation as defined in the amendments of February 3, 1992 (24 N.J.R. 344(a)) will result in accurate reporting of analytical data for a particular month. The definition for average weekly discharge limitation leads to calculating a "rolling seven day average" as explained below:

The first average weekly result for a particular monthly monitoring period begins on the seventh day of each monthly monitoring period and represents the average of all samples taken from day one through day seven. The second average weekly result on the eighth day represents the average of all samples taken from day two through day eight and so on, which is referred to as a "rolling seven day average" calculation.

The average weekly results based on the current calendar week definition would not be appropriate and will result in the misrepresentation of pertinent data. For example, the use of data from a calendar week beginning in one monthly monitoring period and ending in a following monthly monitoring period, with a required twice per week sampling, would require analytical data to be included or excluded on a DMR and show unrepresentative values for the DMR monthly monitoring period.

The "rolling seven day average" weekly calculation using any seven consecutive days would include all the data that occurred in the respective monthly monitoring period, be representative of the definition for the average weekly discharge limitation and comply with the twice per week monitoring frequency.

The amendment will not result in 365 weekly averages per year since the first six days of each month cannot be associated with weekly calculations. Average weekly calculations will only result in additional calculations when new or additional analytical data is obtained; this does not increase sampling frequency. Also, the only average weekly values subject to violations are the ones calculated by using new or additional analytical data reported during that seven day period. Therefore, one high reading may result in seven separate violations, although it is unlikely.

If permittees are allowed to use the same repeated seven day cycle (Monday through Sunday), data reported for a particular month would not be representative for the monitoring period when the seven day cycle begins in one month and ends in the following month.

COMMENT 6: The Western Monmouth Utilities Authority noted that the term "dry weather flow" is not defined.

RESPONSE 6: The term "dry weather flow" appears in the definition of "significant indirect user" under subparagraph 1iv; however, the Department acknowledges that the rules do not provide a definition for this term. The Department intends to further address the issue as part of the SIU Technical Manual, which is currently being developed pursuant to N.J.S.A. 13:1D-111.

COMMENT 7: The Western Monmouth Utilities Authority commented that the NJPDES rules should define the phrase "significant quantities of polluted groundwater" which is referenced in the definition for "significant indirect users" (SIU).

RESPONSE 7: The Department proposed to delete the phrase "significant quantities of polluted groundwater" from the definition of SIU and add the standard of 25,000 gallons per day or more of polluted groundwater. The amendments have been adopted. See N.J.A.C. 7:14A-1.9 "SIU" subparagraph 2iv.

COMMENT 8: Killam Associates commented that the SIU definition is designed for process wastewater, while most of the sewerage authorities' rules address the total wastewater discharge including sanitary wastewater. The commenter further stated that sewerage authorities may experience difficulties with defining an SIU by process wastewater alone, because the mass loading of a particular discharge may be insignificant until it is combined with a sanitary discharge.

RESPONSE 8: The SIU definition at N.J.A.C. 7:14A-1.9 is consistent with the Federal definition at 40 CFR 403.3(t), applied as a minimum statewide standard, and only intended for process wastewater. In non-delegated areas, the Department does not consider the sanitary portion of the wastewater flow when determining if a user is an SIU.

COMMENT 9: Killam Associates commented that in areas of the State where the Department is the control authority for SIUs, the Department should provide guidelines for local sewerage authorities to issue these permits beyond the requirements listed in the SIU definition.

RESPONSE 9: In the area of the State where the Department is the control authority, the local sewerage authority may request the Department to evaluate the need for an individual permit when it believes that the industrial user has a potential to adversely affect the local agency's operation. Although the Department does not have any written guidelines on the issuance of SIU permits by local sewerage authorities, the Department's Bureau of Pretreatment and Residuals (BPR) and Bureau of Industrial Discharge Permit (BIDP) are available to provide assistance on SIU permitting matters. They may be contacted by calling 609-633-3823 (BPR) and 609-292-0407 (BIDP).

COMMENT 10: Killam Associates commented that the definition for a SIU should not be limited to facilities that are in violation of Federal, State, or local pretreatment standards because the criterion is too narrow and may be difficult to apply consistently in practice.

RESPONSE 10: The provision cited by the commenter is only one of eight provisions for defining an SIU at N.J.A.C. 7:14A-1.9. Therefore, the Department would disagree that the criterion for defining SIUs is too narrow.

COMMENT 11: The Rutgers Environmental Law Clinic and the New Jersey Public Interest Research Group commented that the proposed definition of SIU is confusing and difficult to understand. They also commented that the facilities regulated in areas where the Department is the control authority differ from those regulated by delegated local agencies. Specifically, it appears that the SIU definition will not cover landfill leachate dischargers, hazardous waste facilities, industrial waste management facilities, and violators of State or local law, or groundwater

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remediation projects in areas where the Department is not the control authority. The commenters further stated that the inconsistency between the delegated local agencies and the Department's authority in regulating SIUs will lead to water quality degradation and it is recommended that: 1) the definition be simplified, clarified, and expanded so that all SIU facilities are subject to the same provisions of the CWEA, and 2) opportunity for public comment be provided on all SIU reclassification decisions. Ciba-Geigy also commented that the definition of SIU is inconsistent as the DEPE should not be more stringent in its regulation of SIUs than delegated local agencies by requiring NJPDES permits for hazardous waste facilities, industrial waste management facilities, landfill leachate discharges, and groundwater remediation discharges.

RESPONSE 11: The purpose of the SIU program is to assure that discharges into wastewater conveyance systems do not negatively impact the receiving wastewater plant's treatment processes so as to cause a NJPDES permit violation and degrade the quality of the receiving water body. The Department has determined that certain types of facilities have the potential to interfere with wastewater treatment processes and has classified them as a SIU. Facilities so identified must pretreat their wastewater prior to discharge into the municipal conveyance system. Pursuant to the SIU definition, the control authority may also designate an indirect user as an SIU on the basis that the user has a reasonable potential for causing an adverse impact on the local agency's operations. In the area of the State where the Department is the control authority, the Department is currently evaluating the potential for adverse impacts on local agency operations from the discharge of landfill leachate, contaminated ground water, hazardous waste facilities and industrial waste management facilities. After the completion of this evaluation, the Department, if needed, will revise the SIU definition in areas of the State where the Department is the control authority should these and other types of discharges demonstrate reasonable potential for adversely impacting local agency facilities. A delegated local agency, as control authority of their service area, conducts similar evaluations and may elect to designate some or all of the above categories as SIUs. Since it is the control authority's responsibility to prevent pass-through and/or intereference so as to prevent the degradation of surface water and sludge quality (as defined in 40 CFR 403) by establishing appropriate control mechanisms, the Department believes that the rule, as currently written, provides adequate environmental controls while also allowing delegated local agencies the flexibility to regulate the users specific to their service areas. Therefore, the definition of SIU has not been amended on adoption.

Facilities that do not initially meet the Department's or a local agency's definition of a SIU are required to contact the control authority whenever the quality and quantity of pollutants discharged changes so that the control authority can re-evaluate the discharge, and if necessary change the facility's classification.

COMMENT 12: The Joint Meeting of Essex and Union Counties and the Association of Environmental Authorities suggested that the Department revise the language in the definition for SIU in N.J.A.C. 7:14A-1.9 as follows:

1.ii. "The user discharges an average volume of 25,000 gallons per day or more to the sewerage system of a local agency."

1.iii. "The amount of BOD, COD, or Suspended Solids in the user's wastewater's discharge to the sewerage system of a local agency exceeds the mass equivalent of 25,000 gallons per day of the domestic waste of the affected local agency."

1.iv. "The user contributes a process wastestream to the sewerage system of the local agency which makes up five percent or more of the average daily dry weather flow of the local agency."

1.v. "The user's discharge of process wastewater to the sewerage system of the local agency contributes five percent or more of the daily mass loading to the local agency of at least one of the pollutants listed."

The Joint Meeting further commented that the SIU definition be clarified to more clearly express the delegated local agency's authority to determine when a user is designated as an SIU, and suggests the following change:

1.vii. "That the control authority has determined that a user be designated as an SIU. . ."

RESPONSE 12: Paragraph 1 of the definition of SIU already reads ". . . discharges wastewater into a local agency." Hence, the recommendation to add phrases such as "discharge" and/or "contributes" is not needed. The definition proposed by the commenter and the definition proposed in N.J.A.C. 7:14A-1.9 are essentially the same. Subparagraphs 1ii, iii, iv, and v do not significantly differ from the Department's proposal. Subparagraphs 1vi and vii clearly define on what basis a control authority can designate a user as an SIU. Therefore, the Department believes that further clarification is not needed.

COMMENT 13: Chemical Land Holdings commented that the definition of SIU does not identify what monitoring frequency is to be used to assess whether a user's discharge exceeds 25,000 gallons per day. They also commented that the Department should specify if a discharger should use annual flow averages based on monthly averages or some other criterion.

RESPONSE 13: The word "average" implies an average daily discharge. For proposed new discharges, a monitoring frequency is not needed, since the average daily flow would be estimated. For existing discharges, the monitoring frequency is determined on a case-by-case basis by the control authority, so that an appropriate monitoring frequency for each individual indirect user is chosen. This discretion is necessary to address the broad diversity among the indirect dischargers, which could not be accurately assessed by using a single, standardized method.

COMMENT 14: Chemical Land Holdings commented that the definition of SIU should specify concentrations for BOD, COD, and suspended solids to avert possible disputes between the domestic treatment works (DTW) and its users as to what constitutes domestic waste.

RESPONSE 14: Since the concentration of BOD, COD and suspended solids in the domestic waste of the affected local agencies varies from one local agency to another, the Department has not established numerical values for these parameters and will assess each user in the context of the receiving local agency. Also, based upon the Department's experience, disputes between DTWs and their users regarding domestic waste concentration have been rare.

COMMENT 15: Chemical Land Holdings commented that the Department should provide criteria for determining daily dry mass loading as expressed in the SIU definition. The commenter stated that confusion between the DTW and its users is likely to result without this criteria. Also, the Department should provide guidance for calculating daily dry mass loading and require local agencies to make available the data upon which this value is based on a predetermined, regular basis.

RESPONSE 15: The phrase "daily dry mass loading" does not appear in the SIU definition. However, the "daily mass loading" (which does appear) can be calculated by multiplying the average daily flow by the average daily concentration. The information regarding flow and concentration are available from the Department or the delegated local agency.

COMMENT 16: Chemical Land Holdings commented that the use of the word "pure" in the SIU definition at 2iii suggests a degree, a refinement or quality which is not intended. The commenter suggests that the word "untreated" be used in place of "pure." The commenter further recommends the word "polluted" under subparagraph 2iv be replaced with the word "contaminated," which is more consistent with the concept of aquifer contamination. Also, there needs to be some clarification provided as to what interpretation will be applied when diluted landfill leachate is collected, with or without treatment, and discharged into a DTW as part of a groundwater recovery program.

RESPONSE 16: The word "pure" is intended to identify leachate which is both unmixed and untreated. Hence, replacing "pure" with "untreated" will not adequately define the nature of the leachate referenced in the definition.

The Department does not agree that replacing the word "polluted" with "contaminated" at "SIU" subparagraph 2iv is necessary to clarify the "SIU" definition because the Department believes that the term "polluted" adequately identifies the type of groundwater referenced in the definition.

In accordance with "SIU" subparagraph 2iii, facilities discharging diluted landfill leachate would be defined as SIUs.

COMMENT 17: The Passaic Valley Sewerage Commissioners commented that the 25,000 gallons per day minimum for polluted groundwater as expressed at "SIU" subparagraph 2iv is too high to help POTWs. They recommend that the minimum be lowered to 10,000 gallons per day since volatile organic compounds are likely to be present and which should be tracked by both the Department and the local agency.

RESPONSE 17: Pursuant to the SIU definition under subparagraph 1vi, the control authority may designate an indirect user as an SIU on the basis that the user has a reasonable potential for adversely affecting the local agency's operations. In the area of the State where the Department is the control authority, the Department is currently evaluating the potential for adverse impacts on a local agency's operations from discharges of landfill leachate, contaminated ground water, hazardous waste

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facilities and industrial waste management facilities. The Department, as a control authority, may revise the SIU definition in the future after completion of this evaluation. Likewise, the Passaic Valley Sewerage Commissioners, as the control authority for their service area, may choose to conduct a similar evaluation and may designate all users discharging more than 10,000 gallons per day of polluted ground water as SIUs.

COMMENT 18: The Camden County Utilities Authority supported the proposed definition for SIU and were particularly encouraged by the delegated local agency's authority to make SIU designations based upon a user's potential for adversely affecting the receiving treatment facility.

RESPONSE 18: The Department acknowledges and appreciates the commenter's support of the proposed NJPDES/SIU permitting delegation. This delegation will avoid dual permitting, enforcement, and permit fees. Also, the Department may refund any permit fees paid by a Department-regulated SIU permittee upon permit revocation in a delegated service area and when a facility no longer qualifies as a SIU.

COMMENT 19: The New Jersey Petroleum Council commented that the Department should provide a definition for "written statement of consent," since the phrase replaces the term "endorse."

RESPONSE 19: The Department plans to include a definition for "written statement of consent" in a future amendment to the NJPDES rules which is presently under development.

COMMENT 20: The New Jersey Public Interest Research Group recommends that the Department add a requirement to N.J.A.C. 7:14A-2.1 which requires the consent of all municipalities who share the cost of sewage treatment and sludge disposal. This consent should be obtained before granting a NJPDES permit to an industry wishing to discharge to public sewers. Also the commenter recommends that industries intending to discharge to public sewers demonstrate that their discharge will not result in lower water, air, or sludge quality.

RESPONSE 20: Pursuant to N.J.A.C. 7:14A-2.1(k), an applicant for a NJPDES permit is required to submit a written statement of consent from any affected sewerage authority and municipality. This concern is, therefore, already addressed within the rules. A permit which authorizes an industry to discharge into a public sewer contains conditions and limitations which have been established to prevent pass-through and interference, and thereby protect water, air, and sludge quality.

COMMENT 21: The Joint Meeting of Essex and Union Counties and the Association of Environmental Authorities approve of the Department's proposal to include the term "discharge" at N.J.A.C. 7:14A-2.1(b), and indicated that this term is more precise and descriptive.

RESPONSE 21: The Department acknowledges and appreciates the commenters' support of the proposed change at N.J.A.C. 7:14A-2.1(b).

COMMENT 22: The Western Monmouth Utilities Authority commented that N.J.A.C. 7:14A-2.1(i), which authorizes the Department to request additional information from NJPDES permit applicants, can be taken to extremes. As such, the Department should provide adequate advance notice as to what the scope of this additional information will be so that applicants can plan for future expenditures, especially when the necessary required data involves expensive data collection or modeling

RESPONSE 22: The comment is not within the scope of the proposed amendments. However, the Department will consider this comment before formally proposing amendments to the NJPDES rule.

COMMENT 23: Killam Associates commented that the sewerage authority endorsement requirement under N.J.A.C. 7:14A-2.1(k)1 should not apply to surface and groundwater dischargers that will not impact a sewerage authority's facilities.

RESPONSE 23: The Department requires the consent of the affected sewerage authority, even if the project will not immediately cause an impact on their facilities, so that the authority can effectively plan for the treatment and disposition of wastewater generated within its service area. For example, an authority may be planning the construction of an interceptor sewer which would eliminate the need for a particular individual treatment plant. In this case, the authority would have to reserve treatment capacity for the proposed project. In addition, the Department's approval of projects that lack municipal endorsement would amount to permitting preliminary designs, which are subject to change at the municipal or even county level. This would ultimately waste the Department's limited resources by subjecting Departmental approvals to future revisions and, in some cases, rescissions should a project not be able to obtain the municipal/county approvals.

COMMENT 24: The Western Monmouth Utilities Authority commented that N.J.A.C. 7:14A-2.1(k)2iv should be revised to delete the authorization for mayors to sign DEPE application forms without a resolution by the governing body of the municipality. The commenter asserts that a person signing DEPE application forms should be named by the municipality's governing body, and it should not be assumed that the mayor is automatically empowered. Depending on the type of municipal government, the mayor may or may not be rightfully empowered to sign applications.

RESPONSE 24: The Department proposed the deletion of N.J.A.C. 7:14A-2.1(k)2iv authorizing mayors to sign DEPE applications, and included a provision which requires the delegation of authority for signing applications by a governing body resolution at N.J.A.C. 7:14A-2.1(k)2ii.

COMMENT 25: The Western Monmouth Utilities Authority commented that the phrase "or not inconsistent" be added after the word "conformance" in N.J.A.C. 7:14A-2.1(k)3ii(1). The commenter stated that many times minor field changes are necessary on projects such as sewer extensions and the suggested language would imply that although the change differs from the approved design, the construction activity was not inconsistent with the permit itself.

RESPONSE 25: The rule referenced by the commenter refers to the contents of a written statement of consent by an affected sewage authority for a proposed pollutant discharge. Since this "consent" occurs prior to the construction of the project, it would not be appropriate to add the commenter's suggested language which would only apply after construction has taken place.

If a design is changed after permit issuance, the permittee should notify the Department immediately. The Department could then advise the permittee of any permit modifications or other requirements necessary before construction is initiated on the modified design.

COMMENT 26: The Rutgers Environmental Law Clinic commented that the written statement of consent requirement at N.J.A.C. 7:14A-2.1(k)3ii(1) should include, in addition to the requirement that a project conform to all authority ordinances, rules, and regulations, a further requirement that an authority assess the impact of new discharges on sludge and water quality. This analysis should be submitted to the Department for review and approval. The commenter indicated that due to the overall purpose of the CWEA to improve water quality and the great urgency that exists in both the Department and the private sector in approving sludge quality, DTWs should evaluate all new industrial dischargers to insure that the discharge will not adversely impact water and sludge quality.

RESPONSE 26: The impact assessment of new discharges on sludge and water quality requested by the commenter is already provided pursuant to 40 CFR 403.5, which requires delegated local agencies to develop and enforce local limits to ensure that all applicable environmental criteria (water quality, NJPDES permit, sludge quality, protection of treatment plant processes, and worker health and safety) are met. Local limits are established to prevent rather than react to potential problems and also provide a means for the Department to verify the delegated agencies' compliance with the applicable environmental criteria mentioned above.

COMMENT 27: Chemical Land Holdings commented that the word "therefor" proposed in N.J.A.C. 7:14A-2.1(k)5v should be replaced with the word "therefore."

RESPONSE 27: The word "therefor" was taken directly from the Clean Water Enforcement Act (N.J.S.A. 58:10A-6f(6)), and since it is spelled and used correctly, the Department disagrees with the commenter's suggestion.

COMMENT 28: Killam Associates commented that the signatory requirements under N.J.A.C. 7:14A-2.4(c) are too restrictive in that they limit the official authorized to sign Discharge Monitoring Reports to those individuals having responsibility for making capital expenditures and hiring personnel. The commenter stated that such individuals (such as the plant manager or head of the facility) have too many other responsibilities and may not be as intimately involved with facility operations as other lower level personnel. Dupont commented that replacing the word "and" with "or" between capital expenditures and hiring personnel would more accurately define the appropriate person for signing DMRs. The Chemical Industry Council of New Jersey (CIC/NJ) commented that "and/or" should be added to this sentence because the same person may not necessarily have the responsibility to both hire personnel and make capital expenditures. The CIC/NJ also commented that the phrase "in his or her absence" be deleted from this subsection.

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The Western Monmouth Utilities Authority suggested that the highest ranking official be designated by resolution to avoid confusion.

RESPONSE 28: The Department excerpted the signatory requirements at N.J.A.C. 7:14A-2.4 directly from the Clean Water Enforcement Act. The phrase "which responsibilities usually include authorizing capital expenditures and hiring personnel," however, was added by the Department to further clarify who a high ranking official is likely to be. The Department believes that this language implements the statutory intent. However, the Department agrees that the addition of "and/or" between "capital expenditures" and "hiring personnel" would better define the term "highest ranking official," and has made this change to the rule. NJPDES permittees may designate a highest ranking official by resolution, if desired.

COMMENT 29: BP Oil commented that the signatory requirements at N.J.A.C. 7:14A-2.4(c), which require Discharge Monitoring Reports (DMRs) to be signed by the highest ranking official, will delay the submission of DMRs. In many cases the highest ranking official responsible for the facility does not reside at the facility or within the State. The commenter suggested that the Department revise this provision to allow the highest ranking official to delegate the authority to sign DMRs to local facility management and that a copy of the delegation be submitted to the Department for record purposes. BP Oil further commented that despite the delegation authority, the highest ranking official should remain liable for the information transmitted to the Department.

RESPONSE 29: The phrase "having day to day managerial and operational responsibilities" at N.J.A.C. 7:14A-2.4(c) may include local facility management. Therefore, the Department believes that the commenter's suggestion to allow the highest ranking official to delegate the authority to sign DMRs to local facility management is already provided for in N.J.A.C. 7:14A-2.4(b) and (c). The highest ranking official's liability for the accuracy of the information provided is also included in N.J.A.C. 7:14A-2.4(c)1.

COMMENT 30: The New Jersey Petroleum Council suggested amendments to N.J.A.C. 7:14A-2.4(c) that would allow field based engineers having direct responsibility for day-to-day operations at the permitted facility to sign Discharge Monitoring Reports.

RESPONSE 30: The Department will not alter the intent and meaning of "highest ranking official" as expressed by the Legislature in the Clean Water Enforcement Act. A field based engineer may qualify as the highest ranking official if they meet the qualifications of the position.

COMMENT 31: The Joint Meeting of Essex and Union Counties, the Association of Environmental Authorities, and the Passaic Valley Sewerage Commissioners commented that it is unclear if N.J.A.C. 7:14A-2.5 applies to NJPDES permittees or to all permittees (for example, industrial users which are permitted by the local delegated agency). Also the Department should include a provision in the rules which requires all users (permittees and non-permit holders) to comply with the NJPDES rules regardless of whether a condition is stated in a permit (for example, a local limit for petroleum hydrocarbons). The commenters suggested the following addition to N.J.A.C. 7:14A-2.5: "All discharges shall comply with Department or local agency rules and regulations whether or not they are expressly stated in a permit or other control mechanism issued to the discharger."

RESPONSE 31: N.J.A.C. 7:14A-2.5 applies to all NJPDES permittees. The Department does not agree that the commenter's requested language, which would require dischargers to comply with rules whether or not they are stated in a permit, is needed. N.J.A.C. 7:14A-13.4 presently requires users of DTWs to comply with applicable Federal, State, and local laws, regulations, ordinances, including regulations, contracts, or ordinances of the DTW. N.J.A.C. 7:14A-13.4(a) addresses civil liability and 13.4(c) addresses criminal liability.

COMMENT 32: The Western Monmouth Utilities Authority questioned the meaning of the phrase "effectively as possible" at N.J.A.C. 7:14A-2.5(a)7. The commenter is concerned that this could imply that a treatment plant owner is required to operate all of the facility's units 100 percent of the time, which can produce effluent quality better than required by the NJPDES permit. The commenter indicated that because this can be economically unsound, the owner should have the latitude and discretion to manage the operation of the various components at the treatment facility provided that all NJPDES permit limitations are met.

RESPONSE 32: The phrase "effectively as possible" was used by the Legislature in the Clean Water Enforcement Act. However, the Department does not interpret the phrase to mean that a permittee is responsible for facility operation at a level where NJPDES permit requirements are exceeded (better than required) beyond that which is economically practical.

COMMENT 33: Killam Associates commented that N.J.A.C. 7:14A-2.5(a)12, requiring permittees to install, use, and maintain effluent monitoring equipment, is not practical. An applicant should choose whether to install monitoring equipment at the facility, rent equipment on an as needed basis, or retain the services of a laboratory.

RESPONSE 33: N.J.A.C. 7:14A-2.5(a)12 does not specify ownership requirements for monitoring equipment. This provision clearly makes the permittee responsible for the implementation of equipment and methods to ensure the permit requirements for monitoring, recordkeeping, and reporting are met. Methods of compliance with this requirement are left to the permittee's discretion unless specifically stated otherwise.

COMMENT 34: BP Oil commented that the term "serious violation" should be clarified particularly as it is used in N.J.A.C. 7:14A-2.5(a)14v to 14vii. Also, the rule should require the Department to acknowledge non-compliance written reports and any schedules developed as a result of a compliance schedule.

RESPONSE 34: A detailed definition of "serious violation" appears at N.J.A.C. 7:14A-1.9. The Department does not agree that every non-compliance report needs to be acknowledged, since they are recorded by the DEPE Hotline. In addition, permittees have the option of submitting the required written report by certified mail, providing a record of the Department's receipt of such reports.

COMMENT 35: The Western Monmouth Utilities Authority commented that the reporting requirements at N.J.A.C. 7:14A-2.5(a)14vi(1) would be difficult to comply with because permittees do not have the expertise to assess or estimate damage to human health or the environment. Permittees will be deemed in violation of their permit based upon a requirement that they cannot fulfill. The commenter believes that it should be the responsibility of the Department to measure or estimate damage to the environment. Merck and Company, Inc. questioned what information is required pursuant to N.J.A.C. 7:14A-2.5(a)14vi(1)(G) and whether an estimate of danger to human health and the environment posed by a discharge should be quantitative or qualitative.

RESPONSE 35: It would be impossible for the Department to define, in a rule, every possible discharge situation that could possibly pose a danger to human health and the environment. Permittees that are unsure of the potential of their discharge to endanger human health and the environment during periods of permit non-compliance should contact the Department immediately and report the discharge in question. Estimates of danger to human health and the environment that are submitted to the Department should be based on the best available information at the time of the report. An estimate in the initial report may be qualitative if data is not available to make a quantitative estimate. If, at the time of the written submission, data is available on which a quantitative estimate can be made, it should be utilized.

COMMENT 36: The Passaic Valley Sewerage Commissioners, the Joint Meeting of Essex and Union Counties and the Association of Environmental Authorities commented that N.J.A.C. 7:14A-2.5(a)14vi(1)(C) should require a timetable for initiating the steps being taken to remediate a non-complying discharge.

RESPONSE: 36: The Department agrees that the permittee is in the best position to assess timetables for remediation and has made the requested change.

COMMENT 37: The New Jersey Petroleum Council commented that the phrase "... and the damage to the environment..." at N.J.A.C. 7:14A-2.5(a)14vi(1)(C) suggests that there will always, without exception, be damage to the environment. The Council recommends the following change: replace "... and the damage to the environment..." with "... and any damage to the environment...". Likewise at N.J.A.C. 7:14A-2.5(a)14vi(1)(G) replace "... An estimate of the danger to human health..." with "... An estimate of any danger to human health...".

RESPONSE 37: The Department agrees with the commenter's suggestion for N.J.A.C. 7:14A-2.5(a)14vi(1)(C) and has added the word "any" before "damage" as suggested. Likewise, the Department has added the word "any" before "danger" at N.J.A.C. 7:14A-14vi(1)(G).

COMMENT 38: The Joint Meeting of Essex and Union Counties and the Association of Environmental Authorities commented that the Department's proposed amendment at N.J.A.C. 7:14A-2.5(a)14vi(2), (3), and (4), requiring every violation to be reported within two hours, is inconsistent with the CWEA and is burdensome to dischargers. The commenters further stated that it is often difficult to get through on the DEPE Hotline, and it is not uncommon for the line to be busy for

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several hours. Also, many reports cannot be made until laboratory results are available, which may be several days or weeks. The Joint Meeting suggested that N.J.A.C. 7:14A-2.5(a)14 be revised to be consistent with N.J.A.C. 7:14A-3.10. Furthermore, the commenter stated that specified time limits for violation reporting is impractical when applied to many permit parameters such as biochemical oxygen demand, metals, cyanide, oil/grease, etc. These types of violations are usually minimal, have no environmental impact, or the impact will have been felt and mitigated before the data is available. Finally, the commenter indicated that the creation of excessive reporting for a violation situation which occurred weeks earlier only serves to clog the DEPE Hotline, take time away from publicly operated treatment works and DEPE personnel, and create unnecessary written reports.

RESPONSE 38: The Department agrees with the commenter's suggestions regarding N.J.A.C. 7:14A-2.5(a)14vi(2), (3), and (4) and has amended these provisions to incorporate these suggestions. As a result, only those types of discharges listed at N.J.A.C. 7:14A-3.10(b) would be subject to the reporting time limits specified at N.J.A.C. 7:14A-2.5(a)14vi(2), (3), and (4). The types of discharges covered are 1) any discharge that causes injury to persons, or damage to the environment, 2) any discharge which could constitute a threat to human health or the environment, 3) any discharge in violation of an effluent limitation for a toxic pollutant, 4) any discharge in violation of the effluent limitation upstream of a potable water intake or well field, and 5) any discharge of a hazardous pollutant without a permit. The reporting timeframe is dictated by the CWEA. In addition, the Department believes the timeframe for reporting from the occurrence or awareness of the occurrence is reasonable.

COMMENT 39: The Passaic Valley Sewerage Commissioners commented that the five day time limit for providing written submissions at N.J.A.C. 7:14A-2.5(a)14vi(4) should specify "working days" to avoid confusion with weekends and holidays.

RESPONSE 39: The five day time limit does not exclude weekends and holidays. However, if the fifth day is a Saturday, Sunday or State recognized holiday, then the report is due the next business day.

COMMENT 40: Killam Associates commented that reporting serious violations within 30 days of the violation (N.J.A.C. 7:14A-2.5(a)14vii) will be difficult to comply with when considering some laboratory tests may take two to four weeks to process. A permittee may not know that a violation has occurred until the laboratory has submitted its report to the permittee, which may be well after the 30 day limit proposed in the rule. The commenter suggested that the requirement be amended to allow reporting of serious violations within 30 days of becoming aware of the violation.

RESPONSE 40: The Department acknowledges the commenters' contention, but the Department cannot enlarge or expand the reporting period clearly provided by the Legislature at N.J.S.A. 58:10A-6f(10).

COMMENT 41: The New Jersey Petroleum Council commented that N.J.A.C. 7:14A-2.5(a)14vii re-states the same information listed at N.J.A.C. 7:14A-2.5(a)14vi(1)(A) through (G). The Council questioned why the Department requires this second report which seems to be an additional, unnecessary paperwork burden.

RESPONSE 41: N.J.A.C. 7:14A-2.5(a)14vii is a requirement taken directly from the Clean Water Enforcement Act which refers specifically to "serious violations," whereas N.J.A.C. 7:14A-2.5(a)14vi(1)(A) through (G) applies to the types of discharges identified in N.J.A.C. 7:14A-3.10(b). It is possible that a particular violation could be subject to both sections; however, the Department believes it is necessary to clearly incorporate the Legislature's requirement of reporting serious violations. To avoid duplicate reporting in cases where a single discharge triggers both reporting requirements, the Department will require only one report, provided that the applicable requirements of both N.J.A.C. 7:14A-2.5(a)14vi and vii are met. The permittee should also be careful to identify that the report is intended to satisfy both provisions.

COMMENT 42: Chemical Land Holdings commented that the word "serious" as it is used at N.J.A.C. 7:14A-2.5(a)14vii be clearly defined. The commenter also stated that it may not be feasible to prepare and submit a serious violation report within 30 days, as it may take longer to collect the necessary samples and perform the appropriate analyses. The commenter further suggested that the word "report" be modified to reflect an appropriate level of communication from the permittee, which acknowledges the alleged serious violation and expresses an intent and schedule for response.

RESPONSE 42: The definition of "serious violation" appears at N.J.A.C. 7:14A-1.9. As to the 30 day reporting period for a serious violation, refer to Comment/Response 40. N.J.A.C. 7:14A-2.5(a)14vii clearly states that the report be a written communication.

COMMENT 43: The Chemical Industry Council of New Jersey commented that the proposed 30 day deadline for reporting serious violations at N.J.A.C. 7:14A-2.5(a)14vii should be expanded to 40 days. The 30 day requirement can be financially burdensome because the laboratories presently utilized by the CIC/NJ often need 30 days to complete all testing, and faster processing times will result in extra fees. In addition, facilities will require more time to evaluate lab data due to the possible penalties involved. The CIC/NJ believes that the Department should consider the number of certified labs available to conduct the required testing and the additional workload these requirements will place upon them.

RESPONSE 43: See Comment/Response 40.

COMMENT 44: The Chemical Industry Council (CIC/NJ) of New Jersey commented that the Department should clarify the definition of the term "relax" as it is used at N.J.A.C. 7:14A-2.5(a)16. It is CIC/NJ's belief that in certain cases the Department should permit the lessening of monitoring frequencies and base this frequency reduction on: 1) good documentation of historical performance, 2) valid and verifiable scientific data, and 3) good demonstrated engineering practices.

RESPONSE 44: The requirements and language of N.J.A.C. 7:14A-2.5(a)16 are the requirements set forth at N.J.A.C. 58:10A-6k. Since monitoring frequency is not a water quality standard or an effluent limitation, relaxing a permit monitoring frequency is not subject to this provision.

Requests for reducing monitoring frequencies are reviewed by the Department in accordance with the minimum frequencies set forth at N.J.A.C. 7:14A-14.5 (oil and grease) and Appendix H. For pollutants not listed in Appendix H, the Department would consider any reasonable request for monitoring frequency reduction provided that adequate support documentation is submitted. Requests for monitoring frequency reductions require a permit modification pursuant to N.J.A.C. 7:14A-2.12.

COMMENT 45: The Chemical Industry Council of New Jersey had the following questions on schedules of compliance (N.J.A.C. 7:14A-2.8): 1) Does this compliance schedule act as a replacement of the Administrative Consent Order (ACO) format/approach?; or 2) Does it function as a replacement of the penalties associated with the CWEA?; and 3) Can industry initiate a compliance schedule in a permit renewal, or application, or is it only initiated at the prerogative of the Department.

RESPONSE 45: The permit compliance schedule is not a replacement of the ACO format approach; each are discrete regulatory tools which are utilized by the Department when a permittee demonstrates that it cannot meet permit limits unless significant treatment system additions and/or modifications are made. The permit compliance schedule is intended for use when the Department includes new or more stringent effluent limitations at the time of permit issuance or renewal, but its use is subject to the circumstances and exclusions specified in N.J.A.C. 7:14A-2.8. An ACO is intended for use when the permittee cannot meet current effluent limits, and in cases of new effluent limits for which the regulations expressly disallow the use of a permit compliance schedule. In either case, a permittee must demonstrate that significant treatment system additions and/or modifications (those requiring a Treatment Works Approval, substantial capital expenditures, and an extended implementation timetable) are necessary in order to meet the effluent limits.

The compliance schedule, regardless of whether incorporated into a permit or an ACO, provides an end date at which point the effluent limit(s) must be met. CWEA mandatory penalties for the parameter(s) in question would not become effective until the final compliance date stipulated in the schedule. However, in most cases, the Department would establish interim (less stringent) effluent limits in the permit or ACO for the parameter(s) that cannot be immediately attained. Any violations of these interim limits by the permittee would be subject to CWEA mandatory penalties. Additionally, in ACO negotiations, the Department routinely requires an "upfront" penalty assessment of the liability accrued by the permittee for past violations, and in appropriate cases, also the expected liability to be accrued for future violations of the permit effluent limits.

The Department would normally be the initiating party of a compliance schedule in a permit action. However, a permittee is not precluded from petitioning the Department for a compliance schedule in its comments on a draft permit, or during any appropriate point in the application

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process. Any such request by a permittee, however, would be subject to the conditions and exclusions discussed above, and those specifically noted in N.J.A.C. 7:14A-2.8.

COMMENT 46: The Joint Meeting of Essex and Union Counties and the Association of Environmental Authorities commented that N.J.A.C. 7:14A-2.8(a)1iv prohibits the issuance of a compliance schedule if specific water quality based effluent limitations were based upon ambient water quality criterion that were established prior to July 1, 1977. The commenters questioned how a publicly owned treatment works (POTWs) would proceed if it was discovered that a user was discharging a pollutant in excess of the limitation for that pollutant and which limitation was based upon ambient water quality data established before July 1, 1977. Both the Joint Meeting and the Association of Environmental Authorities request an interpretation of this part of the rule, a determination as to the possible impacts to indirect users, and a list of the pollutants included in this restriction along with the ambient water quality data that was adopted prior to July 1, 1977.

RESPONSE 46: The ambient water quality criterion referenced at N.J.A.C. 7:14A-2.8 applies to direct surface water discharges (DSWs) and not indirect discharges (SIUs). Indirect discharges are subject to the special prohibitions set forth at 40 CFR 403.5(b) which must be complied with by August 25, 1981, and Categorical Standards which must be complied with within three years of the date the Standard is effective (40 CFR 403.6(b)). Therefore, N.J.A.C. 7:14A-2.8 would not apply to indirect POTW users.

A list of the water quality criteria promulgated prior to July 1, 1977 is available from the Department's Office of Regulatory Policy, CN 401, Trenton, New Jersey 08625. The commenters have been sent copies of the list.

COMMENT 47: The Passaic Valley Sewerage Commissioners commented that the prohibition against schedules of compliance (N.J.A.C. 7:14A-2.8(a)iv) for water quality based effluent limitations derived from ambient water quality criterion adopted prior to July 1, 1977 should be deleted.

RESPONSE 47: The Federal Clean Water Act (Section 301(d)(1)(C)) requires compliance with limitations necessary to meet water quality standards by July 1, 1977. Any limitations based on criteria adopted prior to July 1, 1977 are required to have been met by July 1, 1977, and it would be inappropriate to include a compliance schedule in a permit in such cases. However, compliance schedules may be stipulated by the Department in an Administrative Consent Order.

COMMENT 48: Merck and Company commented that the section on schedules of compliance at N.J.A.C. 7:14A-2.8(a)1iv should be revised to show that schedules of compliance are not "issued" but rather "negotiated." Merck believes that compliance with effluent limitations should be a joint responsibility between the Department and the permittee and schedules should be in the form of an agreement.

RESPONSE 48: Negotiations often occur between the Department and the regulated community on various actions including compliance schedules and permits. However, the Department's final action normally results in something being "issued." Also, compliance schedules are normally initiated by the Department and may be in the form of an administrative order wherein little or no negotiations took place. Therefore, the Department disagrees that the word "issued" at N.J.A.C. 7:14A-2.8(a)1iv should be replaced.

COMMENT 49: Saul, Ewing, Remick, and Saul commented that the Department did not revise N.J.A.C. 7:14A-2.9(b) to express the CWEA requirement of analyzing wastewater samples taken during annual inspections at an independent laboratory. The commenter stated that this should be clarified by adding language which explicitly authorizes the Department to utilize independent laboratories to verify results reported by affiliated laboratories. However, if independent laboratory analysis is consistent with an affiliated laboratory's results, a permittee should have the right to continue the use of its affiliated laboratory for routine testing.

RESPONSE 49: The CWEA requirement for analyzing wastewater samples taken during annual inspections has been incorporated into the NJPDES regulations at N.J.A.C. 7:14A-13.10(a)2. The commenter's suggestion regarding the Department's independent verification of affiliated laboratory results would significantly expand the scope of this requirement as defined by the Legislature in the Clean Water Enforcement Act. Therefore, N.J.A.C. 7:14A-13.10(a)2 has not been changed.

COMMENT 50: The Joint Meeting of Essex and Union Counties, the Passaic Valley Sewerage Commissioners, and the Association of Environmental Authorities commented that the language expressed at subsection N.J.S.A. 58:10A-6h(1) and N.J.A.C. 7:14A-3.11(a)2ii must be interpreted to mean that a permit issued to an SIU by the Department or a POTW shall require the SIU to notify the permitting agency of the quality and quantity of all new introductions of pollutants into a facility. This requirement would place an impossible burden on each domestic treatment works. The Joint Meeting and the Association of Environmental Authorities further commented that discharges may not be quantified or qualified in advance, and indeed, may not be representative until the industrial user has been operating for several months. All of the commenters suggested that the Annual Report be utilized for the reporting of any new pollutants.

RESPONSE 50: This specific section within the NJPDES regulations pertains to requirements of "all DTWs" and is therefore reflective of the permit issued by the Department, and not an SIU permit issued by the Department or delegated local agency (DLA). This requirement can be fulfilled by DLAs through specifying changed discharges within the annual report submitted to the Department pursuant to 40 CFR 403. For non-delegated POIWs, this requirement can be fulfilled through submission of a letter to the Department outlining the required information.

The requirement that POTWs be notified in advance of any modified discharge is consistent with the requirement in 40 CFR 403.12(j) which specifies that industrial users must notify the POTW in advance of any substantial change in volume or character of pollutants to be discharged.

COMMENT 51: Saul, Ewing, Remick and Saul commented that the Department's proposal to modify N.J.A.C. 7:14A-3.11(a)2ii, which would require all domestic treatment works to notify the Department in advance of the quantity and quality of all new introductions of pollutants into a facility, does not give sufficient consideration to the pre-existing Federal reporting requirements at 40 C.F.R. §403.12(j) and (p). The proposed rule will impose duplicative and overlapping reporting, and the commenter suggests that the Department revise the State rules to conform with the Federal requirements or explicitly cross-reference them.

RESPONSE 51: 40 CFR 403.12(j) requires industrial users to notify the POTW of any substantial changes in volume or character of pollutants in its discharge to the POTW. N.J.A.C. 7:14A-3.11(a)2ii, in turn, requires that POTWs inform the Department of these changes. This proposed rule is, therefore, neither duplicative nor overlapping. 40 CFR 403.12(p) is a one-time notification requirement that the industrial user report to the POTW any discharge of a substance, which, if otherwise disposed of, would be a hazardous waste under 40 CFR 261. This one-time reporting requirement is also neither duplicative nor overlapping.

COMMENT 52: The Joint Meeting of Essex and Union Counties and the Association of Environmental Authorities commented that it is unclear if N.J.A.C. 7:14A-3.11(a)2iii is referring to an approved pretreatment program or some other program. It is recommended that this subparagraph be clarified.

RESPONSE 52: N.J.A.C. 7:14A-3.11(a)2, preceeding the requirements in subparagraph (a)2iii, states "All DTWs shall:" As such, the requirements under this paragraph are applicable to all DTWs, delegated and non-delegated.

COMMENT 53: BP Oil disagrees with the Department's proposal at N.J.A.C. 7:14A-3.13(a)9i(4) to specify pollutant test methods in final NJPDES discharge permits. Since methods are continually reviewed and revised by the technical community, including specific methods in permits would defeat the Department's ability to recommend the most reliable and sensitive proven method. In addition, setting the permit compliance level equal to the quantification level is also a risk, because this approach does not consider the positive/negative bias specific to the sample matrix. BP Oil suggests that the Department outline all approved testing methods but allow the permittee to make a selection based upon an understanding of the sample matrix and the method sensitivity. Furthermore, the implementation of the rule as proposed could create numerous erroneous permit exceedances.

RESPONSE 50: The Department acknowledges the permittee's concerns regarding the Department's proposal to include a specific analytical method in the NJPDES permit. As stated in the proposed Summary, the Department is required by the Federal Clean Water Act to impose true water quality based effluent limitations where needed. Since different analytical methods often have differing analytical sensitivities, the Department must select the method with a quantification level or the method detection level (MDL) that is appropriate for the magnitude of the calculated effluent limit. For example, if a calculated limit is less than the most sensitive MDL for a specific parameter in the NJPDES permit, the calculated water quality based limitation will be imposed as

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the effluent limitation; however, the MDL for the most sensitive analytical method will be indicated as the Permit Reporting Level. If the calculated limit is not less than but near the MDL for the most sensitive method, the Department will specify that method to ensure that self monitoring data will be usable to evaluate compliance with the limit. If, by using the specific approved method identified in the NJPDES permit, a given detection level cannot be reached due to matrix interferences, the problem should be referred to the Department, with supporting documents, so that if appropriate, an alternate MDL can be established. The Department needs to specify particular pollutant test methods in the NJPDES permit to ensure that monitoring is performed properly and to maximize the ability to accurately determine compliance with the effluent limitations. This does not preclude the permittee from petitioning the Department for an equally sensitive or more reliable or sensitive method. The Department's review of such requests will be based upon the documentation submitted by the permittee to substantiate the proposed alternate test procedure and its applicability to the effluent limit in question. (Any alternate test procedure can be approved pursuant to 40 CFR 136.3(d), 136.4 and 136.5.)

The Department also notes that upon the issuance of a draft permit, the permittee may raise objections to any terms and conditions of the permit and the Department can make appropriate adjustments in the final permit.

COMMENT 54: Saul, Ewing, Remick, and Saul commented that in proposing N.J.A.C. 7:14A-3.13(a)9i(4), which authorizes the Department to specify a particular test method for pollutants when more than one method exists, the Department is acknowledging that different test methods often have different analytical sensitivities. Furthermore, the selection of the single most sensitive analytical methodology does not address (and may exacerbate) the analytical problems experienced by a facility with a complex matrix, such as Chemical Waste Management of New Jersey. The commenter included tests results from the analysis of total cyanide from two samples taken from the same bottle, wherein two different test methods were used: 1) SW-846, Method 9010, and 2) EPA Method 600 Series—Method 335.2. The commenter asserts that while neither method is clearly inferior, the discrepancies in results are apparent, and the Department needs to develop a mechanism for eliminating from review aberrant measurements which appear to show an exceedance, but in reality are the result of analytical defects.

RESPONSE 54: The Department's rationale for specifying a particular method in the permit has been answered under Response 53, which also expresses the Department's willingness to resolve problems regarding matrix interference.

Of the two different methods specified for analysis of total cyanide, the Department acknowledges EPA Method 600 Series—Method 335.2 as the series specified for Chemical Analysis of Water and Wastes (1991). However, SW-846, Method 9010 is considered to be an analysis of solid waste and not of wastewater. Therefore, the Department does not believe that the permittee's comparison of the two test methods is valid as referenced.

COMMENT 55: The New Jersey Petroleum Council commented that the proposed revisions at N.J.A.C. 7:14A-3.13(a)9i(4) should be amended to include a provision which allows permittees to request alternative effluent test methods based on scientific or cost justification. The commenter stated that different test methods will yield the same desired or required detection limit but at significantly different costs per test. Cost considerations should be included in any decision to specify a particular test method.

RESPONSE 55: The Department will specify what it considers to be the most appropriate analytical method (either approved or referenced in 40 CFR Part 136 or listed in the USEPA Document "Methods for the Determination of Metals in Environmental Samples" (1991)) to assure compliance with the effluent limitation. N.J.A.C. 7:14A-2.5 does not require the Department to take cost into consideration when selecting one of the approved test methods. However, if the Department needs to specify an analytical method and two acceptable methods of equal sensitivity were available, the permittee would have the option.

COMMENT 56: Chemical Land Holdings commented that if there is more than one method for testing a particular effluent parameter (N.J.A.C. 7:14A-3.13(a)9i(4)), the merits/demerits of the various options should be evaluated with regard to the effectiveness of the methods in the particular aqueous matrix of concern, the detection limit compared to the quality objective, and the availability of New Jersey certified laboratories to perform the analysis. The Rahway Valley Sewerage Authority commented that N.J.A.C. 7:14A-3.13(a)9i(4) should be amended to include a provision which allows the permittee the discretion to use alternative analytical methodology when documentation showing a more appropriate or accurate method is provided.

RESPONSE 56: The Department, when choosing a particular method for any pollutant of concern, will take matrix interferences into account as well as other problems that have been made known. If the detection level cannot be reached by using the approved test method due to matrix interferences, the Department will evaluate, upon request by the permittee, the appropriateness of an alternate detection level. (Also refer to Response 53).

COMMENT 57: Merck and Company, Inc. commented that the word "validated" should be inserted into N.J.A.C. 7:14A-3.13(a)9i(4) so that the statement would read "... If more than one approved method exists for a pollutant, the Department may specify a particular validated method in the permit." Merck would like to insure that the Department and the permittee agree to a validated method that provides the most accurate result for a given sample.

RESPONSE 57: Since the Department is choosing one of the approved methods contained and/or referenced under 40 CFR Part 136, the Department does not see the need to validate any particular method. Method validation would have been done by the Environmental Protection Agency.

If more than one approved method exists for a pollutant, the Department will specify what it considers to be the most appropriate analytical method in the NJPDES permit. If a permittee does not agree with an approved method, as stated earlier, it should be referred to the Department for evaluation. See also Comment Response 53.

COMMENT 58: Killam Associates commented that the advance notification requirement for the introduction of all new pollutants at N.J.A.C. 7:14A-3.13(a)10ii should be made to the local agency in delegated areas rather than the Department. Also, if annual reporting demonstrates that a pollutant is non-detectable, it should not be included in a new permit.

RESPONSE 58: In order to provide clarification of requirements applicable to all DTWs, the Department proposed to recodify N.J.A.C. 7:14A-3.13(a)10ii at N.J.A.C. 7:14A-3.11(a)2ii. This section pertains to conditions applicable to all DSW permits. 40 CFR 403.12(j) requires industrial users to notify the POTW of any substantial changes in volume or character of pollutants in its discharge to the POTW. N.J.A.C. 7:14A-3.11(a)2ii, in turn, requires that POTWs inform the Department of these changes. Therefore, permittees in delegated areas are required to notify the POTW and not the Department.

The annual report delegated agencies are required to submit includes influent and effluent priority pollutant data representing one monitoring event. Since this data is not sufficient to characterize effluent variability, the Department must utilize other sources of data. However, if the finding of "non-detectable" for a pollutant is based on appropriate, sensitive methodology, the Department will use this data as part of its overall effluent characterization assessment.

Pollutants found to be "non-detectable" are not included as limits in a new permit, but will be subject to monitoring requirements.

COMMENT 59: BP Oil commented that the use of surrogate parameters as indicators of chemical specific toxics as authorized under the proposed N.J.A.C. 7:14A-3.13(a)10ii are not appropriate because ecosystems are complex matrices. According to the proposed rule, one could infer that the analysis of sulfate is an acceptable surrogate parameter to detect low pH, or the use of Total Kjedhal Nitrogen as a surrogate for monitoring the toxicity associated with any poly-cyclic nitrogen compound. BP Oil is generally opposed to applying surrogates across the board because of the different matrices and the problems interpreting what the effluent data says about water quality.

RESPONSE 59: Although the Clean Water Enforcement Act (CWEA) allows the Department to issue permits to a local delegated agency using surrogate parameters as indicators of chemical specific toxics, the Department acknowledges the commenter's concerns and believes that the use of surrogates is not appropriate in all situations. As such, the Department will evaluate the suitability of using surrogate parameters in a permit on a case-by-case basis to insure that the data provided is equivalent to data obtained through the separate analysis of individual pollutants.

COMMENT 60: The Western Monmouth Utilities Authority commented that the Department should not require the dechlorination of effluent that is discharged to the Atlantic Ocean (N.J.A.C. 7:14A-3.14). The commenter cited two reasons for discontinuing this requirement: 1) Due to the size of the Atlantic Ocean, the discharge of chlorinated effluent cannot have any effect upon productivity, and 2) the benefits

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of chlorinating effluent (public health protection) far outweigh the negligible impacts associated with the discharge of effluent with low chlorine levels.

RESPONSE 60: Federal regulations at 40 CFR 122.44 require that appropriate effluent limitations be developed for all conventional, non-conventional and toxic pollutants which cause, have reasonable potential to cause, or contribute to any exceedance or potential exceedance of any applicable water quality criteria or standard.

Accordingly, N.J.A.C. 7:9-4, Surface Water Quality Standards, which implements the Federal requirements, classifies the Atlantic Ocean as "saline coastal" waters with water quality criteria for chlorine produced oxidants being less than 7.5 ug/L as a 24 hour average and 13 ug/L as a maximum at any time. As a result, the Department's establishment of a water quality based effluent limitation for chlorine must insure compliance with the water quality criteria of the receiving water.

COMMENT 61: BP Oil commented that the provision which authorizes the use of the "Technical Support Document" to calculate effluent limitations at N.J.A.C. 7:14A-3.14(d)2 will not provide for adequate public review and comment. Referencing the Technical Support Document in the proposed rule contradicts and is inconsistent with the basis for issuing such information as "support/guidance" documents. BP Oil further commented that additional time is needed by the public to properly review the referenced material and its applicability prior to the promulgation of this subchapter.

RESPONSE 61: The Department disagrees with the commenter's comment. The United States Environmental Protection Agency (EPA) produced the first draft of the current edition of the Technical Support Document (TSD) in November, 1989. This draft was circulated among members of a work group composed of representatives from EPA Regions, States, environmental groups, trade associations, academia, private industry and municipalities, and anyone else upon request for review and comment. EPA considered each comment during the development of a second revised draft TSD, which was noticed in the Federal Register on May 11, 1990. Again, EPA evaluated and incorporated comments made by interested parties and published a final TSD (EPA-505/2-90-001, March 1991), which was noticed in the Federal Register on April 4, 1991. Since the EPA has provided ample opportunity for public review of the TSD, the Department believes the commenter's request for additional review time is unnecessary and would unreasonably delay the use of this document.

COMMENT 62: Chemical Land Holdings commented that the Department should define the phrase "scientifically valid and up to date criteria" as used in the proposal Summary discussing the deletion of N.J.A.C. 7:14A-3.14(l). This phrase can be interpreted by different parties in widely differing manners, depending on the objectives and perspective of the interpreting party. The criteria should be acceptable to the scientific community and must go through a rulemaking procedure to afford public comment and review.

RESPONSE 62: The Department utilizes the parameter specific criteria contained in N.J.A.C. 7:9-4.14 in the development of chemical specific water quality based effluent limitations for point source discharges. Pursuant to N.J.A.C. 7:9-4.6(c)4iii, whenever parameter specific criteria have not been adopted, the Department will utilize the best available scientific information in the development of chemical specific water quality based effluent limitations for point source discharges. The phrase "scientifically valid and up to date criteria" is merely a reiteration of this standard.

Whenever criteria based on "best scientific information" are utilized to develop effluent limitations, the permittee will have the opportunity to comment on the limit and the criteria.

The Department notes that amendments to the surface water quality standards were proposed on November 2, 1992 (24 N.J.R. 3983(a)).

COMMENT 63: Ciba Geigy Corporation and the Chemical Industry Council of New Jersey commented that the Class V injection well exception at N.J.A.C. 7:14A-5.17(b)4 should be revised and expanded to include an exception for uncontaminated roof runoff that is discharged directly to the ground or to infiltration/percolation basins.

RESPONSE 63: The rules governing overland flow discharges and discharges to infiltration/percolation basins were not a part of these amendments, as these activities are regulated pursuant to N.J.A.C. 7:14A-6. In the future, the Department may propose to regulate these types of discharges through a permit-by-rule or general permit that emphasizes best management practices.

COMMENT 64: The Western Monmouth Utilities Authority commented that N.J.A.C. 7:14A-7.2(a)1 appears to require compliance with the NJPDES rules whether or not they apply. The commenter requested a clarification of this paragraph and further stated that there is no need to regulate the construction of wastewater facilities in this subchapter, as it is already controlled by N.J.A.C. 7:14A-12.

RESPONSE 64: N.J.A.C. 7:14A-7.2(a)1 specifies that a final NJPDES permit shall serve as the Department's approval for building, installing, operating, or substantially modifying a facility for the collection or treatment of any pollutant, unless the Department also requires the applicant to apply for a treatment works approval pursuant to N.J.A.C. 7:14A-12. It also states that all treatment works shall conform with the requirements of N.J.A.C. 7:14A-12 even though not specifically required to obtain Department approval. Therefore, the Department is not regulating wastewater facility construction under this section, but is providing notice of the rule which applies to such construction.

COMMENT 65: The New Jersey Petroleum Council commented that on November 4, 1991, at 23 NJR 3327 and 3328, N.J.A.C. 7:14A-7.2(a)5, 8.9(a) and 12.26(b) were amended to show the address for sending adjudicatory hearing requests. However, this proposal did not include these amendments.

RESPONSE 65: The Department agrees with the commenter's finding. The address corrections made by the November 3, 1991 adoption were part of the November 18, 1991 update of the Administrative Code. The adoption reflects these amendments.

COMMENT 66: Ciba Geigy Corporation and the Chemical Industry Council of New Jersey commented that N.J.A.C. 7:14A-7.3(a)1, which requires the filing of informal documents as a prerequisite for permits-by-rule or general permits, circumvents the original intention of the rule to streamline permit processing. The commenter also stated that the proposed rule as written is too vague. Chemical Land Holdings questioned what type of less formal filings are referenced by this section and under what circumstances would they be required.

RESPONSE 66: The Department disagrees that the filing of less formal documents as a prerequisite for permits-by-rule or general permits circumvents the original intent of streamlining permit processing. In order to be informed of an applicant's desire to be covered under a general permit and to determine if all established requirements are met, some form of documentation may be required as evidence for qualifying for a general permit or permit-by-rule. This information will normally be significantly less complex in both volume and content than the information required for a standard NJPDES application. The Department acknowledges that this rule does not define every application requirement because its purpose is to provide a general notice that, in the case of permits-by-rule or general permits, proof of eligibility may be a requirement. Specific requirements regarding these types of permit actions would be listed in the subchapters governing each particular permit or may be included in a public notice for such permits.

COMMENT 67: Dupont commented that since the Department is proposing to use the DEPE Bulletin instead of the New Jersey Register for the purpose of publishing notices of permit modifications (N.J.A.C. 7:14A-8.1), the Department should make the DEPE Bulletin more readily available.

RESPONSE 67: The use of the DEPE Bulletin to public notice all permit modifications is mandated by the Clean Water Enforcement Act. Subscriptions to the DEPE Bulletin are available through the Department's Documents Distribution Center, CN 402, Trenton, N.J. 08625, or by calling (609) 292-1553.

COMMENT 68: The New Jersey Petroleum Council commented that an applicant/permittee has the right to know whether any person is raising issues, contesting any conditions of a final draft permit, or is interested in being considered a party to an action. The commenter suggests that the Department amend N.J.A.C. 7:14A-8.4(a) and 8.9(a) to require persons interested in being considered a party to an action to submit an additional copy of their request to the applicant/permittee.

RESPONSE 68: The Department agrees with the commenter's suggestion and has made the requested change at N.J.A.C. 7:14A-8.9(d)4ix.

COMMENT 69: Schering Laboratories made the following three comments relative to the third party adjudicatory hearing process at N.J.A.C. 7:14A-8.9: 1) the proposed third party hearing process would transfer the Department's authority to regulate and control pollution to the courts, 2) Schering's experience indicates that the existing permit backlog is extensive and the proposed hearing process will stress an already taxed system, and 3) third party adjudicatory hearings would add undetermined permit costs to both the Department and the regulated community. The commenter concluded by stating that the Department should delete the third party adjudicatory hearing process from consideration.

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RESPONSE 69: The third party adjudicatory hearing process's inclusion into the permitting program is mandated by the Clean Water Enforcement Act. As to the commenter's concerns regarding increases in the permit backlog and economic costs, the Department will strive to minimize any adverse impacts by the third party hearing process on permit services. Although the Department believes access to the administrative process by third parties serves a role in protecting human health and the environment, the Department agrees that increased operational costs for both the Department and the regulated community are a likely result of this hearing process.

COMMENT 70: Dupont commented that the existing procedures for reviewing permits afford third parties ample opportunity to comment on permit applications pending before the Department. Both Dupont and the Rahway Valley Sewerage Authority stated that the NJDEPE permitting process, in its present form, is often long and arduous, and the third party adjudicatory hearing process proposed at N.J.A.C. 7:14A-8.9 will further delay the final issuance of permits that are essential for the construction of much needed facilities. The commenter further stated that large projects requiring substantial preliminary work including DEPE review, public hearings and comments, resolution of permit limits, possible issuance of bonds, and construction and operation plans, can be disrupted at the "eleventh hour" by a third party under the proposed hearing process. This can result in an economic disincentive to pursue these projects, even when their implementation is the appropriate course of action.

RESPONSE 70: The Department acknowledges the concerns of the commenters regarding the impacts of third party adjudicatory hearings on the NJPDES permit program, but the Legislature has recognized the importance and need for this type of public participation as part of the Clean Water Enforcement Act. The Department intends to implement this clear mandate with these provisions.

COMMENT 71: The New Jersey Petroleum Council commented that since the words "adjudicatory" and "administrative" are used interchangeably throughout N.J.A.C. 7:14A-8.9, and there is not a difference in meaning (in the context of the rule), the Department should use only one term. If there is a difference in the meaning of these words, each one should be clearly defined in N.J.A.C. 7:14A-1.9.

RESPONSE 71: The Department agrees that no difference is intended in these terms. The term "administrative hearing" has been replaced with "adjudicatory hearing" wherever it is used in N.J.A.C. 7:14A-8.9.

COMMENT 72: The New Jersey Petroleum Council commented that the word "within" should replace "with" in the first sentence of N.J.A.C. 7:14A-8.9(a).

RESPONSE 72: The Department agrees and has made the requested change.

COMMENT 73: Ciba Geigy Corporation and the Chemical Industry Council of New Jersey commented that the introduction of interested parties into the hearing process with the potential to grant them equal standing with the permittee will guarantee a continuation of the adversarial relationship that presently exists. The commenter suggests that the Department revise N.J.A.C. 7:14A-8.9(d) to provide for a "pre-draft notification workshop" where the Department, the permittee, and interested parties can reconcile differences in an informal, and non-adversarial manner.

RESPONSE 73: The Department acknowledges the commenters' concerns regarding the impacts of third party adjudicatory hearings on the NJPDES permit program, but is bound by the Legislature's assessment of the importance and need for this type of public participation in the permit process. The commenters' suggestion to provide a pre-draft notification workshops had merit, and the Department will be giving consideration to this idea during its presently on-going revisions to the NJPDES rule. In addition, the Department has changed its procedures to provide for informal meetings, upon request, with applicants and with third parties throughout the permit review process.

COMMENT 74: The Rutgers Environmental Law Clinic commented that the first sentence of N.J.A.C. 7:14A-8.9(d) should be revised to indicate that effective July 1, 1992 the Department "shall" review third party adjudicatory requests. Although the Department is not required to designate all who wish to be designated a party to an action, it should be clear that the Department is required to consider all such requests.

RESPONSE 74: The Department agrees and has made the requested revision at N.J.A.C. 7:14A-8.9(d).

COMMENT 75: The Rutgers Environmental Law Clinic commented that a person seeking to be named a party to an adjudicatory hearing should not be precluded from participating on the grounds that he or she may not have the expertise to meaningfully discuss treatment technologies (N.J.A.C. 7:14A-8.9(d)5viii). If the prospective participant does possess technical expertise, this knowledge should be included in the hearing request; however, this proposed language should not be used to exclude the public from the permit process.

RESPONSE 75: This requirement is clearly mandated by the Clean Water Enforcement Act at N.J.S.A. 58:10A-7e(5)(h). While the Department acknowledges the commenter's concern, the CWEA does not provide an exclusion for persons that do not possess technical expertise. Therefore, third parties must be prepared to identify objections to the technologies involved and offer different technologies in order to meet the requirements of the CWEA.

COMMENT 76: The New Jersey Petroleum Council commented that both N.J.A.C. 7:14A-8.9(d) and (e) should be amended to include a provision which requires the Department to notify, in writing, a person seeking to be considered a party to an action and the applicant/permittee, of the Department's decision regarding the granting of a hearing (by certified mail).

RESPONSE 76: The commenter's suggested changes are not necessary. N.J.A.C. 7:14A-8.9(i), (j) and (k) and 8.11 adequately address the commenter's concerns for notice of agency action in response to requests for hearings.

COMMENT 77: Ciba Geigy Corporation and the Chemical Industry Council of New Jersey (CIC/NJ) commented that the Department should revise N.J.A.C. 7:14A-8.9(f) to allow permittees to demonstrate other financial instruments for fee payment rather than establishing an escrow account. Since the adjudicatory process can be long and slow, it is unfair to deny a permittee the use of this money, which may be substantial. CIC/NJ commented that the escrow amount is arbitrary as it is not related to any particular factors and requested the Department to provide the basis for designating the permit fee as the escrow amount. CIC/NJ also stated that placing an escrow requirement on the permittee without a similar requirement upon third parties is unfair and prejudicial.

RESPONSE 77: This requirement is clearly mandated by the Clean Water Enforcement Act at N.J.S.A. 58:10A-7f. If the Legislature had intended to include third party actions in this requirement, it could have done so. The rules implement exactly the Act's provision; therefore, this rule does not extend to third party actions and requires the use of escrow accounts. The Department believes this provision was intended to prevent frivolous litigation on the part of permittees attempting to delay the implementation of the permit.

COMMENT 78: The Passaic Valley Sewerage Commissioners commented that time extensions for the submission of hearing requests (N.J.A.C. 7:14A-8.9(g)) should be for a maximum length of time. The commenter recommends no more than 14 days be granted for this purpose and suggests that the rule be amended to include this limit.

RESPONSE 78: The Department disagrees with the commenter's request to define a specific length of time for hearing request extensions. The reasons for requesting such time extensions are very diverse and oftentimes cannot be resolved within 14 days as suggested by the commenter. In order to maintain the flexibility the rule presently provides the Department when addressing the many variables associated with the permit process, the Department has not made this change. However, the Department wishes to point out that requests for time extensions on hearing requests are carefully evaluated to insure that a length of time, appropriate to the circumstances under consideration, is chosen. In exercising this discretion, the Department attempts to avert undue delays, while protecting the integrity of the administrative process.

COMMENT 79: The Passaic Valley Sewerage Commissioners commented that in granting the public broad rights of intervention, the Department should make conformance with the requirements mandatory. The commentary suggests that the language at N.J.A.C. 7:14A-8.9(h) be revised so that if an applicant/permittee or a person requesting to be considered a party to an action fails to include any of the information under N.J.A.C. 7:14A-8.9, the Department "shall" deny the request for a hearing and "no further action will be taken on the request."

RESPONSE 79: The Department disagrees with the commenter's suggestion, and believes that the language at N.J.A.C. 7:14A-8.9(h) provides adequate authority for the Department to deny deficient adjudicatory hearing requests when necessary. Moreover, the commenter's request would effectively remove the discretion needed by the Department when reviewing hearing requests, which often vary in quality, content, and subject matter.

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COMMENT 80: The Western Monmouth Utilities Authority commented that the requirement for any person currently discharging pollutants without a NJPDES permit to apply for a permit within 30 days of the effective date of the chapter seems outdated (N.J.A.C. 7:14A-10.3(a)). If there are dischargers whose six month time limit has already been exceeded, they should be noted, as well as any new types of discharges not previously covered.

RESPONSE 80: The Department has deleted the provision referred to by the commenter in N.J.A.C. 7:14A-10.3(a) in a separate NJPDES rule adoption published on November 2, 1992 (24 N.J.R. 4088(a)).

COMMENT 81: The Joint Meeting of Essex and Union Counties (JMEUC), the Association of Environmental Authority's (AEA), and the Passaic Valley Sewerage Commissioners (PVSC) commented that although amendments are not proposed to N.J.A.C. 7:14A-10.3(a)9, it is recommended that the Department incorporate a change to address when pollutant parameters, such as pH and LEL, are continuously monitored. PVSC stated that this would incorporate the applicable provisions of 40 CFR 401.17. The JMEUC and the AEA further suggested that the Department establish a framework to allow publicly owned treatment works to implement site specific procedures. The PVSC offered the following suggested language:

"Where a user continuously measures the pH of his wastewater discharge pursuant to a requirement or option contained in his permit or letter of authorization, he shall maintain the pH within the range established in the applicable limitation, except that excursions from the range are permitted subject to the following limitations:

i. The total time during which the pH values are outside this required range shall not exceed 7 hours and 26 minutes in any calendar month (1 percent);

ii. No individual excursion from the range of pH values shall exceed 60 minutes; and

iii. The excursions shall be permitted for excursions of alkaline pH limits and for acidic pH limits provided the pH does not go below 5.0 at any time.

iv. For the purpose of this section, excursion means an unintentional and temporary incident in which the pH value of the discharge exceeds the range set forth in the applicable effluent limitation or pretreatment standard."

RESPONSE 81: The provisions of N.J.A.C. 7:14A-10.3 are applicable to those facilities which discharge to the surface waters of the State. The Department believes the commenters, however, want their statements to be incorporated into a section of the rules applicable to users of DTWs (N.J.A.C. 7:14A-13). The provisions of 40 CFR 401.17 are applicable to surface water discharges only and, at this time, are not applicable to those facilities which discharge to sanitary sewers. The General Pretreatment Regulations at 40 CFR 403 specify a minimum pH of 5.0. Therefore, any discharge below this limit would be considered a violation and must be addressed as such. USEPA is planning to establish rules regarding violations for continuous pH monitoring.

COMMENT 82: Chemical Land Holdings commented that N.J.A.C. 7:14A-10.3(a)9 should be amended to specify that grab samples be used for the analysis of volatile organic compounds.

RESPONSE 82: In accordance with the Department's Field Sampling Procedures Manual (dated May, 1992), the Department is currently specifying (in NJPDES permits) the grab sample method for volatile organic compounds. Specific changes to the sampling methods will be addressed in a future amendment to the NJPDES rule, which is presently under development.

COMMENT 83: The Hackensack Water Company supports the delegation of the SIU permitting authority to the delegated local agencies (N.J.A.C. 7:14A-10.5) and believes that it is in the best interest of the Department, the permittee, and the environment.

RESPONSE 83: The Department acknowledges and appreciates the commenter's support of the proposed NJPDES/SIU permitting delegation.

COMMENT 84: The Rutgers Environmental Law Clinic (RELC) commented that the Department should maintain the present NJPDES permit program (N.J.A.C. 7:14A-10.5) for significant indirect dischargers to insure that domestic treatment work's (DTW) effluent and sludge quality does not deteriorate. This is especially important in light of the fact that some of the State's biggest dischargers would have their permits canceled under the proposed rule. The RELC and the New Jersey Public Interest Research Group (NJPIRG) recommend that NJPDES permits be canceled only when a delegated local agency has issued a discharger, a local permit with appropriate limits on toxics. NJPIRG also stated that if delegated local agencies are not willing to develop toxic discharge limitations in their own indirect user permits, the Department should terminate the delegation agreement with the DTW.

RESPONSE 84: One of the requirements of an approved industrial pretreatment program is to develop local limits for hazardous and non-hazardous pollutants based upon appropriate environmental criteria (for example: water quality, NJPDES permit conditions, sludge quality, protection of treatment plant processes, and worker health and safety). The delegated local agencies must utilize these local limits as a control mechanism for industrial users, by incorporating them into Sewer Use Ordinance/Rules and Regulations, conducting compliance monitoring, and by enforcing them in accordance with 40 CFR 403 and the New Jersey Water Pollution Control Act. The Department oversees that the program is implemented as it was approved by conducting annual audits and file reviews. Appropriate enforcement actions may be taken against delegated local agencies that fail to responsibly implement an adequate pretreatment program.

COMMENT 85: The New Jersey Public Interest Research Group commented that a discharger holding both a departmentally issued NJPDES-SIU permit and a NJPDES-SIU permit issued by a delegated local agency could be subject to fines for violating either permit. The commenter recommends that the Department amend N.J.A.C. 7:14A-10.5 to clarify that violations of the same parameter in both permits will not make the permittee liable for double fines.

RESPONSE 85: The general intent of this amendment is to dispense with dual permitting, and dual enforcement. Since the Department is planning to terminate its NJPDES-SIU permits in delegated local agency areas, the situation described by the commenter should not occur.

COMMENT 86: Saul, Ewing, Remick, and Saul offered comments in support of the Department's proposal to delegate primary responsibility for administering the NJPDES/SIU program to the local agencies with Department approved pretreatment programs. The commenter further stated that any departmental determinations that affect a permittee's ability to achieve certain discharge criteria should be binding on the delegated local agencies, in order to prevent a local agency from inadvertently requiring standards that the Department has already deemed unachievable.

RESPONSE 86: The Department acknowledges and appreciates the commenter's support of the proposed NJPDES/SIU permitting delegation. Pursuant to N.J.S.A. 58:11-57, the Department cannot require any local agency to grant a connection or a permit to discharge wastewater into its treatment facilities, which, in the judgment of the local agency, would exceed the capabilities of the plant to adequately treat. Furthermore, N.J.S.A. 58:11-57 states the local agency may, in addition to any pretreatment standards imposed, require any user of its facilities such other pretreatment of industrial wastes as it deems necessary to make possible the adequate treatment of such waste.

COMMENT 87: Givaudan-Roure Corporation, Garden State Paper Company, and Unisys Corporation offered comments in support of the Department's proposal to delegate primary responsibility for administering the NJPDES/SIU program to the local agencies with Department approved pretreatment programs (N.J.A.C. 7:14A-10.5). All commenters cited the enforcement authority granted to local agencies by the CWEA and the elimination of overlapping and duplicative permitting jurisdiction as justification for the Department's proposed action.

RESPONSE 87: The Department acknowledges and appreciates the commenter's support of the proposed NJPDES/SIU permitting delegation.

COMMENT 88: Givaudan-Roure Corporation commented that pursuant to the provisions of N.J.S.A. 58:10A-6(h) all local agencies are empowered to enforce the provisions of the Clean Water Enforcement Act; therefore, N.J.A.C. 7:14A-10.5 should be revised to allow for the revocation of all SIU permits.

RESPONSE 88: The Department amended N.J.A.C. 7:14A-10.5 to eliminate dual permitting in areas that have an approved pretreatment program. Although all local agencies have the authority to enforce the provisions of the Clean Water Enforcement Act, including the issuance of summonses up to $5,000, non-delegated DTWs do not have the necessary resources and funding to implement and enforce a pretreatment program as required pursuant to 40 CFR 403. Therefore, in non-delegated areas of the state, the Department's SIU permits will not be terminated until a local pretreatment program has been delegated and an SIU permit has been issued by the local authority.

COMMENT 89: The Joint Meeting of Essex and Union Counties and the Association of Environmental Authorities commented that pursuant

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to N.J.A.C. 7:14A-10.5(a)3 the Department may require an industrial user to maintain a departmentally issued NJPDES/SIU permit for discharge to a local agency (even if the agency has an approved pretreatment program), if the NJPDES/SIU permit was required pursuant to an Administrative Consent Order (ACO) issued by the Department. The rule does not provide for a means to remove such a requirement, if the ACO does not include an expiration time. The commenters questioned how a permittee in this situation could satisfy the certification requirements at N.J.A.C. 7:14A-10.5(g)1 unless the Department has previously committed in writing (or the ACO provides) that the Department issued permit will no longer be required.

RESPONSE 89: Permittees with ACOs in delegated areas wishing to terminate a Department issued NJPDES/SIU permit should petition the Department for an evaluation of the case prior to submitting a termination request pursuant to N.J.A.C. 7:14A-10.5(g)1. If the pertinent terms and conditions of the ACO have been completed to the Department's satisfaction, and the provisions of N.J.A.C. 7:14A-10.5(a) have been met, the Department may terminate its NJPDES/SIU permit.

COMMENT 90: Szaferman, Lakind, Blumstein, Watter, and Blader raised concerns about the Department's proposal to delegate NJPDES/SIU permit review authority to local agencies with Departmental-approved pretreatment plans (N.J.A.C. 7:14A-10.5(f)) and offered the following general comments. First, the NJPDES/SIU permit authority delegation to local agencies will create an inherent conflict in that local agencies bound to protect receiving waters pursuant to the Clean Water Enforcement Act are also involved with maximizing the gallons of treated wastes received to enhance revenues. This conflict will jeopardize the objective assessment of SIU permit applications.

Second, few local agencies have NJPDES permits with discharge limits that regulate contaminants; however, an SIU can discharge dozens of pollutants pursuant to its NJPDES permit. In view of this, the likelihood of a local agency finding pass through or interference when reviewing SIU applications is small. Prior to abandoning review authority and oversight, the Department must issue meaningful NJPDES permits to the local agencies.

Third, the proposed NJPDES/SIU delegation will be extremely expensive to administer for local agencies that neither have the capability nor the funds to review applications with the same level of care as the Department.

Fourth, The Guidance Manual on the Development and Implementation of Local Discharge Limits Under the Pretreatment Program, USEPA, December 1987, p. 1-3, states that significant amounts of toxics will be discharged to local treatment works even after full implementation of categorical pretreatment standards. The Department, with its Statewide experience, can more efficiently develop discharge limitations for individual dischargers than can a local agency with a far smaller body of information to call upon. Also, the EPA's memorandum of August 5, 1985 entitled Local Limit Requirements for Pretreatment Programs, acknowledges that categorical pretreatment standards do not necessarily address all industrial discharge problems which may occur at a given publicly owned treatment works. Considering that local agencies rely almost exclusively upon categorical pretreatment standards when establishing permit limits, it would seem that the Department, with its greater level of sophistication, is more capable of recognizing the deficiencies of the categorical standards.

Fifth, all local agencies must survey and identify potential industrial users as a condition to approval of a local pretreatment program. It is inconceivable that the delegated local agencies, impacted by the proposed regulations, have done this survey.

Sixth, in the aforementioned EPA memorandum entitled Local Limit Requirements for Pretreatment Programs, the EPA states that local agencies must immediately adopt local limits for cadmium, chromium, copper, lead, nickel, and zinc. Futhermore, the local agency must adopt limits for other pollutants as soon as possible. A review of the Ocean County Utilities Authority's (OCUA) regulations reveals a total absence of local limits other than for the six metals listed above. Therefore, any delegation to OCUA would be unlawful, despite the Department's clear intention to do so.

RESPONSE 90: The Department regulates the wastewater treatment capacity of local agencies through the treatment works approval and NJPDES permit programs. As a result, all delegated local agencies must assess how a potential discharge could affect their ability to comply with the terms and conditions of their enforceable NJPDES permit. Therefore, the concern of over-extending the local agency's treatment plant capacity for revenue enhancement is neither valid nor possible under the present rule.

The Clean Water Enforcement Act mandates that if any of the pollutants listed in an indirect user's discharge permit are present in the local agency's effluent above applicable method detection levels, the Department must impose chemical-specific water quality based effluent limitations for that pollutant. Local agencies review potential discharges not only to determine compliance with applicable discharge standards and sewer use ordinance provisions, but to also determine possible pass-through or interference, as well as the possible effect on the local agency's sludge quality and worker health and safety.

Any POTW which meets the criteria specified under 40 CFR 403.8(a) is required to develop an industrial pretreatment program (IPP). As part of the IPP development and implementation, the POTW must have adequate funding (40 CFR 403.8(f)(3)), and is required to issue control mechanisms to industrial users (40 CFR 403.8(f)(1)(iii)). These program aspects are reviewed semi-annually, at a minimum, by the Department through an IPP on-site audit and IPP annual report. The Department will take appropriate enforcement action if deficiencies are found in the administration of the pretreatment program.

When establishing permit conditions, delegated local agencies rely not only upon categorical pretreatment standards, but also upon the local discharge limitations they developed to prevent pass through and intereference, as defined by 40 CFR 403, in their local treatment systems. A delegated local agency has a more comprehensive understanding of the potential effect of IU discharges on their treatment works. Categorical standards and local limits are distinct and complementary. If an industrial user is subject to federal categorical regulations, the determination of which limits apply, local or categorical, is done by choosing the limit which is more stringent. Delegated local agencies are required to develop local limits pursuant to 40 CFR 403.8(f)(4). The Department performs a review of and will approve local limits prior to adoption by the local agency.

As part of the delegation of the pretreatment program, local agencies are required to identify all industrial users in their service area by sending questionnaires and conducting inspections and/or sampling, where appropriate. After the Department approves the delegation of a pretreatment program, a delegated local agency is required to submit an annual report which lists all current industrial users pursuant to 40 CFR 403.12(i) and its NJPDES/DSW permit. This is not a new requirement for delegated local agencies.

The OCUA's local limit development was based upon the eight metals of the New Jersey Land Application-Class B criteria rather than the six metals mentioned by the commenter. The eight metals are arsenic, cadmium, chromium, copper, lead, mercury, nickel, and zinc. The other pollutants (for example, pesticides, PCBs, phenols, and petroleum based oil and grease) were evaluated and found not to be of concern. Therefore, they were not considered during the development of local limits. The August 5, 1985 EPA memorandum discusses the need to evaluate local limits for metals, cyanide, phenols, and other applicable pollutants of concern, but does not mandate the adoption of local limitations for all listed pollutants. Therefore, the Department disagrees that the OCUA delegation is an "unlawful" action.

COMMENT 91: Merck and Company commented that pursuant to the proposed N.J.A.C. 7:14A-10.5(g)1, it is unclear if certifications are required in cases where the Department revokes or terminates a NJPDES/SIU permit. The commenter requests a clarification of this paragraph.

RESPONSE 91: Certifications are required when the revocation or termination proceedings are begun at the permittee's request. However, such certifications are not required if the Department at its own discretion initiates the termination proceeding.

COMMENT 92: The Western Monmouth Utilities Authority, the Ciba Geigy Corporation, and the Chemical Industry Council of New Jersey commented that the Department did not provide an explanation for limiting requests for permit revocation or terminations to one per year (N.J.A.C. 7:14A-10.5(g)3).

RESPONSE 92: As proposed in N.J.A.C. 7:14A-10.5(g)2, the Department shall revoke or terminate a permit if the permittee has not met any of the criterion listed at N.J.A.C. 7:14A-10.5(a) at any time during the 365 days preceding its certification. By limiting only one request for revocation or termination during a 365 day period for each permit, the Department is discouraging permittees from making premature revocation or termination requests.

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COMMENT 93: The New Jersey Petroleum Council commented that the language proposed at N.J.A.C. 7:14A-11.1(a) is not required by statute. The commenter recommends that the phrase "and related correspondence" be deleted from this section because it takes away the discretion of the Commissioner.

RESPONSE 93: Related correspondence is clearly included in the Clean Water Enforcement Act and codified at N.JS.A. 58:10A-60; therefore, the Department disagrees with the commenter's assertion regarding the statutory authority for inclusion of related correspondence at N.J.A.C. 7:14A-11.1(a). However, the Department does agree that the Commissioner's discretion at N.J.A.C. 7:14A-11.2(a) is not in accord with N.J.S.A. 58:10A-60, because the statute provides that all information may be evaluated for confidentiality except effluent data. N.J.A.C. 7:14A-11.2(a) excepts all the information listed in N.J.A.C. 7:14A-11.1(a) as well as effluent data from a confidentiality assessment. As a result of this apparent discrepancy between the Clean Water Enforcement Act and the rule, the Department has deleted the phrase "and the types of information listed in N.J.A.C. 7:14A-11.1" from N.J.A.C. 7:14A-11.2(a).

COMMENT 94: The Chemical Industry Council of New Jersey and Merck and Company offered comments in support of the language at N.J.A.C. 7:14A-11.2, which concerns the confidentiality of information submitted to the Department. The CIC/NJ and Ciba Geigy Corporation commented that the Department should provide clarification regarding the procedures which will be instituted to guarantee the confidentiality of submitted information.

RESPONSE 94: The Department appreciates the comments submitted in support of N.J.A.C. 7:14A-11.2. With respect to confidentiality measures, the Department has internal policies and procedures which implement the Legislative requirements at N.J.S.A. 58:10A-60. The Department's Records Custodian is required to strictly adhere to these procedures when responding to inspection requests from interested parties. Any information that has been deemed "confidential" is removed from the public record files to prevent public disclosure.

To insure that methods or processes entitled to protection as trade secrets are kept confidential, it is incumbent upon permittees to make a claim of confidentiality at the time an application is filed with the Department.

COMMENT 95: The Camden County Municipal Utilities Authority commented that the Department should waive the requirement for a treatment works aprpoval (TWA) (N.J.A.C. 7:14A-12) for dischargers that have received a NJPDES/SIU permit from a delegated local agency. The commenter believes that in the case of an SIU, the regulatory focus should be on "end of pipe" compliance with the limitations specified in the NJPDES permit issued by the local agency. There is little to be gained by an in depth TWA review of the discharge by the Department, when considering that end of pipe compliance is the goal of the pretreatment program. Also, delays in compliance can be averted by eliminating the need for SIUs to obtain TWAs.

RESPONSE 95: The rules pertaining to the activities requiring a Treatment Works Approval were not part of the proposed amendments. However, the Department developed a "working paper" on the treatment works program which was widely distributed for public comment. One of the topics discussed in the working paper was the necessity of treatment works approvals for certain types of industrial projects. The Department is presently evaluating all of the written comments that were received, as well as the comments that were offered during two public hearings on the working paper that were held in March, 1992, with a goal of proposing revisions to the Treatment Works Approval and Sewer Ban Rules (N.J.A.C. 7:14A-12) in early 1993.

COMMENT 96: The Western Monmouth Utilities Authority commented that the Department seems to have a policy requiring the design of the smallest sewer necessary to accommodate the immediate anticipated wastewater flows N.J.A.C. 7:14A-12 and 7:9-1). The commenter further states that the Department has been prohibiting the design of larger sewer lines that provide for future wastewater conveyance capacity. To avoid expensive future replacement costs, the Department should allow the permittee to exercise discretion in designing an appropriately sized sewer pipe for a particular area.

RESPONSE 96: The rules pertaining to the construction standards for sewer systems were not a part of the proposed amendments. However, the Department disagrees with the commenter's impressions regarding the sizing of sewer lines. Generally, the Department would prohibit the construction of sewer lines larger than hydraulically necessary if the sole purpose was to meet the minimum slope requirements specified in N.J.A.C. 7:9-1.20. The Department does not prohibit the sizing of sewer lines for projected future wastewater flows.

COMMENT 97: The Western Monmouth Utilities Authority commented that the opening statement of N.J.A.C. 7:14A-12.2(b), which indicates that a treatment plant receiving sewage in excess of its design capacity discharges improperly treated wastes, is false. Since all treatment plants are designed with a safety factor in ultimate capacity, the exceedances of the design do not necessarily result in the discharge of improperly treated wastewater. As a result, the commenter recommends that this clause in the rule be deleted.

RESPONSE 97: N.J.A.C. 7:14A-12.2(b) was not part of the proposed amendments. However, the Department will consider this comment in the Treatment Works/Sewer Ban rule amendments planned for proposal in early 1933.

COMMENT 98: The Western Monmouth Utilities Authority commented that N.J.A.C. 7:14A-12.5, which addresses the construction or operation of treatment works that are inconsistent with the Department's approval, should not apply to all situations. The commenter asserts that no violation should occur if the inconsistency does not result in or contribute to a permit violation. For example, if a treatment facility is oversized, the permittee should not be penalized for doing more than required. Similarly, if a sewer line must be re-routed due to unknown below ground conditions, the permittee should not be subject to enforcement action.

RESPONSE 98: The Department considers all relevant facts and circumstances before taking an enforcement action for a permit violation. The Department requires, however, that permittees notify the Department, in advance if possible, of any significant changes or deviations from the design approved by the Department. The Department could then advise the permittee of any permit modifications or other requirements necessary before construction is initiated on the modified design.

COMMENT 99: The New Jersey Petroleum Council commented that the second sentence in N.J.A.C. 7:14A-12.9(b) should be deleted because it is absurd to require a written statement of consent from a local sewerage authority for an on-site discharge that will not be contributory to the local authority's facility. Merck and Company also expressed similar sentiments regarding the inclusion of this requirement.

RESPONSE 99: The Department requires the consent of the affected sewerage authority, even if the project will not cause an immediate impact on their facilities, so that they can effectively plan the final disposition of wastewater generated within their service areas. For example, an authority may be planning the construction of an interceptor sewer which would eliminate the need for a particular individual treatment plant. In this case, the authority would have to reserve treatment capacity for the proposed project. In addition, a local governmental entity may revise or deny a project for reasons unrelated to wastewater disposal issues that may nevertheless impact the Department's approval (for example—size of development, location of industrial buildings, street configurations, wetland concerns, zoning, etc.). In such cases, the Department's approval of projects that lacked municipal endorsement would amount to permitting preliminary designs, which are subject to change at the municipal and/or county level. This would ultimately waste the Department's resources by subjecting departmental approvals to future revisions and, in some cases, rescissions should a project not be able to move forward through the municipal/county approval process. Therefore, the Department disagrees with the commenters' suggestion and has not made the requested deletion.

COMMENT 100: The Western Monmouth Utilities Authority commented that the Department should clearly state in the rules at N.J.A.C. 7:14A-12.12 that the discharge of surface waters or ground waters from sump pumps, cellar drains, gutters, area drains, foundation drains, and stormwater into a separate sanitary collection system is not permitted and is a violation of the Clean Water Enforcement Act. The illegal connection of surface or ground water into separate sanitary sewage collection systems probably contributes more to overloading systems than does infiltration or any other source of inflow, and it is incumbent upon the Department to support local efforts to cease these discharges.

RESPONSE 100: The Department agrees that extraneous flows from sump pumps and cellar drains overload wastewater conveyance systems. However, this subject is beyond the scope of the amendments and would be better addressed in the Department's rules governing sewer construction (N.J.A.C. 7:9). The Department will be proposing changes to the sewer construction rule in early 1993 as part of the amendments as-

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sociated with the Sewer Ban/Treatment works working paper. The commenter's suggestion is being considered in the development of this forthcoming rule change.

COMMENT 101: Chemical Land Holdings commented that the Department should allow for the use of alternative and/or supplemental documents, appropriately cross-referenced to the Department's forms, to minimize the need for manually transferring information onto the Department forms (N.J.A.C. 7:14A-12.12), particularly where computerized design documentation contains the requisite information.

RESPONSE 101: The forms referenced in N.J.A.C. 7:14A-12.12 are the application forms required for treatment works approvals, including the CP-1 Application, the Endorsement form (WQM-003), and the Engineer's Report (WQM-006). The CP-1 is the standard application form used throughout the Department for permitting purposes. It does not request any technical design information. The Endorsement form is used to record a municipality's and/or sewerage authority's consent to a project. The Engineer's Report is required for applications involving wastewater conveyance systems and was specifically designed in a questionnaire format to streamline the Department's review by reducing and organizing the amount of technical information required. The commenter's suggestion would be permissible when preparing engineer's reports for wastewater treatment plants (for which no Departmental form exists), since the content of such reports is often variable and does not lend itself to a standardized format.

COMMENT 102: The Western Monmouth Utilities Authority commented that the certification in N.J.A.C. 7:14A-12.12(d), which requires a professional engineer to attest that sufficient capacity exists in downstream sewers and pumping stations, should not be made by a professional engineer. In essence, this requirement could mean that an engineer representing a developer constructing five homes would be responsible for assesing the adequacy of perhaps 20 miles of downstream interceptor sewers through various jurisdictions and ownerships. The commenter suggests that the Department develop an approval "sign off" on the application forms for conveyance capacity similar to the present certification for treatment capacity. The commenter also requested a clarification of under what circumstances does adequate capacity exist; is it during dry weather, average rainfall, wet weather, or flooding conditions.

RESPONSE 102: The Department agrees that the certification requirements at N.J.A.C. 7:14A-12.12(d), regarding the hydraulic adequacy of downstream sewer systems, need to be clarified. Although the applicant's engineer is presently required to certify as to the adequacy of the downstream sewer system, the Department confers with municipalities, municipal sewerage authorities, and county sewerage authorities in assessing downstream conveyance capacity. The Department intends to address the certification responsibilities of both the design engineers and the owners of wastewater conveyance systems in the rule revisions associated with the sewer/ban treatment works working paper due for publication in early 1993. In response to the commenter's question on adequate capacity, the NJPDES rules currently contain a definition for adequate conveyance capacity at N.J.A.C. 7:14A-1.9. This rule defines adequate conveyance capacity for both wet and dry weather conditions.

COMMENT 103: Killam Associates commented that it is unclear if N.J.A.C. 7:14A-12.12(e) and 12.14(a)2 require the submission of a written statement of consent prior to the submission of a treatment works application and requested a clarification of this requirement.

RESPONSE 103: N.J.A.C. 7:14A-12.12(e) states "Upon receipt of a written statement of consent pursuant to N.J.A.C. 7:14A-12.9, the applicant shall send the application, statement of consent, and other documents and information to the address shown on the applicable form." A written statement of consent is obtained by the applicant and then submitted simultaneously with the Treatment Works Application. N.J.A.C. 7:14A-12.14(a)2 does not include requirements for written statements of consent, but the topic of consent is referenced in N.J.A.C. 7:14A-12.14(a)3. N.J.A.C. 7:14A-12.14(a)3 states that a written statement of consent shall be in accordance with N.J.A.C. 7:14A-2.1(k), which requires written statements of consent to be submitted with applications submitted to the Department. However, if an applicant is unable to obtain a written statement of consent from a municipality or sewerage authority, N.J.A.C. 7:14A-2.1(k)4iv and v sets forth procedures for submitting applications without such written statements of consent. In summary, written statements of consent should be obtained before, and transmitted with, applications submitted to the Department, unless a written statement cannot be obtained (for reasons beyond the control of the applicant) in which case the provisions of N.J.A.C. 7:14A-2.1(k)4iv and v would apply.

COMMENT 104: Saul, Ewing, Remick, and Saul commented that a literal reading of the proposed N.J.A.C. 7:14A-13.4(d) makes a user of a domestic treatment works liable for interim enforcement limits established by any administrative order or administrative consent order. The commenter recommends that the language be modified to make clear that a person or user of a domestic treatment works shall be liable only for those interim enforcement limits stipulated in an administrative order or administrative consent order directed specifically towards them.

RESPONSE 104: The language in N.J.A.C. 7:14A-13.4(d) was excerpted directly from the Clean Water Enforcement Act (see N.J.S.A. 58:10A-10a). However, the Department agrees that it is unclear and has revised this subsection to eliminate the confusion, while maintaining the intent of the Legislature.

COMMENT 105: The Rutgers Environmental Law Clinic commented that facility inspections should not take place in advance as stated in the proposal Summary for N.J.A.C. 7:14A-13.10, but should be conducted simultaneously with sampling at one unscheduled visit. This would be more cost effective for the domestic treatment works and would reveal actual facility conditions. NJPIRG recommends that delegated local agencies adopt a policy that provides for unannounced inspections, and in the event that sampling cannot occur on the same day as other required activities in an inspection, the Department should clarify that the inspection must be completed within the timeframes required under the Clean Water Enforcement Act.

RESPONSE 105: As indicated in the proposal Summary, inspection and sampling activities do not have to occur concurrently. The Department believes that unannounced inspections may be difficult to perform at industrial facilities having complex operational processes, and are usually safer and more thorough when personnel from the IU are present to assist the inspector in answering questions and escorting him/her through the facility. The inspection activity generally consists of evaluating manufacturing processes, chemical storage areas, hazardous waste generation areas, spill prevention and control procedures, pretreatment facilities, sampling procedures, monitoring records, etc. Addressing all of these items alone, without assistance, would not be expedient and in some cases may be unsafe. As such, IU personnel must be contacted in advance to ensure their availability. During IU sampling, however, no IU personnel need be present because sampling activities determine compliance with the industrial user's applicable pretreatment standards. As a result, sampling activities may be and often are completed unannounced. Furthermore, under section 308 of the Clean Water Act (33 U.S.C. 1318) and N.J.S.A. 58:10A-6, the DLA has the right of inspection and entry to verify IU activities and is bound by the timeframe specified in the New Jersey Water Pollution Control Act for completing inspections (N.J.S.A. 58:10A-6i).

In conclusion, while delegated local agencies are not required to perform unannounced inspections, they are not precluded from using this approach if they deem it to be useful in assessing compliance (at facilities where the inspector's safety would not be a concern).

COMMENT 106: The Association of Environmental Authorities, the Joint Meeting of Essex and Union Counties, and the Passaic Valley Sewerage Commissioners commented that the Clean Water Enforcement Act provision which requires an annual inspection within six months of receiving an application for a new or renewed permit is arbitrary (N.J.A.C. 7:14A-13.10(a)). This requirement does not address the fact that a company could submit a complicated application to the delegated local agency, which would take longer than six months to review. How would the local agency proceed under such a scenario? The commenters recommend that the Department revise the rule to provide more flexibility and submitted the following suggested language for inclusion into N.J.A.C. 7:14A-13.10(a): "A POTW may be exempted from the strict time requirement to conduct an inspection or issue a permit within six months if the Department determines that strict adherence to the six month or 30 day time frame by a particular POTW is impractical or could result in a violation of another paragraph of the Act."

RESPONSE 106: N.J.A.C. 7:14A-13.10(a) is consistent with the New Jersey Statute, N.J.S.A. 58:10A-61. The Department believes that the seven month timeframe, that is, six-month timeframe and an additional 30-day extension to conduct an inspection following receipt of an application for a new permit or permit renewal, is reasonable. Also, in accordance with the approved pretreatment requirements, a delegated

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local agency should have sufficient resources to carry out the implementation of the pretreatment program.

COMMENT 107: Killam Associates commented that the Department should revise N.J.A.C. 7:14A-13.10(a)1 to grant permittees discretion in deciding whether or not to conduct sampling on the same day as the inspection of the facility. In requiring sampling at the time of the inspection, the proposed rule is too restrictive because the person (entity) responsible for conducting the sampling may not be the same person (entity) responsible for conducting the inspection.

RESPONSE 107: The Department concurs with the commenter. As indicated in the Summary, inspection and sampling activities do not have to occur concurrently because a pretreatment inspection consists of evaluating manufacturing processes, chemical storage areas, hazardous waste generation area(s), spill prevention and control procedures, pretreatment facility sampling procedures, monitoring records, etc., while a sampling activity consists of determining compliance with the industrial user applicable pretreatment standards. See also Response 105.

COMMENT 108: The New Jersey Petroleum Council commented that the following sentence should be added to N.J.A.C. 7:14A-13.10(a)1: "The permittee shall be allowed to obtain a split (duplicate) of the representative sample." The commenter indicated that this is normal protocol and should be allowed.

RESPONSE 108: The sampling requirements at N.J.A.C. 7:14A-13.10(a)1 were excerpted directly from the Clean Water Enforcement Act (N.J.S.A. 58:10A-61(1)). Although the Legislature did not provide for split samples, the Department's policy has been to allow split samples when the sample type, analytical method, and sampling location are the same.

COMMENT 109: The Joint Meeting of Essex and Union Counties (JMEUC) and the Association of Environmental Authorities (AEA) commented that a delegated local agency should not be barred from using a laboratory that has been used by the permittee (N.J.A.C. 7:14A-13.10(a)2) for the following reasons: 1) There is no time limitation on this requirement, which makes it unfair; 2) There are not many certified laboratories available to perform the required analyses, and an agency should not be precluded from using one of the few laboratories certified for certain analyses simply because that laboratory has at one time performed analyses for the permitted user; 3) The opportunity for abuse will always exist; therefore, it is good laboratory practice to disguise or not identify the discharge whose samples are to be tested; and 4) If the laboratory certification process is to be meaningful, we should all be entitled to rely on the integrity of these laboratories to perform their jobs properly. The JMEUC and the AEA recommend that N.J.A.C. 7:14A-13.10(a)2 be deleted. The Passaic Valley Sewerage Commissioners (PVSC) submitted the following similar comments: 1) Since this rule constrains the POTW and not the user, the POTW could be prevented from using a laboratory that a user has used. This means using out of state laboratories or non-state certified laboratories; 2) How does a POTW operate under the New Jersey state bidding statute? How can one law require a public agency to violate another State statute?; and 3) What happens when sample holding times are exceeded as POTWs scurry about trying to find a "legal" laboratory? The PVSC also recommends that N.J.A.C. 7:14A-13.10(a)2 be deleted.

RESPONSE 109: The Department acknowledges the burden this may place on delegated local agencies, but this provision was clearly mandated by the CWEA, codified at N.J.S.A. 58:10A-61(2). Therefore, the Department will not subvert the clear intent of the statute. Requiring analysis by uninterested, independent laboratories will preserve the public confidence and integrity of the delegated pretreatment program.

COMMENT 110: Killam Associates commented that the reporting requirement under N.J.A.C. 7:14A-13.10(h)25 needs to be clarified because the extent of the information required in the annual report relative to the dispensation of penalty monies is not definitive enough. The penalties assessed by some sewage authorities are merged with their pretreatment budget, such that a separate account of enforcement penalties is not maintained.

RESPONSE 110; This requirement from the Clean Water Enforcement Act is to ensure that penalties collected under the pretreatment program are used to fund program improvement. In accordance with N.J.S.A. 58:10A-6i(2), 10 percent of any penalty assessed and collected pursuant to N.J.S.A. 58:10A-10.1 must be deposited into the Wastewater Treatment Operators' Training Account. The remainder "shall be used by the local agency solely for enforcement purposes, and for upgrading municipal treatment works." Therefore, delegated local agencies must establish appropriate recordkeeping practices and accounting procedures to meet the annual reporting requirements of N.J.S.A. 58:10A-14.2.

COMMENT 111: The Township of East Brunswick commented that there may be cases when delegated local agencies will be issuing NJPDES/SIU permits to themselves (for facilities they own).

RESPONSE 111: The Department agrees that this situation may occur. However, the delegated local agency (DLA) is required to enforce the terms and conditions of all SIU permits issued as part of the IPP implementation criteria, including any permits issued for facilities they own. The Department, in turn, performs an annual on-site audit at each DLA to ensure that all SIU permit conditions are enforced and the program, as a whole, is being administered as required. As a result, the Department believes that the commenter's concern is and will be adequately addressed by the continued oversight of the IPPs.

COMMENT 112: BP Oil commented that the Department should outline protocols for collecting samples at facilities regulated under the Spill Compensation and Control Act (SCCA). In many cases, the monitoring/sampling proposed under the NJPDES rule are in conflict with the stormwater management rules for facilities which must comply with the SCCA and the Discharge Prevention Control and Containment rules. Flows at these facilities are instantaneous and manually controlled. Sampling protocols developed should be based upon a general consensus of all affected permitted facilities.

RESPONSE 112: N.J.A.C. 7:14A-14.5(c)(1) and (2) dictate oil and grease monitoring requirements for stormwater discharges resulting specifically from a precipitation event. This type of discharge is not manually controlled but is an uncontrolled, intermittent discharge that has not been contained in any manner. Those facilities regulated under SPCC and DPCC programs are not normally required to follow these sampling requirements provided that the discharge is manually controlled and has been contained. In this case, unless otherwise specified in the individual permit, at least one sample shall be taken at the onset of the discharge when the stormwater is released through the outfall to the receiving water. Facilities which contain their stormwater then manually release it are not normally required to take samples at 15 minute intervals as specified in the oil and grease regulations since the stormwater has been contained and the impact of the "first flush" is greatly reduced.

COMMENT 113: Chemical Land Holdings commented that the following factors should be used when proposing specific effluent limitations under the NJPDES regulations:

1. Consistency with Federal guidelines, procedures, and toxicity data for establishing water quality criteria;

2. Parametric limits for a permitted discharge no lower than the practical quantitation limits (PQLs) that can be routinely achieved by New Jersey certified laboratories;

3. Application of equitable methods and criteria for setting surface discharge limits for both public sector and private sector effluents;

4. Inclusion of a provision for diffusion of effluents which discharge into surface waters with essentially multi-dimensional flow (as is proposed for deletion under N.J.A.C. 7:14A-3.14);

5. Allowance for net contaminant contribution in calculating effluent limits where surface water sources, which are used as make-up water, contain levels of contaminants which are regulated in the facility effluent; and

6. Inclusion of a provision which allows DTW users with small flows (for example 25,000 gallons per day) to discharge recovered ground water or relatively weak strength process wastewater. This would be subject to the discharge meeting local agency pretreatment requirements and the DTW having the hydraulic capacity and appropriate unit operations to effectively treat the proposed discharge. The commenter opposes arbitrarily excluding such dischargers.

RESPONSE 113: When establishing specific effluent limitations, the Department must establish limits at least as stringent as the Federal guidelines in accordance with sections 301, 306, and 307 of the Federal Clean Water Act. However, as specified in N.J.A.C. 7:9-4.5(e)4, if, after the application of effluent limits consistent with the Federal guidelines, pollutants discharged would still interfere with the attainment and maintenance of the water quality criteria, the Department shall establish more stringent water quality based effluent limitations.

The Department is currently evaluating Practical Quantitation Limits (PQLs) and has issued, for interested party review, surface water PQLs to be considered as part of the New Jersey Surface Water Quality Standards, N.J.A.C. 7:9-4 (24 N.J.R. 4008(a), November 2, 1992). However, at the present time, only Method Detection Limits (MDLs) have been established. Most MDLs are also in Federal regulation.

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The New Jersey Surface Water Quality Standards, N.J.A.C. 7:9-4, apply to all surface waters of the State and contain water quality criteria to be applied to discharges to surface water so that the existing uses can be maintained and protected. These standards apply to both public and private sector discharges; therefore, the procedures and criteria used to calculate water quality based effluent limits for both are the same.

N.J.A.C. 7:14A-3.14(l) contained outdated procedures used to calculate water quality based effluent limits based on criteria contained in Appendix F of the NJPDES Regulations. Appendix F has been proposed to be deleted since the criteria are outdated, and updated criteria based on the use of "best scientific information" are authorized by the New Jersey Surface Water Quality Standards, N.J.A.C. 7:9-4. Therefore, this section will also be deleted from the NJPDES regulations since it refers to Appendix F. The Department notes that when it calculates water quality based effluent limits for surface waters with multi-dimensional flows, a site-specific dilution factor is determined and used to calculate applicable water quality based effluent limits. Therefore, multi-dimensional flows are currently accounted for in these calculations. A specific provision for multi-dimensional flows and water quality based effluent limitation calculation procedures, however, will be addressed during a separate NJPDES rule revision which is presently under development (see NJPDES notice of opportunity for interested party review published elsewhere in this issue of the New Jersey Register).

N.J.A.C. 7:14A-3.14(h), which allows for net limitations under certain conditions, has not been modified under the proposed amendments. Net limitations for water quality based effluent limits will be addressed during a separate NJPDES rule revision which is presently under development (see NJPDES notice of opportunity for interested party review published elsewhere in this issue of the New Jersey Register).

Pursuant to N.J.S.A. 58:11-57, the Department cannot require any local agency to grant a connection or a permit to discharge wastewater into its treatment facilities, which, in the judgment of the local agency, would exceed the capability of the plant to adequately treat.

COMMENT 114: Chemical Land Holdings commented that the Department did not provide any rationale for the proposed modification of N.J.A.C. 7:14A-14.4(a), which reduces the average monthly effluent limit for oil and grease from 15 mg/L to 10 mg/L and the maximum single sample limit from 30 mg/L to 15 mg/L. As the regulated community is currently preparing to comply with new stormwater discharge regulations which take effect late in 1992, these proposed reduced limits may have a significant impact on the ability of many facilities that have bituminous or asphalt covered surfaces (for example roofs, roadways, and parking lots) to rountinely comply. In particular, they will have little control of the content of oily materials in surface runoff samples collected within 15 minutes after the onset of the discharge. Since the provision is likely to affect thousands of facilities across the State, its practical and economic impacts should be evaluated thoroughly before it is imposed on the regulated community.

RESPONSE 114: The Department disagrees with the commenter's statement in that N.J.A.C. 7:14A-14.4(a) does not reduce any limitations, but deletes old limits that are no longer effective. N.J.A.C. 7:14A-14.4(a), promulgated July 2, 1984 and established by N.J.A.C. 7:14A-14.3(a), required existing discharges to meet an average monthly limit of 10 mg/l and a daily maximum limitation of 15 mg/l within two years of the rule's effective date or when the Department issues a renewal NJPDES/DSW permit for a facility, whichever condition occurs later. Out of approximately 1,500 NJPDES/DSW permits, one permit has the former existing discharger oil and grease effluent limitations and one permit has a Federally based categorical effluent limitation, which is higher than the adopted State standards. Since the Department is in the process of renewing these permits (incorporating the newly adopted oil and grease limitations), and to avoid confusion in the rule, N.J.A.C. 7:14A-14.3 has been deleted. Notwithstanding the changes to the rule, the enforcement level will remain at the currently permitted levels until the Department has renewed the affected permits to incorporate the newly adopted limitations.

Also, the Department notes that dischargers throughout New Jersey have been consistently in compliance with these limitations since their promulgation, which demonstrates that they are technologically achievable.

COMMENT 115: Merck and Company commented that although the effluent limits proposed at N.J.A.C. 7:14A-14.4(a)2 and 3 may be appropriate for process wastewater discharges, they are inappropriate for stormwater discharges. Merck recommended prevention, through the use of continued analysis and upgrades to a best management practices plan, as the appropriate manner to address stormwater discharges. The Department should not consider the establishment of compliance using concentration based discharge limits and the imposition of a single concentration based permit limit for any parameter in regulating stormwater because it is technically inaccurate. Therefore, Merck requested that any and all concentration based permit limits listed in this section be deleted. This request is based on the fact that the quantity and quality of stormwater are dynamic, highly variable, and vastly different from continuous dischargers of process wastewater. The quantity and quality of stormwater are intricately and completely linked to many variables including, but not limited to, storm intensity, frequency and duration, type of runoff surface, and slope and distance of travel. Since the concentration of a contaminant in stormwater is changing constantly over time throughout the storm event, Merck believes that the use of a concentration based limit would be highly dependent on the intensity of the precipitation event, which is beyond the control of the permittee.

RESPONSE 115: As stated in the previous response, proposed N.J.A.C. 7:14A-14.4(a)2 and 3 were actually promulgated as N.J.A.C. 7:14A-14.4(a)2 on July 2, 1984. Therefore, these effluent limitations have been effective since 1986 for all types of discharges and are not a result of the rule amendments proposed on February 3, 1992. They were established to protect and maintain the designated uses of all State waters, regardless of the source of the pollutants. In addition, since most currently permitted dischargers of stormwater have maintained consistent compliance with these limitations since the promulgation of the rule in 1984, these limitations are technically achievable.

Recognizing the fact that the concentration of oil and grease in a stormwater discharge does change over time in a storm event, the Department established the multiple grab sampling regimen and dry period requirements for gravity flow storm-caused discharges in order to measure the "first flush" discharge, the portion of the discharge expected to contain the highest concentrations of pollutants. However, since the flow from a discharge resulting from precipitation is highly variable and intermittent by nature, the Department does not impose mass limitations, which are flow dependent. It should also be noted that the Department strongly supports the use of best management practices plans to achieve compliance with the limitations whenever feasible.

COMMENT 116: BP Oil supports the proposed definitions for "oil and grease" and "petroleum hydrocarbons" (N.J.A.C. 7:14A-14.2) in that the Department acknowledges the capability of Method 413.1 (40 CFR Part 136) as a summation measurement of many oil and grease constituents. The language in N.J.A.C. 7:14A-14.4(c) suggests that the Department intends to concentrate on pollutants associated with contact surfaces; however, when the Department ignores this fact and proposes to establish a new lower oil/grease limit of 15 mg/L, it is clearly a mistake rather than a contradiction. Again, Method 413.1 measures Method 418.1, miscellaneous oils, miscellaneous greases, humus, and interferences. However, Method 418.1 measures petroleum based hydrocarbons. Reviewing the sensitivity, reliability, accuracy, and repeatability of Method 413.1, a new permittee will average noncompliance for the 10 mg/L limitation. A noncompliance can be reported without the analysis of a single effluent sample, but merely by analyzing blanks and standards and noting the existing detection limits. BP Oil believes it is the Department's intention to require the analysis of Method 418.1 petroleum hydrocarbons. The effluent limit established should consider the natural background and any interferences.

RESPONSE 116: As stated in Responses 113 and 114, N.J.A.C. 7:14A-14.4(a)2 and 3, which require a daily maximum limitation of 15 mg/l for oil and grease discharges, were promulgated in 1984 and have been fully effective since 1986; therefore, they are not a result of the proposed amendments and are not being made more stringent. The proposed N.J.A.C. 7:14A-14.2 specifies oil and grease limits to be tested using Method 413.1 while petroleum hydrocarbons are required to be tested using Method 418.1. Either oil and grease or petroleum hydrocarbons limitations are imposed in the permit depending on the type of water discharged. Therefore, the permittee should analyze for the parameter specified in the permit, either oil and grease or petroleum hydrocarbons, using the corresponding test method as defined in N.J.A.C. 7:14A-14.2. The Department notes that Method 413.1 is an EPA-approved method for oil and grease (40 CFR Part 136). Oil and grease limitations are normally imposed in a permit for a nonpetroleum based discharge of pollutants for facilities that have oil and grease components in wastewater of animal or vegetable origin.

COMMENT 117: The Joint Meeting of Essex and Union Counties and the Association of Environmental Authorities commented that

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N.J.A.C. 7:14A-14.4(c)2 should be clarified to indicate that the control authority, at its discretion, may impose a more stringent limitation.

RESPONSE 117: The Department does not believe that a clarification is necessary. N.J.A.C. 7:14A-13.4(a) requires that all users of a domestic treatment works must discharge in accordance with applicable Federal, State, and local regulations, including ordinances of the DTW. It is clear indirect users are subject to more stringent limitations which may be imposed by local ordinance, rules or regulations.

COMMENT 118: Chemical Land Holdings commented that although the Department has limited monitoring to working hours, the concept embodied in N.J.A.C. 7:14A-14.5(c)1 and 2 is no less than a management nightmare, particularly for small businesses who have limited staff available to assign the task of monitoring the weather from the beginning of each month to determine when a 72-hour or greater "dry" period has past and the first discharge due to precipitation occurs thereafter. Apart from the interruption in normal business this is likely to cause, the following require greater definition: 1) What is the criteria of "dry" (for example, less than what level of precipitation over 72-hours)?; 2) Does "working hours" exclude 2nd and 3rd shifts and periods of darkness?; 3) Are the necessary up-to-date records (last 72-hours of precipitation) readily accessible from NOAA weather stations throughout the State, and have arrangements been made for the staffs of these stations to respond to the needs of the regulated community in a timely manner? Has the workability of this provision been tested?

RESPONSE 118: Again, the Department notes that the conditions commented on were not part of the proposed amendments of February 3, 1992 and are the same as those promulgated in 1984. "Dry" means that there is no discharge through the permittee's outfall. In order to take a sample under these requirements, there must be no discharge through the permittee's outfall for at least 72 hours before the sampling event. These sampling requirements are only for discharges that result specifically from precipitation events, that is, the discharge only occurs as a result of precipitation or the outfall would otherwise be dry. "Working hours" is defined at N.J.A.C. 7:14A-14.2 to include 8:00 A.M. through 5:00 P.M., Monday through Friday. If necessary, the Department may impose site-specific monitoring times beyond these, if facility operations warrant it. NOAA weather reports are not necessary for permittees to determine if a 72 hour dry period has passed since the dry period is based on whether the individual facility has experienced a stormwater discharge in the past 72 hours. This change is a clarification of the original rule which has been implemented successfully by dischargers throughout New Jersey.

COMMENT 119: BP Oil commented that N.J.A.C. 7:14A-14.5(c)2 should be revised to state: "During the first precipitation event for the required monitoring calendar month, the discharger. . .". Also, the Department should clarify if the permittee is required to monitor up to 45 minutes, and whether the results for these multi-grab samples are averaged as one result for one sampling event. Furthermore, BP Oil is concerned that there has been a lack of consideration given to NJPDES/DSW permittees who discharge stormwater from facilities regulated under the Spill Compensation and Control Act. This Act requires facilities with petroleum products to manually discharge stormwater runoff from their containment dikes, which ultimately dictates the ". . . onset of the discharge. . ." and allows the inspection of dike waters for possible product. Finally, the commenter indicated that there is an insufficient volume of contact surface stormwater runoff, which flows longer than 15 minutes. It is suspected that the reasoning for including a 15 minute elapse period is to allow for obtaining a representative sample which does not have a slug of oil/grease. While this makes good sense considering the 15 mg/L limit for a single sample, BP Oil's experience has shown that if one does not abide by the rigid monitoring and sampling protocols, one is cited for noncompliance.

RESPONSE 119: As stated in the previous response, for discharges caused by precipitation, there must be a minimum dry period of 72 hours preceding a sampling event, and the first precipitation event to fit this criteria may not be the first precipitation event of the month. Therefore, the suggested additional statement is not appropriate and may only confuse permittees. In addition, the Department may impose monitoring on a more frequent basis than monthly thereby making the suggested language inappropriate. As stated in the Department's Response 112, for stormwater manually discharged from a containment area under an SPCC or DPCC plan, the permittee is not normally required to take samples at 15 minute intervals following a 72-hour dry period in accordance with the sampling requirements in N.J.A.C. 7:14A-14.5(c)1 and 2. These provisions apply only to uncontrolled stormwater discharged as a result of a precipitation event. N.J.A.C. 7:14A-14.5(c)2 states that permittees must sample at 15 minute intervals, as long as the discharge continues, up to and including 45 minutes after the onset of the discharge. This requirement is necessary when sampling for oil and grease in order to determine the impact of the "first flush" and the time that the highest concentration of these pollutants is likely to be discharged. When reporting data, the single highest daily maximum concentration must be reported as the daily maximum value and all of the data points should be averaged and reported as a monthly average value.

COMMENT 120: New Jersey Laboratories commented that the requirement to monitor for oil and grease during the first precipitation event of the month is not flexible enough (N.J.A.C. 7:14A-14.5). It is possible that the first event in month "1" is only three or four days prior to the first event in month "2," so why couldn't this same timing be allowed during any given month? This would allow the generator or the contracted sampling service some flexibility in collecting timely samples, especially if they are responsible for several sites.

RESPONSE 120: The intent of the question is a bit unclear; however, permits for stormwater discharges require sampling during the first precipitation event of the month to ensure that a sample will be collected for that month. If the permittee did not sample during the first event of the month, there might not be another precipitation event that month. It is difficult to establish a flexible stormwater sampling schedule because, unlike process wastewater from a manufacturing operation, storm events are unpredictable.

The Department notes that this comment was submitted well after the expiration of the public comment period (April 3, 1992).

COMMENT 121: New Jersey Laboratories commented that there is no regulatory definition for a precipitation event. Does it include snow, which is not melting when falling, or melts several days after falling, or is moved by a snow plow? Certain flow characteristics are necessary for oil and grease samples, but what about other parameters?

RESPONSE 121: Since the Department considers "precipitation" to be any meteorological event (rain, snow, sleet) that results in a discharge from an outfall, the Department would classify melting snow as a type of precipitation. Also, there are no specific flow requirements for pollutants other than oil and grease/petroleum hydrocarbons unless specifically required in an individual permit.

The Department notes that this comment was submitted well after the expiration of the public comment period (April 3, 1992).

COMMENT 122: New Jersey Laboratories commented that for precipitation event sampling, dischargers are sometimes required to determine pH in addition to other parameters. Since only a NJDEPE certified laboratory can determine pH, and since there is no holding time for pH samples, it is necessary for lab personnel to be on site within 15 minutes after the discharge starts. From a practical standpoint, this is impossible for a lab responsible for several sites at different locations.

RESPONSE 122: The holding time for pH cannot be relaxed since pH can change significantly in even a short period of time. The holding time of 15 minutes is consistent with the requirements of 40 CFR Part 136. However, any permittee can request to be certified to test pH themselves, or any other parameter, under the existing laboratory certification regulations. Being certified themselves for this parameter, rather than relying on a certified laboratory, would allow someone who is already on site to collect an effluent sample and measure pH within the required 15 minute holding time.

Any permittees interested in obtaining certification should contact the Bureau of Revenue at (609) 777-1013 to request a copy of the necessary procedures and requirements.

The Department notes that this comment was submitted well after the expiration of the public comment period (April 3, 1992).

COMMENT 123: Killam Associates commented that the rule proposed at N.J.A.C. 7:14A-14.6(a)5 only permits the use of hydrochloric acid to preserve a hydrocarbon sample, while EPA Guidelines also accept the use of sulfuric acid. The commenter requests a clarification of this issue.

RESPONSE 123: As stated in N.J.A.C. 7:14A-14.6(a)5, samples shall be preserved by the addition of a sufficient amount of HCl for petroleum hydrocarbons, and either HCl or H_2SO_4 for oil and grease. Although EPA accepts the use of sulfuric acid to preserve a hydrocarbon sample, the NJPDES regulations only allow for the addition of HCl because HCl is less dangerous to use.

COMMENT 124: Chemical Land Holdings commented that it is difficult to understand how the Department can indicate that the water quality based effluent limits, which will replace Appendix F, will not have a significant impact upon the regulated community (proposal Summary—

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Economic Impact, Appendix F). The assertion that water quality based limits would be generally "similar in magnitude" using either Appendix F, or data contained in the U.S.E.P.A.'s Technical Support Document for water quality based toxics control (EPA-505/2-90-001, March 1991), is presumptuous and requires a more definitive and quantitative evaluation to be considered a fair assessment of the economic impact in terms of benefits to the users of the State's waters and the regulated community. Will the criteria that replaces Appendix F also distinguish between freshwater and saltwater aquatic life by parameter, including its potential toxicity to inherent biota species in the waterway? What criteria will be used in setting new surface water discharge quality limitations?

RESPONSE 124: Although criteria are presently contained in Appendix F of the NJPDES Regulations, many of these criteria are outdated. Therefore, the Appendix F criteria were proposed to be deleted since they are no longer used in calculating water quality based effluent limits and may only confuse permittees. The Department is required by the Federal Clean Water Act to impose water quality based effluent limits where appropriate. The Department has been imposing these based on criteria contained in the New Jersey Surface Water Quality Standards, N.J.A.C. 7:9-4, since their adoption August 7, 1989, or upon best available scientific information as authorized by the Standards whenever parameter specific criteria have not been adopted. These criteria represent aquatic life protection, human health protection, and toxicity criteria for both fresh and saline waters.

The criteria in Appendix F were based on EPA 304(a) guidance for use by the States in their Surface Water Quality Standards, and are therefore, in accordance with N.J.A.C. 7:9-4.6(c)4iii, the "minimum acceptable best scientific information." Although EPA has updated their 304(a) guidance for numerous parameters, as a whole, the numerical criteria for most parameters are similar in magnitude to the original 304(a) guidance criteria incorporated as Appendix F. The Department believes that the resulting effluent limits will also be of similar magnitudes, although the Department acknowledges that in certain cases there could be significant differences. However, there is not an economic impact resulting from the deletion of Appendix F since these criteria have not been used in recent years. Currently, the "best available scientific information" is used to set effluent limits based on existing rules where criteria are not included in the Surface Water Quality Standards. The Department has proposed revisions to the Surface Water Quality Standards (24 N.J.R. 3983(a), November 2, 1992), to include the criteria currently used as best available scientific information. The economic impact of these criteria are discussed in that proposal.

COMMENT 125: Chemical Land Holdings commented that the Department's Regulatory Flexibility Analysis for this rule proposal was inadequate in that the Department did not attempt to address the economic burden that is likely to result from the changed regulations.

RESPONSE 125: The Department explained in the Regulatory Flexibility Analysis that a definitive economic assessment of the proposed rules was not provided because the wide variety of small businesses involved coupled with the diverse nature of the domestic treatment works' discharges would result in a very imprecise evaluation. Moreover, as most of the amendments were mandated by the Federal government and the New Jersey Legislature, the probable economic impacts of these requirements were assessed during the development of the Federal regulations and the revisions to the Water Pollution Control Act (N.J.S.A. 58:10A).

COMMENT 126: The New Jersey Public Interest Research Group commented that environmental groups were not informed of the Department's public hearing on February 8, 1991, regarding the pre-proposal of the pretreatment rules. NJPIRG requested an explanation of the incident.

RESPONSE 126: Prior to the February 8, 1991 Pre-treatment rule pre-proposal, delegated POTWs were notified, via a Departmental correspondence, that a public hearing was scheduled. A public hearing notice was also published in the largest newspaper(s) in each county of the State on or about January 22, 1991 through February 6, 1991, and also appeared in the New Jersey Register (23 N.J.R. 149(a)). The Department believes that these activities fulfilled its "reasonable and formal" means of notice as required under N.J.A.C. 1:30-3.2. Furthermore, the hearing was well attended, as a total of 74 people, consisting of industry representatives, environmental consultants, POTW representatives, and other interested parties were present. While this hearing was held to discuss possible changes to the regulations with respect to the pretreatment program, a separate Pretreatment Task Force was also established to allow for further input and advice from the regulated community, as well as environmental groups. NJPIRG was one such group which participated in this Task Force. In conclusion, the Department believes that it has substantially complied with all current public participation regulations and procedures in developing this regulatory package, but it welcomes suggestions for additional mechanisms it can use to better inform and involve the public.

Summary of Hearing Officer's Recommendations and Agency Response:

Dennis Hart, the Department's Wastewater Facilities Regulation Program Administrator, served as the hearing officer at the public hearing held on April 1, 1992. Six persons offered testimony at the public hearing. Administrator Hart recommended that the Department adopt the proposal without change, except for the minor revisions discussed above in the Summary of Public Comments and Agency Responses and the Summary of Agency-Initiated Changes below. The Department agrees with the recommendation.

A copy of the record of the public hearing is available upon payment of the Department's normal charges for copying. To request a copy, contact:

Richard J. McManus, Director
Department of Environmental Protection
and Energy
Office of Legal Affairs
CN 402
Trenton, New Jersey 08625-0402

Summary of Agency-Initiated Changes:

Additional changes have been made on adoption to clarify the requirements as follows:

The Department corrected a typographical error at N.J.A.C. 7:14A-8.9(d)5ii. The proposal incorrectly cited "(b)1 through 5." The correct citation is "(b)1 through 15."

The Department made three changes directly related to the repeal of N.J.A.C. 7:15-4.1. At N.J.A.C. 7:15-1.1(a)9, the Department removed the phrase "NJPDES permittees required for certain new or expanded domestic treatment works," as this phrase referred to N.J.A.C. 7:15-4.1 only. At N.J.A.C. 7:15-1.5, the Department removed the definition of "commercial unit," a term that was used in N.J.A.C. 7:15-4.1 only. At N.J.A.C. 7:15-3.2(a)1, the Department removed the phrase ", and, for DTW, permittees under N.J.A.C. 7:15-4.1."

Other changes were made in N.J.A.C. 7:15-1.5, 2.2, 3.4, and 7:15-5 to remove the definition of "BWQP" (that is, the former Bureau of Water Quality Planning) and to remove all references to that Bureau. In the proposal document, the Department proposed to replace some, but not all, of these outdated references with references to the Office of Regulatory Policy (ORP). On adoption, all references to that Bureau have been replaced by references to the ORP or the Department. (N.J.A.C. 7:15-5.4 and 5.14(a) refer to the Department instead of the ORP because the deadlines in those provisions elapsed prior to the creation of the ORP.)

In subchapter 12 of the Department's rule Summary, the third paragraph contained a typographical error. The rule citation should have read N.J.A.C. 7:14A-12.1(h).

The Department received one request for a public hearing from the Rutgers Environmental Law Clinic regarding the Department's notice to terminate Significant Indirect User (SIU) permits in areas with approved pretreatment programs (24 N.J.R. 491(a), February 3, 1992). The Department determined that this request, standing alone, did not constitute significant public interest. Therefore, the hearing request was denied. Furthermore, the Department believes that the public hearing for these rule amendments, which addressed the aforementioned SIU termination, provided adequate opportunity for public comment.

In addition to the above changes which were directly related to the rule proposal, the Department has made other technical corrections and changes described below.

At N.J.A.C. 7:15-1.5, the definitions of the terms "Commissioner," "continuing planning process," and "Department" were amended to reflect the new title of the Department: the New Jersey Department of Environmental Protection and Energy. Also, the definitions of "Director" (that is, the Director of the former Division of Water Resources) and "Division" (that is, the former Division of Water Resources) were removed. As part of the continuing reorganization of the Department, the functions formerly performed by the Division of Water Resources are now performed by other Department units. N.J.A.C. 7:15-2.2(a),

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3.4(g)1, and 3.9(c) were also amended to reflect the new title of the Department and eliminate references to the former Division of Water Resources and its Director.

N.J.A.C. 7:15-3.1(d) has been recodified as the last two sentences in N.J.A.C. 7:15-3.1(a), in order to make the rule more understandable by consolidating closely related policies in one subsection. As a result of this recodification, N.J.A.C. 7:15-3.1(e) through (h) have been recodified as N.J.A.C. 7:15-3.1(d) through (g), and corresponding amendments have been made to cross-references in N.J.A.C. 7:15-2.2(c), 3.2(a)6ii, and 3.2(a)7.

At N.J.A.C. 7:15-3.4(c) and 3.4(d), the term "plan amendment procedures" has replaced "procedures for plan amendment," in order to make the terminology consistent with N.J.A.C. 7:15-3.4(e), which uses the term "plan amendment procedures."

N.J.A.C. 7:15-4.3(d) has been recodified as N.J.A.C. 7:15-3.4(l), since these items are more closely related to the plan amendment procedures in N.J.A.C. 7:15-3.4 than they are to the remaining provisions in N.J.A.C. 7:15-4.3.

The Department has amended N.J.A.C. 7:15-3.6(a) to include the current title of N.J.A.C. 7:7E, Rules on Coastal Zone Management, and to update some of the cross-references to those rules to reflect recodifications made within those rules.

The Department has deleted N.J.A.C. 7:15-5.17(a)3iii because it pertained solely to the 10-foot contour line specified in former N.J.A.C. 7:7E-8.19, which has been recodified at N.J.A.C. 7:7E-3.25 and no longer specifies a 10-foot contour line.

Changes have been made to N.J.A.C. 7:15-3.8(b), 5.18(f), and 5.23(d) to reflect administrative corrections made at 22 N.J.R. 2001(b) on July 2, 1990, which were omitted from the Code.

It should also be noted that the adopted rule text which follows incorporates changes to certain rules adopted effective November 2, 1992 at 24 N.J.R. 4085(a).

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*).

NJPDES CROSS-REFERENCE TABLE

Present Cite	New Cite	Title
7:14A-2.4(c)	7:14A-2.4(d)	Signatories
7:14A-2.5(a)14vii	7:14A-2.5(a)14viii	Conditions Applic.
7:14A-2.5(a)14viii	7:14A-2.5(a)14ix	Conditions Applic.
7:14A-3.11(a)2 & 3	7:14A-3.11(a)2i & ii	DTWs
7:14A-3.13(a)9ii	Deleted	Monitoring Req.
7:14A-3.13(a)10i	7:14A-3.11(a)2i	DTW Permits
7:14A-3.13(a)10ii	7:14A-3.11(a)2ii (from CWEA 58:10A-6.h(1))	DTW Permits
7:14A-3.13(a)10iii	7:14A-3.11(a)2iii	DTW Permits
7:14A-3.13(a)10iv	7:14A-3.11(a)2iv	DTW Permits
7:14A-3.13(a)10v	7:14A-3.13(a)10ii	DTW Permits
7:14A-3.14(l)	Deleted	Limits for Toxic Substances
7:14A-8.9(d)	7:14A-8.9(g)	Adjudicatory Hearing
7:14A-8.9(e)	7:14A-8.9(h)	Adjudicatory Hearing
7:14A-8.9(f)	7:14A-8.9(i)	Adjudicatory Hearing
7:14A-8.9(g)	7:14A-8.9(j)	Adjudicatory Hearing
7:14A-8.9(h)	7:14A-8.9(k)	Adjudicatory Hearing
7:14A-10.5(a)1	Deleted	Discharges into DTWs
7:14A-10.5(a)3	7:14A-10.5(a)1	Discharges into DTWs
7:14A-13.6	Deleted	Water Qlty. Violation
7:14A-14.3(a) & (b)	None (Reserved)	Implementation
7:14A-14.4(a)1 and 7:14A-14.4(a)2	7:14A-14.4(a)	Oil and Grease Effluent Limitations
7:14A-14.4(a)2i 14.4(a)2ii 14.4(a)2iii	7:14A-14.4(a)1 14.4(a)2 14.4(a)3	Oil and Grease Effluent Limitations
7:14A-14.4(c)1 and 7:14A-14.4(c)2	7:14A-14.4(c)1	Oil and Grease Effluent Limitations
7:14A-14.4(c)3	7:14A-14.4(c)2	Oil and Grease E.L.
Appendix F	Deleted	Toxic Values

7:14A-1.2 Scope

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

(c) No person shall discharge any pollutant except in conformity with a valid NJPDES permit that has been issued by the Department pursuant to the State Act or a valid NJPDES permit issued by the Administrator pursuant to the Federal Act, as the case may be. A discharger which existed prior to the effective date of this chapter who has submitted a complete application shall be deemed to satisfy only the requirement of applying for a permit. This shall not preclude the Department from taking any appropriate enforcement action for violation of the State Act, this chapter, or other applicable law or regulation.

(d) It is the intent of the Department to regulate, at a minimum, the following by means of the New Jersey Pollutant Discharge Elimination System (NJPDES) permit program:

1.-6. (No change.)

7. The storage of any liquid or solid pollutant in a manner designed to keep it from entering the waters of the State;

8.-14. (No change.)

(e) (No change.)

7:14A-1.3 General prohibitions

(a) The Department shall not issue a NJPDES permit:

1.-3. (No change.)

4. For any discharge which conflicts with any areawide plan or plan amendment adopted pursuant to law;

5. (No change.)

6. For any discharge which the United States Secretary of the Army, acting through the Chief of Engineers, finds would substantially impair anchorage or navigation;

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7. For any discharge to which the Administrator has objected in writing pursuant to the Federal Act;

7:14A-1.8 Fee schedule for NJPDES permittees and applicants

(a) Except as provided in (i) and (j) below, the general conditions and applicability of the fee schedule for NJPDES permittees and applicants are as follows:

1.-7. (No change.)

8. The Department, upon the termination of a NJPDES permit, or revocation of a NJPDES/SIU permit in accordance with N.J.A.C. 7:14A-10.5(g) shall upon written request of the permittee prorate the fee for the number of days that the facility was in operation or was discharging under a valid NJPDES/SIU permit during the billing year and return to the permittee the amount that is in excess of the minimum annual fee for the specific category of discharge.

9.-10. (No change.)

(b)-(j) (No change.)

7:14A-1.9 Definitions

As used in this chapter, the following words and terms shall have the following meanings.

...

"Approved industrial pretreatment program" means an industrial pretreatment program prepared by a local agency and approved by the Department in accordance with 40 CFR Part 403 and N.J.A.C. 7:14A-13.1(a).

...

"Average monthly discharge limitation" means the highest allowable average of "daily discharges" over a calendar month calculated as the sum of all daily discharges measured during a calendar month divided by the number of daily discharges measured during that month.

"Average weekly discharge limitation" means the highest allowable average of "daily discharges" over any seven consecutive days, calculated as the sum of all daily discharges measured during any seven consecutive days, divided by the number of daily discharges measured during that seven day period.

...

"Control Authority" means the entity responsible for administering an industrial pretreatment program pursuant to 40 CFR 403 and N.J.A.C. 7:14A-13.1(a) and shall be the Department in areas of the State served by a local agency without an approved industrial pretreatment program or the delegated local agency in all other areas of the State.

...

"Maximum daily discharge limitation" means the highest allowable "daily discharge" during the reporting period.

...

"Significant indirect user" ("SIU") means, solely for the purposes of this chapter:

1. Any user in the State including, but not limited to, any Significant Industrial User as defined in 40 CFR 403.3(t) but excluding municipal collection systems, who discharges wastewater into a local agency where:

i. The user is subject to Categorical Pretreatment Standards under 40 CFR 403.6 and 40 CFR Chapter I, Subchapter N; or

ii. The user's average volume of process wastewater exceeds 25,000 gallons per day; or

iii. The amount of BOD, COD or Suspended Solids in the user's process wastewater discharge exceeds the mass equivalent of 25,000 gallons per day of the domestic waste of the affected local agency; or

iv. The volume of process wastewater in the discharge exceeds five percent or more of the average daily dry weather flow of the local agency; or

v. The user's discharge of process wastewater contributes five percent or more of the daily mass loading of any of the pollutants listed in Appendix B Tables II-VI; or

vi. The user is designated as an SIU by the Control Authority on the basis that the user has a reasonable potential for adversely affecting the local agency's operation; or

vii. The user is designated as an SIU by the Control Authority on the basis that the user has been in violation of any Federal, State, or local pretreatment standard or requirement, including but not limited to, significant noncompliance as defined in 40 CFR 403.8(f)(2)(vii); or

viii. The Control Authority determines it would be consistent with the intent of the Pretreatment Act or State Act to require a permit for the indirect discharger; and

2. Any user in areas of the State in which the Department is the Control Authority where:

i. The user is determined to be a Hazardous Waste Facility under N.J.A.C. 7:26-12 and meets the requirements of N.J.A.C. 7:14A-4.2(b)1; or

ii. The user is determined to be an Industrial Waste Management Facility under N.J.A.C. 7:14A-4; or

iii. The user's discharge consists of landfill leachate, which is either pure, treated or diluted; or

iv. The user's discharge consists of 25,000 gallons per day or more of polluted groundwater which is pumped from the ground in order to decontaminate an aquifer; however

3. Upon finding that any user in the State has no reasonable potential for adversely affecting the local agency's operation or for violating any Federal, State, or local pretreatment standard or requirement, the Control Authority may at any time, on its own initiative or in response to a petition received from a user or a local agency, and in accordance with 40 CFR 403.8(f)(6), determine that any user specified in paragraphs 1 or 2 above, unless the user is subject to Categorical Pretreatment Standards under 40 CFR 403.6 and 40 CFR Chapter I, Subchapter N, is not a significant indirect user.

...

"State Act" means the New Jersey "Water Pollution Control Act", N.J.S.A. 58:10A-1 et seq. and any amendments thereto.

...

7:14A-2.1 Application for a NJPDES permit

(a) (No change.)

(b) The following persons shall obtain a NJPDES permit:

1. A person who currently owns any part of a facility which includes a discharge or activity regulated pursuant to this chapter;

2. A person who currently operates any part of a facility which includes a discharge or activity regulated pursuant to this chapter.

(c) Whenever, pursuant to (b)1 and/or (b)2 above, more than one person is required to obtain a NJPDES permit for one or more discharges or activities at a specific site, the Department may issue a single permit and may list all of these persons as permittees.

(d)-(j) (No change.)

(k) Applicants for NJPDES permits (other than those applying for the renewal of SIU permits where there is to be no change in the discharge identified in the existing permit), DACs, treatment works approvals, or sewer connection approvals shall provide written statements of consent and comments as follows:

1. Prior to the submission of an application, the applicant shall submit (return receipt requested) a copy of the application and the applicable information required pursuant to this chapter to the affected sewage authority(ies) and to the municipality in which the discharge(s) will be located, with a request that they provide a written statement of consent to the application.

i. Applications submitted to the Department shall include a written statement of consent from both the affected sewage authority(ies) and municipality in which the discharge(s) will be located. Applications which are submitted without a written statement of consent shall be reviewed by the Department in accordance with (k)4iv and v below.

*[iii.]***ii.*** This subsection does not apply to NJPDES permits that are solely for discharges from separate storm sewers; however, this subsection does apply to NJPDES permits for discharges into storm sewers of domestic wastewater, non contact cooling water, or process wastewater other than stormwater.

2. A written statement of consent by a municipality shall be as follows:

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i. A written statement of consent by a municipality concerning a proposed discharge or treatment works shall include the following:

(1)-(2) (No change.)

ii. A statement of consent shall be in the form of a resolution by the governing body, or it may be a written statement, in a form approved by the Department, signed by a person who has been delegated the authority to sign such a statement by a governing body resolution. In the latter case, the delegation resolution shall be provided to the Department.

3. A written statement of consent by an affected sewage authority shall be as follows:

i. (No change.)

ii. A written statement of consent by an affected sewage authority concerning a proposed discharge of pollutants or a treatment works shall include the following:

(1) The project as proposed is in conformance with all ordinances, rules, or regulations of the authority.

(2) (No change.)

iii. A statement of consent must be in the form of a resolution by the governing body, or it may be a written statement, in a form approved by the Department, signed by a person who has been delegated the authority to sign such a statement by a governing body resolution. In the latter case, the delegation resolution shall be provided to the Department.

4. An applicant's request for a written statement of consent from an affected sewage authority or municipality shall be processed as follows:

i. The affected sewage authority or municipality must consent to the application or submit comments to the Department within 60 days of the request for consent. Prior to the expiration of the 60-day period to respond to a request for a written statement of consent, the municipality or sewage authority may request a 30-day extension for review of a request for consent.

ii. Any document issued by a sewage authority or a municipality which is tentative, preliminary, or conditional approval shall not be considered a statement of consent.

iii. When the affected sewerage authority or municipality does not consent to a project, it shall state all reasons for rejection or disapproval in a resolution and send a certified copy of the resolution to the Department.

iv. When the affected sewage authority or municipality expressly denies a request for a written statement of consent for a project, the permit application may be determined by the Department to be incomplete for processing; or in the alternative, the Department may review the reasons for denial. Any such reasons shall be considered by the Department in determining whether to issue a draft permit in accordance with N.J.A.C. 7:14A-7.6, or a Treatment Works Approval or sewer connection approval in accordance with N.J.A.C. 7:14A-12.

v. When the affected municipality or sewage authority does not issue a written statement of consent in accordance with (k)4i above, or a denial in accordance with (k)4iv above, the Department, upon receipt of proof that the applicant has delivered to the affected agency a written request for a written statement of consent, shall review the reasons therefor, if known on the basis of reasonably reliable information. Any such reasons shall be considered by the Department in determining whether to issue a draft permit in accordance with N.J.A.C. 7:14A-7.6, or a Treatment Works Approval or sewer connection approval in accordance with N.J.A.C. 7:14A-12. The Department may, in its discretion, deem the application to be incomplete pending the expiration of the time period set forth in (k)4i above.

7:14A-2.3 Continuation of expired permits

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

(c) When the permittee is not in compliance with the conditions of the expired or continued permit, the Department, in its discretion, may choose to do one or more of the following:

1.-4. (No change.)

(d) (No change.)

7:14A-2.4 Signatories

(a) (No change.)

(b) Except as provided in N.J.A.C. 7:14A-3.13(a)9iii(3) or in a general DSW permit, all reports required by permits except Discharge Monitoring Reports, other information requested by the Department and all permit applications submitted for Class II wells under N.J.A.C. 7:14A-5.8 shall be signed by a person described in (a)2i above, who shall make the certifications set forth in (a)2 above, or by a duly authorized representative of that person. A general DSW permit shall not specify signature requirements less stringent than those applicable under 40 CFR 122.22(b). A person is a duly authorized representative only if:

1.-5. (No change.)

(c) All discharge monitoring reports shall be signed by the highest ranking official having day-to-day managerial and operational responsibilities for the discharging facility, which responsibilities usually include authorizing capital expenditures and***/or**** hiring personnel. For private entities this will usually be a person identified in *[(a)2ii]* ***(a)2i*** above, and for public entities it will usually be a plant manager, an executive director of a public authority, or a ranking elected official. The above described official may, in his or her absence, authorize another responsible high ranking official to sign the report. Authorizations for other individuals to sign in accordance with this subsection shall be made in accordance with (b) above. The following requirements shall also apply to the signing of discharge monitoring reports:

1. The highest ranking official shall be liable in all instances for the accuracy of all of the information provided in the monitoring report. However, the highest ranking official may file within seven days of his or her return, amendments to the monitoring report to which he or she was not a signatory.

i. The filing of amendments to a monitoring report in accordance with (c)1 above shall not be considered a late filing of a report for the purposes of N.J.A.C. 7:14-8.9(e), or for the purposes of determining a significant noncomplier.

(d) (No change in text.)

7:14A-2.5 Requirements applicable to all permittees

(a) Permittees shall comply with the following:

1. The permittee shall comply with all the conditions of its permit including, but not limited to, effluent limitations based upon guidelines or standards established pursuant to the Federal Act or the State Act together with such further discharge restrictions and safeguards against unauthorized discharge as may be necessary to meet water quality standards, areawide plans adopted pursuant to law, or other legally applicable requirements. All discharges shall be consistent at all times with the terms and conditions of the permit and no pollutant shall be discharged more frequently than authorized or at a level in excess of that which is authorized by the permit. The discharge of any pollutant not specifically in the NJPDES application shall constitute a violation of the permit, unless the permittee can prove by clear and convincing evidence that the discharge of the unauthorized pollutant did not result from any of the permittee's industrial activities which contribute to the generation of its wastewaters, or unless the NJPDES permit is a general NJPDES permit for stormwater point sources or separate storm sewers that expressly exempts permittees from this provision, in which case the exemption shall apply only to the discharge authorized by the permit. Any permit noncompliance constitutes a violation of the State Act or other authority of this chapter and is grounds for enforcement action, for permit termination, revocation and reissuance, or modification, or for denial of a permit renewal application. The Department shall not issue a NJPDES permit when the conditions of the permit do not provide for compliance with the applicable requirements of the State and Federal Acts or regulations.

2.-6. (No change.)

7. The permittee shall at all times maintain in good working order and operate as effectively as possible all treatment works, facilities, and systems of treatment and control (and related appurtenances) for collection and treatment which are installed or used by the permittee for water pollution control and abatement to achieve compliance with the terms and conditions of the permit. Proper

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operation and maintenance includes, at a minimum, effective performance based on designed facility removals, adequate funding, effective management, adequate operator staffing and training and adequate laboratory and process controls including appropriate quality assurance procedures as described in 40 CFR 136 and applicable State law and regulations. All permittees who operate a treatment works shall satisfy the licensing requirements of the "Water Supply and Wastewater Operators Licensing Act", N.J.S.A. 58:11-64 et seq., or other applicablelaw. This provision requires the operation of back-up or auxiliary facilities or similar systems when necessary to achieve compliance with the conditions of the permit or where required by applicable law or regulation.

8. A permit may be modified, revoked and reissued, or terminated for cause by the Department. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance shall not stay any permit condition. A permit condition may be administratively stayed by the Department in accordance with N.J.A.C. 7:14A-8.10.

9.-10. (No change.)

11. The permittee shall allow an authorized representative of the Department, upon the presentation of credentials, to:

i.-iv. (No change.)

12. The permittee shall install, use and maintain such monitoring equipment and methods, to sample in accordance with such methods, to maintain and retain such records of information from monitoring activities, and to submit to the Department reports of monitoring results as may be stipulated in the permit, or required by the Department pursuant (a)14 below. The permittee shall provide for monitoring, reporting and records as follows:

i.-xi. (No change.)

13. (No change.)

14. The permittee shall conform to the reporting requirements as follows:

i. The permittee shall give notice to the Department, as soon as possible, of any planned physical alterations or additions to the permitted facility. Notice is required only when the alteration or addition could change the nature or increase the quantity of pollutants discharged.

ii.-iv. (No change.)

v. Where applicable, the permittee shall meet schedules for compliance with the terms of the permit and interim deadlines for progress or reports of progress towards compliance. Reports of compliance or noncompliance with, or any progress reports on, the interim and final requirements contained in any compliance schedule of a permit shall be submitted no later than 14 days following each schedule date.

vi. The permittee shall include the following in each report:

(1) The permittee shall report to the Department any noncompliance including, but not limited to, exceedances of effluent limitations that cause, or have the potential to cause, injury to persons or damage to the environment, or poses a threat to human health or the environment. The permittee shall provide the Department with the following information:

(A)-(B) (No change.)

(C) Steps being taken to reduce, remediate and eliminate the noncomplying discharge and *[the]* ***any*** damage to the environment, ***and the anticipated time frame to initiate and complete the steps to be taken;***

(D) (No change.)

(E) The cause of the noncompliance;

(F) Steps being taken to reduce, eliminate, and prevent reoccurence of the noncomplying discharge; and

(G) An estimate of *[the]* ***any*** danger to human health or the environment posed by the discharge.

(2) *[The]* ***For the types of discharges identified in N.J.A.C. 7:14A-3.10(b)5, the*** permittee shall orally provide the information in (a)14vi(1)(A) through (C) above to the *[DEP]* ***DEPE*** Hotline (609) 292-7172 within two hours of the occurrence, or of the permittee becoming aware of the occurrence, whichever occurs later.

(3) *[The]* ***For the types of discharges identified in N.J.A.C. 7:14A-3.10(b), the*** permittee shall orally provide the information in (a)14vi(1)(D) through (G) above to the *[DEP]* ***DEPE*** Hotline within 24 hours of the occurrence or of the permittee becoming aware of the occurrence, whichever occurs later.

(4) *[A]* ***For the discharges identified in N.J.A.C. 7:14A-3.10(b), a*** written submission shall also be provided within five days of the occurrence or of the permittee becoming aware of the occurrence, whichever comes later. The written submission shall contain the information in (a)14vi(1)(A) through (G).

vii. The permittee shall submit a written report to the Department of any serious violation within 30 days of the violation, together with the information specified in (a)14vi(1)(A) through (G) above, and a statement indicating that the permittee understands the civil administrative penalties required to be assessed for serious violations, and explaining the nature of the serious violation and the measures taken to remedy the cause or prevent a recurrence of the serious violation.

viii. The permittee shall report all instances of noncompliance not reported under (a)12i, iv, v, and vi above, at the time monitoring reports are submitted. The reports shall contain the information required in the written submission listed in (a)14vi(1) above.

ix. Where the permittee becomes aware that it has failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Department, the permittee shall promptly submit such facts or information within 10 days of the time the permittee becomes aware of the correct information.

15. Where applicable, the permittee shall limit the concentrations of heavy metals, pesticides, organic chemicals, and other contaminants in the sludge and shall conform with the requirements for the management of residuals under:

i.-v. (No change.)

16. No permit may be issued, renewed or modified so as to relax any water quality standard or effluent limitation until the applicant, or permit holder, as the case may be, has paid all fees, penalties or fines due and owing pursuant to the State Act or has entered into an agreement with the Department establishing a payment schedule therefore. However, if a penalty or fine is contested, the applicant or permit holder shall satisfy the above requirement by posting financial security as required pursuant to N.J.A.C. 7:14-8.4(a)9. The provisions of this paragraph with respect to penalties or fines shall not apply to a local agency contesting a penalty or fine.

7:14A-2.8 Schedules of compliance

(a) The Department may, when appropriate, specify in the permit a schedule of compliance, including interim deadlines for progress or reports of progress towards compliance with the State and Federal Acts and all other applicable authority for this chapter.

1. The Department shall establish schedules of compliance under this section as follows:

i.-iii. (No change.)

iv. Compliance schedules may be issued when it is demonstrated by a discharger that new or revised water quality based effluent limitations, based on ambient criteria adopted or revised after July 1, 1977, cannot be consistently met with the facility's existing treatment process. No schedule of compliance may be allowed for parameter specific water quality based effluent limitations where the parameter specific ambient water quality criterion, which was the basis for developing that limitation, was adopted prior to July 1, 1977 and has not been revised since adoption.

2.-3. (No change.)

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

7:14A-2.9 Requirements for recording and reporting of monitoring results

(a) All permits shall specify:

1.-2. (No change.)

3. Applicable reporting requirements based upon the impact of the regulated activity and as specified in N.J.A.C. 7:14A-3.13 (DSW), 4.4 (IWMF), 5.13 through 5.17 (UIC) and subchapter 6 (DGW).

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(b) (No change.)

7:14A-2.12 Modification, suspension, or revocation of permits

(a) (No change.)

(b) The following are causes for modification, suspension, or revocation of a permit:

1.-6. (No change.)

7. For an individual NJPDES/SIU permit the wastewater unit has actual or potential discharge only into a delegated local agency or information has been received by the Department that a permittee has ceased to meet all criteria under which an individual NJPDES/SIU permit is required pursuant to N.J.A.C. 7:14A-10.5(a).

(c)-(d) (No change.)

7:14A-3.11 Additional conditions applicable to specified categories of DSW permits

(a) The following conditions, in addition to those set forth in N.J.A.C. 7:14A-2.5, 3.10 and 3.12, apply to all DSW permits within the categories specified below:

1. (No change.)

2. All DTWs shall:

i. Identify, in terms of character and volume of pollutants, any significant indirect user discharging into the local agency subject to pretreatment standards under Section 307(b) of the Federal Act or Sections 4 or 6 of the State Act, 40 CFR Part 403, and the Pretreatment Act and regulations promulgated thereunder;

ii. Notify the Department in advance of the quality and quantity of all new introductions of pollutants into a facility and of any substantial change in the pollutants introduced into a facility by an existing user of the facility. For introductions of nonindustrial pollutants not requiring a treatment works approval pursuant to N.J.A.C. 7:14A-12, the Department may exempt this notification requirement when ample capacity remains in the facility to accommodate new inflows. Such notification shall estimate the effects of the changes on the effluents to be discharged into the facility.

iii. Establish an effective regulatory program, alone or in conjunction with the operators of sewage collection systems, that will assure compliance and monitor progress toward compliance by industrial users of the facilities with user charge and cost recovery requirements of the Federal Act or State Act and toxicity standards adopted pursuant to the State Act and adopted pretreatment standards;

iv. Comply with the capacity assurance program provisions of N.J.A.C. 7:14A-12.20; and

v. Prescribe terms and conditions, consistent with applicable State and Federal law, or requirements adopted pursuant thereto by the Department, upon which pollutants may be introduced into treatment works. Terms and conditions shall include limits for heavy metals, pesticides, organic chemicals and other contaminants in industrial wastewater discharges based upon the attainment of land-based sludge management criteria established by the Department in the Statewide Sludge Management Plan adopted pursuant to the "Solid Waste Management Act," P.L. 1970, c.39 (N.J.S.A. 13:1E-1 et seq.) or established pursuant to the Federal Act or any regulations adopted pursuant thereto.

*[4.]***3.*** Municipal separate storm sewer systems: The operator of a large or medium municipal separate storm sewer system or a municipal separate storm sewer that has been designated by the Department or the Regional Administrator under 40 CFR 122.26(a)(1)(v) must submit an annual report by the anniversary of the date of the issuance of the permit for such system. The report shall include the information required under 40 CFR 122.42(c).

7:14A-3.13 Establishing DSW permit conditions

(a) In addition to the conditions established under N.J.A.C. 7:14A-2.6(a), each DSW permit shall include conditions meeting the following requirements when applicable.

1.-8. (No change.)

9. Monitoring requirements: In addition to N.J.A.C. 7:14A-2.9 the following monitoring requirements:

i. To assure compliance with permit limitations, requirements to monitor:

(1)-(3) (No change.)

(4) According to test procedures approved under 40 CFR Part 136 for the analyses of pollutants having approved methods under that Part, and according to a test procedure specified in the permit for pollutants with no approved methods. (See N.J.A.C. 7:14A-2.5(a)*[10iii]***12ii***.) If more than one approved method exists for a pollutant the Department may specify a particular method in the permit.

*[iii.-iv.]***ii.-iii.*** (No change in text.)

10. Pretreatment program requirements for delegated local agencies *[(]*shall comply with the requirements set forth at N.J.A.C. 7:14A-3.11(a)2.

i. A local agency shall submit a local program when required by and in accordance with 40 CFR Part 403 to assure compliance with pretreatment standards to the extent applicable under Section 307(b) of the Federal Act. The local program shall be incorporated into the permit as described in 40 CFR Part 403. The program shall require all indirect dischargers to the POTW to comply with the reporting requirements of 40 CFR Part 403, N.J.A.C. 7:14A-13, the Pretreatment Act and the State Act.

ii. A permit for a delegated local agency shall include effluent limits for all pollutants listed under the USEPA Categorical Pretreatment Standards, adopted pursuant to 33 U.S.C. 1317, and such other pollutants for which effluent limits have been established for a permittee discharging into the municipal treatment works of the delegated local agency, except those categorical or other pollutants that the delegated local agency demonstrates to the Department are not discharged above detectable levels by the municipal treatment works. The Department by permit may authorize the use by a delegated local agency of surrogate parameters for categorical and other pollutants discharged from a municipal treatment works, except that if a surrogate parameter is exceeded, the permit shall include effluent limits for each categorical or other pollutant for which the surrogate parameter was used, for such period of time as may be specified in the permit.

11.-17. (No change.)

7:14A-3.14 Calculating NJPDES permit conditions

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

(d) Continuous discharges: For continuous discharges all permit effluent limitations, standards, and prohibitions, including those necessary to achieve water quality standards, shall unless impractible be stated as:

1. (No change.)

2. Average weekly and average monthly discharge limitations for POTWs, except that effluent limitations for any toxic substance listed in N.J.A.C. 7:9-4.14 or in accordance with section 307(a) of the Federal Act shall be stated as a daily maximum and average monthly concentration. Limitations may be calculated using applicable scientific or statistical procedures including "Technical Support Document for Water Quality Based Toxics Control" (EPA publication number, EPA-505/2-90-001, March 1991), and subsequent revisions.

(e)-(k) (No change.)

7:14A-5.17 Criteria and standards applicable to Class V injection wells

(a) (No change.)

(b) Inventory requirements: All Class V injection wells covered by rule shall submit inventory information to the Department. The authorization by rule for any Class V well which fails to comply within the time specified in (b)3 below shall be automatically terminated.

1. Contents: As part of the inventory, the following information is required:

i. (No change.)

ii. Facility name and location, if different than the information on the well permit;

iii.-vi. (No change.)

2.-3. (No change.)

4. Exceptions: The requirements of this subsection do not apply to underground injection of stormwater runoff from the roofs of

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buildings, so long as the roofs are devoid of pollutant point sources and devices (for example, motors, tanks, pipelines, drums) that contain pollutants.

(c)-(g) (No change.)

7:14A-6.15 Criteria for ground water protection and response

(a)-(d) (No change.)

(e) The Department will specify in the permit the concentration limits in the ground water for hazardous constituents established under (d) above.

1.-3. (No change.)

(f)-(k) (No change.)

7:14A-7.2 Procedures for decision-making

(a) Initial issuance of a new source NJPDES permit (except a DSW new source which shall comply with N.J.A.C. 7:14A-3.3 and (b) below) includes the following procedural stages:

1. No person shall build, install, operate, or substantially modify a facility for the collection or treatment of any pollutant prior to the issuance of a final draft NJPDES permit. The final draft NJPDES permit shall serve as approval for such action in accordance with Section 6(b) of the State Act, unless the Department specifically requires the applicant to apply for a treatment works approval in accordance with N.J.A.C. 7:14A-12. All treatment works shall conform with the requirements of N.J.A.C. 7:14A-12, even though not specifically required to obtain Department approval.

2.-4. (No change.)

5. The permittee, applicant, or any other person considered a party to the action pursuant to N.J.A.C. 7:14A-8.9 may request an adjudicatory hearing to contest the final determination by the Department to grant, deny, modify, suspend or revoke a permit in accordance with the procedures identified under N.J.A.C. 7:14A-8. The Department shall determine if a hearing shall be granted, and shall refer all hearings to the Office of Administrative Law, except as provided in N.J.S.A. 52:14F-1 et seq.

6.-14. (No change.)

(b) (No change.)

7:14A-7.3 Application review by the Department

(a) Permit application is as follows:

1. Any person who requires a NJPDES permit shall complete, sign and submit to the Department an application in accordance with, but not limited to, N.J.A.C. 7:14A-2.1, 3.2 (DSW), 4.4 (IWMF), 5.8 (UIC) and subchapter 10 of this chapter. Applications are not required for IWMF and UIC permits-by-rule (N.J.A.C. 7:14A-4.5, 4.6, and 5.5), and DSW general permits. However, the Department may require the filing of requests, authorizations, or other less formal documents as a prerequisite for permits-by-rule or general permits.

2.-3. (No change.)

(b) Completeness for reviewing application is as follows:

1. (No change.)

2. If the applicant fails or refuses to correct said deficiencies within the 30 day time period, and if an extension has not been granted by the Department, the permit may be denied and any appropriate enforcement action may be taken pursuant to the State Act or N.J.A.C. 7:14-8.

3.-4. (No change.)

(c) The Department shall conduct site inspections in accordance with the provisions of the State Act.

(d)-(f) (No change.)

7:14A-8.1 Public notice of permit actions and public comment period

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

(c) The Department shall provide public notice according to the following schedule:

1. Public notice of an action set forth in (a)1, 2, 3 or 5 above, except for minor modification of a permit under N.J.A.C. 7:14A-2.14, shall be provided at least 30 days prior to the end of the public comment period unless otherwise required pursuant to N.J.A.C. 7:26-12.12(c).

2. (No change.)

(d) (No change.)

(e) To provide public notice of activities described in (a) above, the Department shall:

1.-2. (No change.)

3. Publish notice of all modifications to permits in the DEPE Bulletin.

(f)-(h) (No change.)

7:14A-8.4 Obligation to raise issues and provide information during the public comment period

(a) Applicants/permittees or persons interested in being considered a party to an action, pursuant to N.J.A.C. 7:14A-8.9, who believe that any action under N.J.A.C. 7:14A-8.1(a)1, 2, or 3 is inappropriate, shall raise all reasonably ascertainable issues and submit in writing to the Department by certified mail (return receipt requested) all reasonably ascertainable arguments and factual grounds supporting their position, including all supporting materials, by the close of the public comment period. If an applicant/permittee or any person fails to raise any reasonably ascertainable issues at this time, the right to raise or contest any such issues in any subsequent adjudicatory hearing or appeal shall be deemed to have been waived. All supporting materials shall be included in full and may not be incorporated by reference, unless they are already part of the administrative record in the same proceeding, or consist of State or Federal statutes and regulations, EPA documents of general applicability, or other generally available reference materials. Commenters shall make supporting material not already included in the administrative record available at the request of the Department.

7:14A-8.5 Action subsequent to public comment

(a) Upon determining that any data, information or argument submitted during the comment period raises significant legal and/or factual issues concerning a permit or DAC that is likely to affect the permit determination, the Department may take one or more of the following actions:

1.-3. (No change.)

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

7:14A-8.9 Adjudicatory hearing

(a) A permittee may submit to the Department a written request for an adjudicatory hearing pursuant to (b) below, *[with]* ***within*** 30 days following the Department's service of notice under N.J.A.C. 7:14A-8.6 of the issuance of a final permit or DAC decision. A person, other than the permittee, interested in being considered a party to an action shall submit a written request by certified mail to be so considered in accordance with (d) below, within 30 days of the publication of the notice of the decision to grant, deny, modify, suspend, or revoke a permit. ***All requests*** shall be submitted to the Department at the following address:

Office of Legal Affairs
Attention: Adjudicatory Hearing Requests
Department of Environmental Protection and Energy
CN 402
Trenton, New Jersey 08625-0402.

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

(d) Beginning July 1, 1992, the Department *[may]* ***shall*** review requests from persons, other than the permittee, that are seeking to be considered a party to an action. The administrative law judge upon referral, or the Commissioner, if the Commissioner decides to make the determination, shall find whether a person other than the applicant/permittee is a party to the action within 30 days of the submission of the request or the referral to the administrative law judge. A person shall be deemed a party to the action only if:

1. The person's objections to the action to grant, deny, modify, suspend, or revoke a permit were raised by that person in the hearing held pursuant to N.J.A.C. 7:14A-8.3 or, if no hearing was held, the objections were raised in a written submission in accordance with the public comment period identified under N.J.A.C. 7:14A-8.1;

2. The person demonstrates the existence of a significant issue of law or fact;

3. The person shows that the significant issue of law or fact is likely to affect the permit determination;

4. The person can show an interest, including an environmental, aesthetic, or recreational interest, which is or may be affected by

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the permit decision and that the interest can be fairly traced to the challenged action and is likely to be redressed by a decision favorable to that person. An organization may contest a permit decision on behalf of one or more of its members if the organization's member or members could otherwise be a party to the action in their own right, and the interests the organization seeks to protect are germane to the organization's purpose; and

5. The person submits the following information with the request to be considered a party to an action:

i. A statement of each legal or factual question alleged to be at issue and its relevance to the permit decision, together with a designation of the specific factual areas to be adjudicated and the hearing time estimated to be necessary for adjudication;

ii. Information pursuant to (b)1 through *[5]***15*** above;

iii. The name, mailing address, and telephone number of the person making the request;

iv. A clear and concise factual statement of the nature and scope of the interest of the requester;

v. The names and addresses of all affected persons whom the requester represents;

vi. A statement by the requester that, upon motion of any party granted by the hearing officer, or upon order of the hearing officer sua sponte, the requester shall make available to appear and testify at the *[administrative]* ***adjudicatory*** hearing, if granted, the following: the requester, all affected persons represented by the requester, and all officers, directors, employees, consultants, and agents of the requester;

vii. Specific references to the contested permit conditions, as well as suggested revised or alternative permit conditions, including permit denials, which, in the judgment of the requester, would be required to implement the purposes of the State Act; and

viii. Identification of the basis for any objection to the application of control or treatment technologies, if identified in the basis or fact sheets, and the alternative technologies or combination of technologies which, in the judgment of the requester are necessary to satisfy the requirements of the State Act.

ix. Persons seeking consideration to be considered a party to an action shall also forward a copy of their request to the applicant/permittee.

(e) Whenever a person's request to be considered to be a party to an action is granted, the Commissioner or the administrative law judge, as appropriate, shall identify the permit conditions which have been contested by the requester for which an *[administrative]* ***adjudicatory*** hearing will be granted. Permit conditions which are not so contested shall not be affected by, or considered at the *[administrative]* ***adjudicatory*** hearing. All requests by persons seeking to be considered a party to an action for a particular permit shall be combined in a single *[administrative]* ***adjudicatory*** hearing.

(f) An applicant/permittee may contest the determination to grant, deny, modify, suspend, or revoke a permit in an *[administrative]* ***adjudicatory*** hearing pursuant to this section, only upon the placement, in escrow, of money in an amount equal to the permit fee.

(g) The Department, in its discretion, may extend the time allowed for submission of a hearing request under this section for good cause shown.

(h) If the applicant/permittee or person requesting to be considered a party to an action fails to include any of the information required by (b) or (d) above as appropriate, the Department may deny the request for a hearing.

(i) The Department, in its discretion, shall decide the extent to which the request for an adjudicatory hearing shall be granted. The Department may grant a request for a hearing in whole or in part. The Department's decision shall be made following a determination that the request filed by the applicant/permittee or person seeking to be considered a party to an action conforms to the requirements of this section and sets forth material issues of fact or law relevant to the issuance of the permit.

(j) The Department, if it grants a request for an adjudicatory hearing, shall identify those contested permit conditions for which an adjudicatory hearing has been granted. The Department shall specify these conditions in writing and shall serve notice pursuant to N.J.A.C. 7:14A-8.11. Permit conditions which are not contested, which were not commented on during the public hearing (if one was held pursuant to N.J.A.C. 7:14A-8.3, which were not commented on in writing by the permittee or a party to an action (pursuant to this section) during the public comment period, or for which the Department has denied the hearing request, shall not be affected by or considered at the adjudicatory hearing. The issues presented in the adjudicatory hearing shall be limited to those permit conditions specifically identified by the Department as required by this section.

(k) (No change in text.)

7:14A-8.11 Notice of adjudicatory hearing

The Department shall provide public notice of an adjudicatory hearing by mailing a copy of the notice to the applicant/permittee, co-permittees, to all commenters on the draft permit, and to those parties that testified at the public hearing.

7:14A-9.6 Variances under the State and Federal Acts

(a) An applicant for a DAC or renewal of a DSW may apply for the following variances:

1. Variance requests by non-POTWs. A discharger which is not a publicly owned treatment works (POTW) may request a variance from otherwise applicable effluent limitations under any of the following statutory or regulatory provisions within the times specified in this subsection:

i. (No change.)

ii. Non-conventional pollutants. A request for a variance from the BAT requirements for the Federal Act Section 301(b)(2)(f) pollutants (commonly called "non-conventional" pollutants) pursuant to section 301(c) of the Federal Act because of the economic capability of the owner or operator, or pursuant to Section 301(g) of the Federal Act because of certain environmental considerations, when those requirements were based on effluent limitation guidelines, must be made by:

(1)-(2) (No change.)

(3) Requests for variance from effluent limitations not based on effluent limitation guidelines, need only comply with paragraph (a)1ii(2) above and need not be preceded by an initial request under (a)1ii(1) above.

iii-*[iv]***vi***. (No change).

(b) (No change.)

(c) Expedited variance procedures and time extensions.

1. (No change.)

2. A discharger who cannot file a complete request required under (a)1ii(2) or (a)1ii(3) above may request an extension. The extension may be granted or denied at the discretion of the Department. Extensions shall be no more than six months in duration.

(d) (No change.)

7:14A-9.8 Procedures for variances

(a) When a request for a variance is filed as required under N.J.A.C. 7:14A-9.6 the request shall be processed as follows:

1. If at the time that a request for a variance is submitted the Department has received an application under N.J.A.C. 7:14A-7.3 for issuance or renewal of that permit but has not yet prepared a draft permit under N.J.A.C. 7:14A-7.6 covering the discharge in question, the Department shall give notice of a tentative decision on the request at the time the notice of the draft permit is prepared as specified in N.J.A.C. 7:14A-8.1, unless this would significantly delay the processing of the permit. In that case the processing of the variance request may be separated from the permit in accordance with (a)3 below, and the processing of the permit shall proceed without delay.

2. If at the time that a request for a variance is filed the Department has given notice under N.J.A.C. 7:14A-8.1 of a draft permit covering the discharge in question, but that permit has not yet become final, administrative proceedings concerning that permit may be stayed and the Department shall prepare a new draft permit including a tentative decision on the request, and the fact sheet required by N.J.A.C. 7:14A-7.8. However, if this will significantly

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delay the processing of the existing draft permit or the Department, for other reasons, considers combining the variance request and the existing draft permit inadvisable, the request may be separated from the permit in accordance with (a)3 below, and the administrative disposition of the existing draft permit shall proceed without delay.

3. If the permit has become final and no application under N.J.A.C. 7:14A-7.3 concerning it is pending or if the variance request has been separated from a draft permit as described in (a)1 and 2 above, the Department may prepare a new draft permit and give notice of it under N.J.A.C. 7:14A-8.1. This draft permit shall be accompanied by the fact sheet required by N.J.A.C. 7:14A-7.8 except that the only matters considered shall relate to the requested variance.

7:14A-10.3 Discharges to surface waters (DSW)

(a) Except as exempted pursuant to N.J.A.C. 7:14A-2.1(g)1, any person planning to discharge pollutants from a point source to surface waters of the State must apply for a Discharge Allocation Certificate (DAC) prior to applying for a NJPDES permit. Any person with a valid NJPDES or NPDES permit shall apply for a NJPDES permit in accordance with the schedules in N.J.A.C. 7:14A-2 and 10. Pre-application conferences with the Department are strongly recommended. The following information, in addition to the requirements of N.J.A.C. 7:14A-2, shall be required for a DAC or NJPDES permit (unless different information is required by a general permit to be included in the request for authorization for that permit, pursuant to N.J.A.C. 7:14A-3.9(b)2ii):

1.-8. (No change.)

9. Effluent characteristics. When "quantitative data" for a pollutant is required, the applicant must collect a sample of effluent and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR Part 136. When no analytical method is approved, the applicant must comply with N.J.A.C. 7:14A-2.5(a)12ii. The requirements in (a)9iv and v below that an applicant must provide quantitative data for certain pollutants known or believed to be present does not apply to pollutants present in a discharge solely as the result of their presence in intake water; however, an applicant must report such pollutants as present. Grab samples must be used for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform, and fecal streptococcus. For all other pollutants, 24-hour composite samples must be used. However, a minimum of one grab sample may be taken for effluents from holding ponds or other impoundments with a retention period greater than 24 hours. In addition, for discharges other than stormwater discharges, the Director may waive composite sampling for any outfall for which the applicant demonstrates that the use of an automatic sampler is infeasible and that the minimum of four grab samples will be a representative sample of the effluent being discharged. Additional requirements for stormwater discharges are contained in the introductory text of 40 CFR 122.21(g)(7). An applicant is expected to "know or have reason to believe" that a pollutant is present in an effluent based on an evaluation of the expected use, production, or storage of the pollutant, or on any previous analyses for the pollutant. (For example, any pesticide manufactured by a facility may be expected to be present in contaminated stormwater runoff from the facility.) Each applicant shall report as follows:

i. Every applicant shall report quantitative data representative of the regulated activity for every outfall for the following pollutants:

(1)-(7) (No change.)

ii.-vi. (No change.)

10.-27. (No change.)

(b) (No change.)

(c) NJPDES Permit: Upon receipt of a Discharge Allocation Certificate, the applicant may design and construct a treatment works to meet the limits stated unless the Department determines that a treatment works approval is also required in accordance with N.J.A.C. 7:14A-12. At least 60 days prior to planned discharge, the applicant shall apply for a NJPDES permit to discharge in accordance with N.J.A.C. 7:14A-2.1 and 7.2. The following items and the information required for a DAC must be submitted for the NJPDES permit:

1. (No change.)

2. Request for a written statement of consent, where applicable (see N.J.A.C. 7:14A-2.1(k)).

3.-8. (No change.)

(d) (No change.)

7:14A-10.5 Discharges into a domestic treatment works (DTW)

(a) Discharges into a DTW are indirect discharges. An individual NJPDES significant indirect user (SIU) permit is required for an indirect discharger when:

1. The indirect discharger is an SIU and discharges to a local agency which does not have an approved industrial pretreatment program; or

2. (No change.)

3. The indirect discharger is required by the Department to obtain an individual NJPDES/SIU permit by an administrative consent order issued by the Department prior to *[the effective date of this rule amendment]* ***February 1, 1993***.

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

(f) Except for those SIUs which are required by (a) above to obtain a NJPDES permit, all other SIUs which discharge to a delegated local agency are exempt from applying for a NJPDES permit and are deemed to possess a NJPDES permit-by-rule and must comply with N.J.A.C. 7:14A-13.5.

(g) The Department may at its own discretion or at the request of the permittee, revoke or terminate a NJPDES/SIU permit if the permittee ceases to meet criteria of (a) above. After revocation or termination of the permit, the discharger shall comply with any pretreatment requirements of the local agency and with the provisions in N.J.A.C. 7:14A-13.5. The terms and conditions of the individual NJPDES/SIU permit, including, but not limited to, the requirement to file a timely application for permit renewal, remain in full force and effect unless and until it is revoked or terminated consistent with the procedures in N.J.A.C. 7:14A-8. Such revocation or termination shall be as follows:

1. The permittee shall submit to the Department a notarized certification by an authorized representative that it meets no criterion of N.J.A.C. 7:14A-10.5(a), and giving the date and circumstances under which it ceased to do so. The request shall specifically indicate that the permittee has reviewed and understands each criterion listed therein.

2. The Department shall revoke or terminate the subject permit if the permittee's certification or other evidence establishes that the permittee has not met any criterion of N.J.A.C. 7:14A-10.5(a) at any time during the 365 days preceding its certification. If the permittee's certification or other evidence indicates that one or more of the foregoing criteria were or may have been met during that 365-day period, the Department shall revoke or terminate the subject permit only if it determines on the basis of the permittee's certification or other evidence that none of the criteria are likely to be met during the 365 days following the application for revocation or termination.

3. Permittees may submit only one request for revocation or termination during any 365-day period.

(h) All actions taken pursuant to this subsection will be consistent with the procedures in N.J.A.C. 7:14A-8.

7:14A-10.7 Surface Impoundments

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

(d) A request for a written statement of consent shall be submitted in accordance with N.J.A.C. 7:14A-2.1 (new source dischargers only).

(e) (No change.)

7:14A-10.9 Land application of effluents by spray irrigation

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

(f) A request for a written statement of consent shall be submitted in accordance with N.J.A.C. 7:14A-2.1(k).

(g) No change.)

7:14A-10.10 Land application of effluents by overland flow

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

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(f) Request for a written statement of consent in accordance with N.J.A.C. 7:14A-2.1(k).
(g) (No change.)

7:14A-10.11 Land discharge by infiltration-percolation lagoons
(a)-(e) (No change.)
(f) Request for a written statement of consent in accordance with N.J.A.C. 7:14A-2.1(k).
(g) (No change.)

7:14A-11.1 Public access to information and scope of authority
(a) Except as otherwise provided in section 3 of P.L. 1963, c.73 (N.J.S.A. 47:1A-3), any information obtained by the Department pursuant to the State Act or section 5 of P.L. 1972, c.42 (N.J.S.A. 58:11-53), including all NJPDES permit applications, documented information concerning actual and proposed discharges, comments received from the public, draft and issued NJPDES permits, and related correspondence shall be made available to the public for inspection and duplication in accordance with Section 9 of the State Act and pursuant to N.J.S.A. 13:1E-1 et seq.
(b) (No change.)

7:14A-11.2 Confidentiality
(a) The Department shall protect from disclosure any information, other than effluent data *[and the types of information listed in N.J.A.C. 7:14A-11.1]*, upon a showing by any person that the information, if made public, would divulge methods or processes entitled to protection as trade secrets of such persons. The Department's decision on the claim of confidentiality shall be made in accordance with the substantive criteria listed in N.J.A.C. 7:14A-11.6. The access to any information deemed to be confidential by the Department shall be limited to authorized officers or employees of the Department, the local agency, and the Federal government.
1. For purposes of this subchapter the term "information" shall include records, reports, and any other documents, writings, photographs, sound or magnetic recordings, drawings, or other similar things by which information has been retrieved or copied.
(b) (No change.)

7:14A-11.3 Procedures for asserting or reasserting confidentiality
(a)-(c) (No change.)
(d) The top of each page of the first set containing the information which the person alleges to be entitled to confidential treatment shall display the heading "CONFIDENTIAL" in bold type or stamp.
(e)-(g) (No change.)

7:14A-12.1 Scope
(a) (No change.)
(b) The Department shall determine within 20 working days of the issuance of a final permit or permit modification whether the discharger shall be required to obtain approval in accordance with this subchapter.
(c)-(f) (No change.)
(g) The Department may take enforcement action pursuant to the State Act and impose fines and penalties in accordance with the Civil Administrative Penalty Rules at N.J.A.C. 7:14-8 for failure to comply with the terms, conditions, and requirements of this subchapter.
(h) No person shall permit, approve, or otherwise allow the construction, installation, modification, or operation of any facility or activity that violates the terms, conditions, and requirements of this subchapter.

7:14A-12.2 General policy and purpose
(a) It is the purpose of this subchapter:
1. (No change.)
2. To require that all facilities subject to approval conform to any areawide plan adopted pursuant to law, or sludge management plan, where applicable.
(b) (No change.)
(c) It is the responsibility of participating municipalities and sewage authorities to properly operate and maintain wastewater treatment facilities to insure complete NJPDES permit compliance at all times, to carefully monitor the issuance of municipal approvals and sewage connection permits in order to prevent committed flow from exceeding design capacity, to provide for the future availability of adequate sewage treatment capacity, and to initiate appropriate action when maximum sewage treatment capacity is being approached. Whenever the participating municipalities and sewage authorities fail in this responsibility, the Department may take whatever action necessary to assure compliance, including the imposition of a sewer connection ban as outlined in this subchapter, the initiation of enforcement action as authorized by the State Act and the imposition of fines and penalties pursuant to the Civil Administrative Penalty Rules, N.J.A.C. 7:14-8.

7:14A-12.5 Construction or operation inconsistent with terms of a treatment works approval
The construction, installation, modification, or operation of a treatment works in a manner inconsistent with the terms of the approval of the Department shall constitute a violation of the State Act and shall be subject to the penalties contained in the civil administrative penalty rules, at N.J.A.C. 7:14-8.

7:14A-12.7 Ninety day limitation on Department
(a)-(c) (No change.)
(d) Projects subject to N.J.S.A. 13:1D-29 (90-day law) shall not be subject to the time period requirements of this section but shall be subject to all of the provisions of N.J.S.A. 13:1D-29 et seq. and N.J.A.C. 7:1C.

7:14A-12.8 Responsibility for successful construction and operation is on applicant
(a) (No change.)
(b) The issuance of an approval by the Department shall not relieve the applicant of the continuing responsibility for the successful collection, treatment, or discharge of pollutants, nor shall it relieve the applicant from the responsibility of insuring that all discharges are consistent at all times with the terms and conditions of the applicable NJPDES permit and that no pollutant will be discharged more frequently than authorized or at a level in excess of that which is authorized by the applicable NJPDES permit. The applicant is also responsible for complying with all applicable permits, regulations, statutes, or other laws.

7:14A-12.9 Request for written consent
(a) When discharging into a New Jersey Pollutant Discharge Elimination System (NJPDES) permitted facility, the applicant shall submit a certification by the NJPDES permittee, for the facility into which the proposed project will discharge, that the domestic treatment works is currently complying with its NJPDES permit requirements and should continue to do so even with the additional flow from the proposed project.
(b) The applicant shall submit a request for a written statement of consent to the affected sewage authority and submit a copy of this request to the Department in accordance with N.J.A.C. 7:14A-2.1(k). Such request for consent shall be made regardless of whether the discharge will be contributory to that authority's treatment works, if any. For applications submitted within the authority of P.L. 1954, c.199 (N.J.S.A. 58:11-23 et seq.), this requirement may be omitted by the Department.

7:14A-12.11 Preliminary review of applications for treatment works approval (Stage 1)
(a) Persons who propose to build, install, or modify treatment works, which discharge into the waters of the State, shall:
1. (No change.)
2. For DSW new sources, obtain a Discharge Allocation Certificate from the Department (prior to submitting a TWA application) and submit a copy of the DAC with the TWA application (the Department shall determine the waste load allocation were applicable);
3. (No change.)
4. Submit proof of a request for a written statement of consent, where applicable, of the treatment works from the municipality in which the proposed treatment works will be located and from the affected sewerage authority, as required by N.J.A.C. 7:14A-12.9.
(b) (No change.)

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(c) The Department, at its discretion, may waive the requirements of this section at the request of the applicant. If such a waiver is given, the applicant bears the responsibility of designing its treatment works to meet all the Department requirements for a Stage 2 application pursuant to N.J.A.C. 7:14A-12.12.

(d) (No change.)

7:14A-12.12 Applications for construction, installation, or modification of treatment works (Stage 2)

(a) Persons who propose to build, install, or modify treatment works shall submit to the Department in the manner prescribed by this subchapter:

1. An application for the treatment works approval on forms available from the Department;

2. A written statement of consent regarding the treatment works from the affected sewage authority and or the municipality in which the proposed treatment works will be located, as required by N.J.A.C. 7:14A-12.9;

3. (No change.)

4. A certification by a licensed professional engineer approved by the N.J. Board of Professional Engineers and Land Surveyors to practice in New Jersey, stating that the proposed treatment works are adequate to meet all applicable Federal and State effluent limitations, and meet the requirements for the preparation and submission of plans for Sewer Systems and Wastewater Treatment Plants, N.J.A.C. 7:9-1, where applicable. When the Department provides a form for such certification, only that form, in an unaltered condition, shall be acceptable; and

5. Preliminary review or waiver issued by the Department pursuant to N.J.A.C. 7:14A-12.11 (Stage 1), if applicable.

(b) (No change.)

(c) Applications shall be signed by a responsible official of the applicant or by an authorized agent, provided that an application signed by such agent shall be accompanied by a certified copy of the authorization. A responsible official is an individual meeting the requirements set forth in N.J.A.C. 7:14A-2.4(a)2i.

(d) In order to ensure that sufficient capacity exists and that new projects will not cause environmental degradation, applications for treatment works approvals for sewer connections shall contain a statement by a licensed professional engineer that sufficient capacity exists in the downstream sewers or pumping stations. The owner of the sewage treatment facility shall certify that with the addition of the project, the approved design capacity will not be exceeded. In addition, the Department shall determine that projects are consistent with Areawide Water Quality Management Plans.

(e) Upon receipt of a written statement of consent pursuant to N.J.A.C. 7:14A-12.9, the applicant shall send the application, statement of consent, and other documents and information to the address shown on the applicable form.

7:14A-12.14 Criteria for approval of building, installing or modifying treatment works (Stage 2)

(a) The Department shall not issue a treatment works approval unless:

1. (No change.)

2. The applicant has demonstrated to the satisfaction of the Department that the proposed treatment works has the potential for preventing, abating, and controlling water pollution;

3. Where applicable, the request for a written statement of consent for the treatment works (in accordance with N.J.A.C. 7:14A-2.1(k)) has been submitted to the affected sewage authority and the municipality in which the project will be located except as provided otherwise by N.J.A.C. 7:14A-12.9;

4.-6. (No change.)

7:14A-12.21 Sewer connection bans

(a) (No change.)

(b) Where a sewer connection ban is required by this section, the affected sewage authority and participating municipalities shall issue sewer connection approvals and consent to sewer connection applications (in accordance with N.J.A.C. 7:14A-2.1(k)) in the affected area only after the following requirements have been met:

1.-4. (No change.)

(c) Whenever the participating municipalities and/or affected sewage authority have failed to comply with (a) or (b) above, the Department shall cease issuing treatment works approvals and may direct the implementation of a sewer connection ban. The Department may also impose a sewer connection ban, issue administrative orders, assess civil administrative penalties (N.J.A.C. 7:14-8), seek judicial relief, or take any other enforcement action it deems appropriate pursuant to the State Act.

(d)-(e) (No change.)

7:14A-12.23 Application for a sewer connection ban exemption

(a) The affected sewage authority shall provide the applicant with the following:

1.-2. (No change.)

3. A request for consent form.

(b)-(g) (No change.)

(h) An exemption granted for a specific property is not transferable to any other property and is only transferable to another person, upon written application to and approval by the Department, for the same property if the original circumstances which justified granting the exemption have not changed.

(i) (No change.)

7:14A-12.25 Construction only permits

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

(c) An applicant for a treatment works approval for construction only shall include with the application a certification in which the applicant shall certify that the applicant understands and agrees to the following:

1.-3. (No change.)

4. The applicant shall not use the treatment works and the sewage authority and participating municipalities shall not approve the operation of the treatment works until the Department determines that adequate treatment and conveyance capacity exists at the receiving treatment works, rescinds the sewer connection ban, if applicable, and grants approval to operate.

(d) (No change.)

7:14A-12.26 Requests for adjudicatory hearings

(a) Except as otherwise provided in N.J.A.C. 7:1C-1.9, an applicant who is denied a treatment works approval, a construction only approval or a connection ban exemption pursuant to N.J.A.C. 7:14A-12.22 and 12.23 by the Department may request an adjudicatory hearing within 30 days of receipt of the Department's denial of the Treatment Works Approval application or the sewer connection ban exemption.

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

(d) Requests for hearing shall be sent to:

Office of Legal Affairs
Attention: Adjudicatory Hearing Requests
Department of Environmental Protection and Energy
CN 402
401 East State Street
Trenton, New Jersey 08625-0402

(e) (No change.)

SUBCHAPTER 13. ADDITIONAL REQUIREMENTS FOR DTWs, LOCAL AGENCIES AND THEIR USERS

7:14A-13.1 Purpose and scope

(a) The Department herein provides notice that it adopts the "General Pretreatment Regulations for Existing and New Sources of Pollution," 40 CFR Part 403 *[(including all subsequent supplements and amendments)]* ***as amended***.

(b)-(d) (No change.)

7:14A-13.2 Application for an SIU permit

(a) Duty to apply: Any person who discharges or is planning to discharge pollutants as an SIU and is subject to N.J.A.C. 7:14A-10.5(a) shall submit a complete application to the Department in accordance with N.J.A.C. 7:14A-2.1, 10.1(h) and 10.5(c).

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

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7:14A-13.4 Conditions applicable to all users of a DTW

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

(d) Any person or user of a DTW ***that is subject to a Departmental or local agency administrative consent order or administrative order*** shall be liable for the interim enforcement limits *[established for one or more pollutants, which are stipulated in an administrative order or an administrative consent order established by the Department or a local agency]* ***stipulated therein***.

7:14A-13.5 Permit-by-rule

(a) (No change.)

(b) Termination of eligibility for a permit-by-rule shall be as follows:

1. Based upon non-compliance with (c) below, the Department may terminate the eligibility of any indirect discharger for a permit-by-rule in those areas of the State where the Department is the Control Authority. Where eligibility for a permit-by-rule has been terminated by the Department, the indirect discharger shall apply for and is required to obtain a NJPDES/SIU Permit in accordance with N.J.A.C. 7:14A-10.5(c).

2. (No change.)

(c) (No change.)

7:14A-13.6 (Reserved)

7:14A-13.10 Requirements for delegated local agencies

(a) Starting January 1, 1992, and thereafter, each permitted facility discharging into the municipal treatment works of a delegated local agency, other than a facility discharging only stormwater or non-contact cooling water, shall be inspected by the delegated local agency at least once a year. The Department may inspect a facility required to be inspected by a delegated local agency. Exemption of stormwater facilities from the provisions of this paragraph shall not apply to any permitted facility discharging or receiving stormwater runoff having come into contact with a hazardous discharge site on the Federal National Priorities List adopted by the EPA pursuant to the "Comprehensive Environmental Response, Compensation, and Liability Act," Pub.L. 96-510 (42 U.S.C.A. section 9601 et seq.), or any other hazardous discharge site included by the Department on the master list for hazardous discharge site cleanups adopted pursuant to section 2 of P.L. 1982, c.202 (N.J.S.A. 58:10-23.16). An inspection required under this paragraph shall be conducted within six months following a permittee's submission of an application for a permit, permit renewal or issuance of a permit for a new facility, except that if for any reason, a scheduled inspection cannot be made, the inspection shall be rescheduled to be performed within 30 days of the originally scheduled inspection or, in the case of a temporary shutdown, of resumed operation. Inspections shall include:

1. A representative sampling of the effluent for each permitted facility, except that in the case of facilities that are not major facilities or significant indirect users, sampling pursuant to this paragraph shall be conducted at least once every three years;

2. An analysis of all collected samples by a certified laboratory other than one that has been used by the permittee, or that is directly or indirectly owned, operated or managed by the permittee;

3. An evaluation of the maintenance record of the permittee's treatment equipment;

4. An evaluation of the permittee's sampling techniques;

5. A random check of written summaries of test results, prepared by the certified laboratory providing the test results, for the immediately preceding 12-month period, signed by a responsible official of the certified laboratory, certifying the accuracy of the test results; and

6. An inspection of the permittee's sample storage facilities and techniques if the sampling ***is*** normally performed by the permittee.

(b) In addition, to the inspection requirements described under (a) above, all delegated local agencies shall inspect the facilities of all permittees identified as a significant noncomplier. This inspection under this paragraph shall be conducted within 60 days of receipt of the discharge monitoring report that initially results in the permittee being identified as a significant noncomplier. The inspection shall include a random check of written summaries of test results, prepared by the certified laboratory providing the test results, for the immediately preceding 12-month period, signed by a responsible official of the certified laboratory, certifying the accuracy of the test results. A copy of each summary shall be maintained by the permittee. The inspection shall be for the purpose of determining compliance and shall only be performed once each calendar year. A delegated local agency is not required to make an inspection hereunder if an inspection has been made pursuant to (a) above, within six months of the period within which an inspection is required to be conducted under (a) above.

(c) All delegated local agencies shall perform a complete priority pollutant analysis of the discharge from, and inflow to, the municipal treatment works. The analysis shall be performed by a delegated local agency at least once each calendar year unless more frequent analyses are required under the permit.

(d) A delegated local agency shall comply with the permit processing requirements for relaxing any water quality standard or effluent limitation under N.J.A.C. 7:14A-7.3(a)4.

(e) A delegated local agency shall afford an opportunity to the public to comment on a proposed administrative consent order, in accordance with N.J.A.C. 7:14-8.3A, if it would establish interim enforcement limits that would relax effluent limitations established in a permit or prior administrative consent order.

(f) Of the amount of any penalty assessed and collected pursuant to an action brought by a DTW in accordance with section 10 of P.L.1977, c.74 or section 6 of P.L.1990, c.28 (N.J.S.A. 58:10A-10.1), 10 percent shall be deposited in the Wastewater Treatment Operators' Training Account, established in accordance with section 13 of P.L.1990, c.28 (N.J.S.A. 58:10A-14.5), and used to finance the cost of training operators of municipal treatment works. The remainder shall be used by the DTW solely for enforcement purposes, and for upgrading municipal treatment works.

(g) Except as otherwise provided in section 3 of P.L.1963, c.73 (N.J.S.A. 47:1A-3), any records, reports, or other information obtained by a DTW pursuant to this paragraph or section 5 of P.L.1972, c.42 (N.J.S.A. 58:11-53), including any correspondence relating thereto, shall be available to the public, however, upon a showing satisfactory to the Commissioner by any person that the making public of any record, report or information, or a part thereof, other than effluent data, would divulge methods or processes entitled to protection as trade secrets, the Commissioner or DTW shall consider such record, report, or information, or part thereof, to be confidential, and access thereto shall be limited to authorized officers or employees of the Department, DTW, and the Federal government.

(h) A delegated local agency shall submit an annual report to the Department by February 1 of each year. The annual report shall include the following information:

1. Total number of permitted users;

2. Total number of unpermitted discharges;

3. Total number of new permits issued;

4. Total number of renewed permits issued;

5. Total number of permit modifications;

6. Total number of permits contested by the permittee or other parties;

7. Total number of compliance schedules adopted through administrative order, administrative consent order or other methods involving interim limits that relax permit limitations;

8. Total number of facilities inspected and sampled at least once;

9. Total number of pass throughs of pollutants;

10. Total number of permit violations, categorized as:

i. Reporting violations, including, but not limited to, late or non-submission of self-monitoring reports (SMRs), progress reports, spill reports, etc.;

ii. Effluent violations for hazardous pollutants;

iii. Effluent violations for non-hazardous pollutants;

11. Total number of effluent violations constituting serious violations, including violations that are being contested;

12. Total number of defenses for upsets, bypasses, testing or laboratory errors granted that involve serious violations;

13. Total number of users qualifying as significant noncompliers, including permittees contesting such designation;

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14. Total number of violations of administrative orders or administrative consent orders, including violations of interim limits, or of compliance schedule milestones for starting or completing construction, or for failing to attain full compliance;

15. Total number of violations of compliance schedule milestones for starting or completing construction, or attaining full compliance, that are out of compliance by 90 days or more from the scheduled date;

16. Total number of enforcement actions resulting from local agency inspections and samplings;

17. Total number of violations for which civil penalties, including civil penalties from a summons, or civil administrative penalties, have been assessed;

18. Total dollar amount of all penalties assessed;

19. Total dollar amount of enforcement costs recovered in a civil action or civil administrative action from a violator;

20. Total dollar amount of civil administrative penalties and civil penalties collected, including penalties for which a penalty schedule has been agreed to by the violator;

21. Total number of criminal actions filed by the Attorney General or county prosecutors;

22. A list of permittees qualifying as significant noncompliers, including address, permit number, brief description and date of each violation, date that the violation was resolved, and total number of violations committed by the permittee during the year;

23. A list of permittees at least six months behind in the construction phase of a compliance schedule, including address, permit number, brief description of the conditions violated and the cause for delay;

24. A list of permittees or the permittee's officers or employees convicted of criminal conduct, including address, permit number and a brief description and date of the violation or violations for which convicted;

25. A list of the specific purposes for which penalty monies collected have been expended, displayed in line-item format by type of expenditure and including, but not limited to, position numbers and titles funded in whole or in part from these penalty monies; and

26. Submission of results of the priority pollutant analysis of the discharge from, and inflow to, the municipal treatment works.

(i) All delegated local agencies shall limit concentrations of heavy metals, pesticides, organic chemicals and other contaminants in the sludge in conformance with the land-based sludge management criteria established by the Department in the Statewide Sludge Management Plan adopted pursuant to the "Solid Waste Management Act," P.L. 1970, c.39 (N.J.S.A. 13:1E-1 et seq.) or established pursuant to the Federal Act or any regulations adopted pursuant thereto.

7:14A-14.2 Definitions

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

. . .

"Oil and grease" includes the nonpetroleum-based pollutants of animal and vegetable origin, and petroleum-based pollutants, which are analyzed by method 413.1 for oil and grease referenced in 40 CFR Part 136 as of July 1, 1989, including subsequent amendments.

. . .

"Petroleum-based oil and grease" see petroleum hydrocarbons, below.

"Petroleum hydrocarbons" or "petroleum-based oil and grease" includes the petroleum-based pollutants analyzed by method 418.1 for petroleum hydrocarbons cited in Methods for Chemical Analysis of Water and Wastes, USEPA, Environmental Monitoring and Support Laboratory, Office of Research and Development, Cincinnati, OH, March 1983, including amendments and revisions.

. . .

"Working hours" means including and not limited to 8:00 A.M. through 5:00 P.M., Monday through Friday.

7:14A-14.3 (Reserved)

7:14A-14.4 Oil and grease effluent limitations

(a) Existing and new dischargers to surface waters shall discharge an effluent that does not:

1. Exhibit a visible sheen;

2. Exceed an average monthly oil and grease discharge limitation of 10 mg/l; and

3. Exceed a concentration of 15 mg/l oil and grease in any single sample.

(b) (No change.)

(c) Existing and new dischargers to surface waters, and petroleum-based oil and grease indirect dischargers with discharges resulting from precipitation events, shall operate a facility designed for the runoff characteristics of the site with adequate hydraulic capacity to meet the following effluent limitations for any single precipitation event, except when a rainfall intensity exceeds two (2.0) inches in an hour as recorded by the nearest National Weather Service station (United States Department of Commerce) or as recorded by the discharger's own calibrated rain gauge. Rainfall records shall be kept for review by the Department.

1. Existing ***or*** new dischargers to surface water shall discharge an effluent that does not exhibit a visible sheen and exceed a concentration of 15 mg/l in any single sample.

2. Indirect dischargers shall meet a maximum concentration of 150 mg/l.

(d) (No change.)

7:14A-14.5 Minimum monitoring and reporting requirements

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

(c) Discharges as a result of precipitation events from dischargers to surface waters and from SIU's required to obtain an individual NJPDES/SIU permit who discharge petroleum-based oil and grease shall be monitored in the following way:

1. The discharger shall monitor for oil and grease during the first precipitation event of the month which causes a discharge during working hours and which is preceded by a minimum dry period of 72 hours. Monitoring is dependent on the timing of precipitation events and will not necessarily be conducted at 30-day intervals.

2. During each precipitation event, the discharger shall take a sample 15 minutes after the onset of the discharge, and shall continue to take samples at 15 minute intervals, as long as the discharge continues, up to and including 45 minutes after the onset of the discharge.

3. (No change.)

(d)-(g) (No change.)

7:14A-14.6 Sampling protocol

(a) All samples shall be grab samples collected and stored in wide-mouth glass bottles approximately one-liter in volume and fitted with TEFLON®-lined screw caps or ground-glass stoppers.

1.-4. (No change.)

5. Samples shall be preserved by the addition of a sufficient amount pf HCl(1:1) for petroleum hydrocarbons, and either HCl(1:1) or H_2SO_4(1:1) for oil and grease, within four hours of collection to achieve a pH of less than 2, allowing time for any carbon dioxide to be released prior to capping the sample bottle.

i. (No change.)

ii. Holding time shall not exceed seven days for petroleum hydrocarbons, and 28 days for oil and grease.

(b) Representative grab samples taken from an open channel must be obtained at one of the following locations:

1. Where the Froude number equals or exceeds 1 at the time of sampling and at least 90 percent of the time when a discharge exists, computed according to the following formula:

$$Fr = V/(gy)^{1/2}$$

Where Fr = Froude number (dimensionless)

V = mean velocity of the fluid in the channel (ft/sec).

g = the acceleration of gravity (32.2 ft/sec^2).

y = Vertical depth of flow (ft).

2.-3. (No change.)

(c)-(e) (No change.)

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APPENDIX F
(RESERVED)

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.-8. (No change.)

9. Selected aspects of wastewater management, including *[NJPDES permittees required for certain new or expanded domestic treatment works;]* treatment works deemed to be consistent with WQM plans and this chapter; WQM Plan amendment requirements for treatment works not identified in WQM plans; construction of individual subsurface sewage disposal systems and other small domestic treatment works in future sewer service areas; and eligibility for financial assistance.

10.-12. (No change.)

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.

"BRC-regulated sewer or water utilities" means sewer utilities or water utilities regulated by the Board of Regulatory Commissioners 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 ***and Energy*** or his or her designee.

...

"Continuing planning process" or "CPP" means the Statewide planning process conducted by the Department of Environmental Protection ***and Energy*** as authorized in Section 7 of the Water Quality Planning Act (N.J.S.A. 58:11A-7).

...

"Department" means the New Jersey Department of Environmental Protection ***and Energy***.

...

["Director" means the Director of the Division of Water Resources.]

...

["Division" means the Division of Water Resources in the New Jersey Department of Environmental Protection.]

...

"ORP" means the Office of Regulatory Policy, or its successor, in the Department of Environmental Protection and Energy.

...

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 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]* ***Office of Regulatory Policy***, Department of Environmental Protection ***and Energy***, 401 East State Street, Trenton, New Jersey, or the Office of Administrative Law, Quakerbridge Plaza, Building 9, Trenton, New Jersey.

(b) (No change.)

(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)]***(e)*** 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) (No change.)

(e) Every county planning board may conduct a county-wide water quality management planning process and prepare a county WQM plan.

1. (No change.)

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]* ***ORP***, and to any designated planning agency whose designated area includes part or all of the subject geographic area.

3. (No change.)

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 an adopted WQM plan or with this chapter. For purposes of N.J.A.C. 7:15-3.1 and 3.2, "permit" includes permits, approvals, certifications, and similar actions. ***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.***

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

[(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.]

Recodify existing (e)-(h) as ***(d)-(g)*** (No change in text.)

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.-3. (No change.)

(b) (No change.)

(c) The Department shall perform consistency determination reviews in accordance with the following procedures:

1.-5. (No change.)

6. If a project or activity requires two or more Department permits, and if the Department makes a finding under (c)4 above for one of those permits, that finding shall be valid for the remaining Department permits unless:

i. (No change.)

ii. The Department denies a permit in response to comments received under N.J.A.C. 7:15-3.1*[(g)]***(f)***.

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 an informal discussion of the conflict under N.J.A.C. 7:15-3.1*[(h)]***(g)***.

7:15-3.4 Water quality management plan amendment procedures

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

(c) Areawide WQM plans for designated areas may be amended by designated planning agencies pursuant to their approved ***plan***

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amendment* 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]* ***Plan amendment procedures*** 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.-2. (No change.)

3. Allow the Department to identify governmental entities, sewerage agencies, and BRC-regulated sewer or water utilities that shall be requested to issue written statements of consent for proposed amendments, such parties being in addition to any governmental entities, sewerage agencies, and BRC-regulated sewer or water utilities identified by the designated planning agency.

4.-5. (No change.)

(e) (No change.)

(f) Within 15 days of approving an amendment, a designated planning agency shall submit to the *[BWQP]* ***ORP*** 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]* ***Office of Regulatory Policy, Department of Environmental Protection and Energy,*** CN *[029]* ***423***, Trenton, New Jersey 08625.

2. (No change.)

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 applicant shall request written statements of consent 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 30 days notice of the hearing.

4. Requirements concerning written statements of consent for 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 governmental entities, sewerage agencies, and BRC-regulated sewer or 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 issue written statements of consent for 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 issue written statements of consent for the proposed amendment within 60 days of their receipt of the request.

ii. A written statement of consent 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 statements of consent. A statement of consent by a governmental unit shall be in the form of a resolution by that unit's governing body. If the party objects in writing to the proposed amendment, the party shall state all reasons for objection in writing.

iii. The applicant shall promptly forward to the ORP a copy of all written statements of consent and other written comments received, and a copy of all requests for consent (with return receipts) sent to parties that did not provide written statements of consent or other written comments within 60 days of their receipt of such requests.

iv. Where a party identified under (g)4i above denies a request for a written statement of consent or does not issue a written statement of consent, the reasons therefor, if known on the basis of reasonably reliable information, 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 written statements of consent 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 persons, including, but not limited to, those from whom written statements of consent are requested under (g)4i or 5 above, may submit written comments to the ORP within 30 days of the date of the public notice. Interested 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 ORP within 30 days of the date of the public notice.

7. Interested persons may also request that the Department hold a non-adversarial public hearing; such requests shall be submitted in writing to the ORP 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. A public notice providing at least 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 party who was requested to issue a written statement of consent for the amendment. 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, 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 ORP.

8. If any data, information or arguments submitted during the public comment period or in response to a request for written statement of consent appear to raise substantial new questions concerning a proposed plan amendment, the Department may:

i.-iv. (No change.)

9.-11. (No change.)

(h) For amendments identified in (h)3 below, the Department 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 consent 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 consent to 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 pursuant to (g)3 above. The applicant shall promptly forward to the ORP a copy of all letters (with return

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receipts) sent to these parties under this paragraph. For sewers and pumping stations identified in (h)3ii below, written statements of consent 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 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]* ***ORP***;

ii. Submit written requests to the *[BWQP]* ***ORP*** that the Department extend the public comment period up to 30 additional days; or

iii. Submit written requests to the *[BWQP]* ***ORP*** that the Department hold a non-adversarial public hearing.

3. The modifications set forth in (h)1 and 2 above shall be used only for amendments whose sole purpose is to address the following projects:

i. (No change.)

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 consent 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 consent 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. (No change.)

(i)-(k) (No change.)

***(l) In preparing amendments to areawide WQM plans, the following policies shall be adhered to:**

1. Existing regional DTW shall be used where 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.*

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

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

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

(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 issue written statements of consent for such amendments under N.J.A.C. 7:15-3.4(g)3 and 4 or N.J.A.C. 7:15-3.4(d)3, as appropriate.

2. (No change.)

7:15-3.8 Validity of water quality management plan amendments

(a) (No change.)

(b) A proceeding to contest any WQM plan amendment adopted by the Governor or his designee prior to October 2, 1989, on the ground of noncompliance with the procedural requirements of this chapter as it existed prior to October 2, 1989, shall be commenced ***by*** October 2, 1990.

7:15-3.9 Appeals of Department decisions

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

(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]* ***Department*** upon formal rquest by the applicant.

(d)-(h) (No change.)

7:15-4.1 (Reserved)

7:15-4.3 Treatment works not identified in Water Quality Management Plans

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

*[(d) In preparing amendments to areawide WQM plans, the following policies shall be adhered to:

1. Existing regional DTW shall be used where 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.]*

7:15-5.4 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]* ***Department*** a resolution requesting such responsibility by December 1, 1989. 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.

7:15-5.6 Responsibility of sewerage authorities and municipal authorities

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

(d) The Department may, at any time, send a letter to any municipal authority, requesting that authority to declare in writing to the *[BWQP]* ***ORP*** 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 resposibility. 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)-(g) (No change.)

7:15-5.8 Responsibility of municipalities

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

(d) The Department may, at any time, send a letter to any municipality, requesting that municipality to declare in writing to the *[BWQP]* ***ORP*** 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 change.)

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]* ***Department*** by January 30, 1990:

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1.-3. (No change.)

(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]* ***ORP***, 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]* ***ORP*** within 120 calendar days of receiving such request.

(d) (No change.)

(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]* ***ORP***, 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) (No change.)

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.-2. (No change.)

3. Flood prone areas, based on the following information sources in order of preference:

i.-ii. (No change.)

[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.-7. (No change.)

7:15-5.18 Future wastewater jurisdictions, service areas, and domestic treatment works

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

(f) 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)-(i) (No change.)

7:15-5.22 Consultation and consent for wastewater management plans

(a) (No change.)

(b) Under N.J.A.C. 7:15-3.4(d)3 and (g)4, written statements of consent for wastewater management plans shall generally be requested from, at a minimum, the governing bodies of each of the governmental entities and sewerage agencies that are required to be notified under (a) above.

(c) (No change.)

7:15-5.23 Schedule for submission of wastewater management plans

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

(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 between *[Ocober]* ***October*** 3, 1994 through October 2, 1995, or within 12 months of the creation of the governmental unit, whichever is later.

(e)-(g) (No change.)

(h) The Department may at any time request a wastewater management planning agency to submit written reports on the progress that such agency is making in meeting its wastewater management plan responsibility. Such agency shall submit such reports to the *[BWQP]* ***ORP*** within 90 calendar days of receiving such requests.

(i)-(j) (No change.)

HEALTH

(a)

OFFICE OF HEALTH POLICY AND RESEARCH

Notice of Administrative Correction

Notice of Adoption Concerning N.J.A.C. 8:33C-10.1

Take notice that in the notice of adoption of N.J.A.C. 8:33C, found at 24 N.J.R. 3131(a), the Department of Health, in response to a comment by Morristown Memorial Hospital concerning N.J.A.C. 8:33C-10.1 at 24 N.J.R. 3136, incorrectly attributed certain staffing requirements to guidelines issued by the National Association of Children's Hospitals and Related Institutions. The Department is correcting this mischaracterization by reresponding to the comment. The response is found below and does not change the rule as it was adopted:

COMMENT: Morristown Memorial Hospital feels that in-house coverage of a neonatologist at a children's hospital is unwarranted and costly.

RESPONSE: Children's specialized hospitals are established to treat seriously ill children, including neonates. Therefore, it is necessary to have immediate access to highly trained professional medical staff to serve this population. This requirement reflects the coverage in existence in the currently designated children's hospital in New Jersey. There will be no change to this rule, or current practice, as a result of this comment.

(b)

DRUG UTILIZATION REVIEW COUNCIL

List of Interchangeable Drug Products

Adopted Amendments: N.J.A.C. 8:71

Proposed: November 2, 1992 at 24 N.J.R. 4009(a).

Adopted: January 5, 1993 by the Drug Utilization Review Council, Robert Kowalski, Chairman.

Filed: January 8, 1993 as R.1993 d.64, **with portions of the proposal not adopted but still pending.**

Authority: N.J.S.A. 24:6E-6(b).

Effective Date: February 1, 1993.

Expiration Date: February 17, 1994.

Summary of Public Comments and Agency Responses:

The Drug Utilization Review Council received the following comments pertaining to the proposed products affected by this adoption.

COMMENT: (From Procter and Gamble Pharmaceuticals, in opposition to Danbury Pharmacal's nitrofurantoin 50 mg and 100 mg capsules.) Procter and Gamble informed the Council that Danbury has not received FDA approval for its generic version of Macrodantin and, therefore, no action can or should be taken on this product.

RESPONSE: The Council verified that Danbury's nitrofurantoin product had received approval for marketing from the FDA. Based on

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the supporting bioequivalency data, the Council accepted Danbury's product as a generic substitute for the brand, Macrodantin.

COMMENT: (From McNeil Pharmaceutical, in opposition to Danbury Pharmacal's tolmetin 200 mg tablets and 400 mg capsules.) McNeil informed the Council that Danbury has not received FDA approval for the aforementioned generic versions of Tolectin and, therefore, no action can or should be taken on this product.

RESPONSE: The Council deferred action until FDA approval is obtained.

COMMENT: (From Procter and Gamble Pharmaceuticals in opposition to Trinity's Entex PSE substitute tablets.) Procter and Gamble informed the Council that Entex PSE is a controlled-release product which uses a patented Hydrobid matrix delivery system that regulates delivery of the active drugs, guaifenesin 600 mg and pseudoephedrine HCl 120 mg. Procter and Gamble explained there is a potential bioavailability problem of dose-dumping with generic products where bioequivalency has not been demonstrated.

Since bioequivalency data has not been produced to support Trinity's product, Procter and Gamble requested that the product be rejected.

RESPONSE: The Council deferred this product, pending the receipt of supporting bioequivalency data.

COMMENT: (From Boots Pharmaceuticals, in opposition to Mova Pharmaceuticals levothyroxine tablets.) Boots' comment addressed three areas: (1) the regulatory status of levothyroxine, (2) DURC drug evaluation and acceptance criteria, and (3) problems with Mova's clinical study.

Boots reminded the Council that levothyroxine products are not scrutinized by the FDA through the new drug application process. Also, the FDA had not evaluated the bioequivalency of any levothyroxine product, therefore, they are not rated by the FDA nor included in the "Orange Book."

Boots' interpretation of the Drug Evaluation and Acceptance Criteria (N.J.A.C. 8:70-1.1 to 1.4) was that necessary bioequivalency data includes C-max, T-max and AUC parameters. Boots also suggested that the Council should consider other relevant criteria, such as: double-blind crossover design, randomization, multiple blood sampling, hypothyroidism documentation, six weeks to reach steady state, no concomitant medications, and stable baseline measurements.

Boots pointed out several violations of Mova's study protocol: 52 percent had abnormal baseline thyroid function tests; levothyroxine dosages were adjusted in 20 of the subjects within two weeks prior to entering the study; subjects were not within 25 percent of the recommended dose based on weight; abnormal laboratory values were detected in all subjects; a 50 percent incidence of adverse events; time interval for cross over was only 28 days; potential drug-drug interactions; the study was not blinded; blood samples were taken only at weeks four and eight; AUC, C-max & T-max were not measured; and a "period" effect was in the statistical analysis of the data.

Boots concluded that no meaningful conclusions regarding the clinical usefulness or comparative bioavailability of the study drugs can be derived from Mova's data.

RESPONSE: The Council deferred action on Mova's levothyroxine tablets, to allow further analysis of the data and the presentation of expert testimony.

COMMENT: Lederle recapitulates the lack of regulatory authority for levothyroxine products. Lederle also points out that the USP requirements were modified in 1982 and that manufacturers were permitted to reformulate their products without demonstrating bioequivalency from old to new. Lederle suggested that a formulation change in the brand, Synthroid, occurred in 1982 and was studied by independent investigators after clinical reports of difficulties with the new formulation were published.

Lederle's interpretation of the Drug Evaluation and Acceptance Criteria (N.J.A.C. 8:70-1.1 to 1.4) is that the Council accepts scientifically valid data for the evaluation of therapeutic equivalence. Lederle claims that bioequivalency data is required only for compounds with a potential bioequivalency problem. Lederle explains that all problems with levothyroxine products were attributed to potency and not bioequivalency.

Lederle rebutted Boots' comments concerning violations of Mova's study protocol: Lederle stated that all subjects had clinically controlled hypothyroidism and abnormal baseline values were judged clinically insignificant. TSH level is an extremely variable parameter to measure and evaluate statistically. The coefficients of variations for TSH levels range from 30 percent to 200 percent. T3, T4 and FTI were much more controlled or exhibited the same variability in subjects when taking both brand and generic products. Dosing by weight is only for initiating therapy, then the dose is titrated based on clinical and laboratory responses. Cholesterol, triglyceride, glucose and creatinine values did not vary between treatments, and are of no clinical significance. Reported adverse experience were equal between treatment groups and none were attributed to the study drugs. Several studies support a four-week treatment phase for detecting potency differences. Concomitant medications were kept on stable doses throughout the study. Subjective outcome criteria agree strongly with objective criteria determined by blinded laboratory personnel. Studies using multiple sampling did not provide additional useful data. AUC, C-max and T-max are less reliable indicators of bioequivalence than clinically relevant steady-state trough measurements in patients. In addition, standard pharmacokinetic analysis for a drug which is an endogenous compound is difficult. The endogenous conversion of T3 to T4 also complicates pharmacokinetic analysis. The period effect analysis was determined to be not relevant, since all subjects did not start the study simultaneously. Lastly, Lederle informs the Council that Mova's levothyroxine is bioequivalent, based on the FDA's "Orange Book" definition of bioequivalency.

RESPONSE: The Council deferred action on Mova's levothyroxine tablets to allow further analysis of the data and the presentation of expert testimony.

COMMENT: (From Daniels Pharmaceuticals, in opposition to Mova Pharmaceuticals' levothyroxine tablets.)

Daniels notes that both the scientific community and the FDA require at least two independent clinical studies to establish a proposition concerning the efficacy or safety of a drug product. Daniels suggests that the Council should seek corroboration of the Mova levothyroxine study in a second study before including this product in the Formulary.

RESPONSE: The Council deferred action on Mova's levothyroxine tablets to allow further analysis of the data and the presentation of expert testimony.

Summary of Hearing Officer's Recommendations and Agency Responses:

A public hearing on the proposed additions to the list of interchangeable drug products was held on November 23, 1992. Mark A. Strollo, R.Ph., M.S., served as hearing officer. Seven persons attended the hearing. Six comments were submitted. The hearing officer recommended that the decisions made be based upon available biodata. The Council adopted the products specified as "adopted," and referred the products identified as "pending" for further study.

The following products and their manufacturers were **adopted**:

Benzonatate capsules 100mg	Pharmacaps
Clofibrate caps 500mg	Novopharm
Diflusinal tabs 250mg, 500mg	West Point
Doxycycline hyclate caps 100mg	W-C
Erythromycin delayed release capsule 250mg	Faulding
Gemfibrozil tabs 600mg	W-C
Granulex spray substitute	PEL Associates
Iodinated glycerol tabs 30mg	Trinity
Metaproterenol sulfate syrup 10mg/5ml	Silarx
Nitrofurantoin capsules 25mg, 50mg, 100mg	Danbury
Phenazopyridine tabs 100mg, 200mg	Trinity
Pindolol tabs 5mg, 10mg	Mylan
Potassium Cl oral sol. 10%	Forest
Potassium Cl powder 20mEq/packet	Forest
Theophylline elixir 80mg/15ml	Forest
Theophylline with KI elix. 80mg with 130mg/15ml	Forest
Urised tablets substitute	Trinity

The following products were **not adopted but are still pending**:

Amoxapine tablets 25mg, 50mg, 100mg, 150mg	Danbury
Atenolol tablets 25mg	Danbury
Bromocriptine mesylate tabs 2.5mg	Danbury
Carbidopa/levodopa tabs 10/100, 25/100, 25/250	Purepac
Clorazepate dipotassium tablets 15mg	Danbury
Clorazepate dipotassium tablets 3.75mg	Danbury
Clorazepate dipotassium tablets 7.5mg	Danbury
Desipramine HCl tabs 10mg, 25mg, 50mg	Danbury
Desipramine HCl tabs 75mg, 100mg, 150mg	Danbury
Entex PSE tablets substitute	Trinity
Fiorinal tablet substitute	Danbury
Fluphenazine HCl tabs 1mg, 2.5mg, 5mg, 10mg	Danbury
Gemfibrozil capsules 300mg	Danbury

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Guaifenesin LA tablets 600mg	Trinity
Ibuprofen tablets 300mg	Danbury
Isosorbide dinitrate tablets 20mg, 30mg, 40mg	Danbury
Leucovorin calcium tablets 5mg, 25mg	Danbury
Levothyroxine sodium tabs 125mcg, 150mcg	Mova
Levothyroxine sodium tabs 200mcg, 300mcg	Mova
Levothyroxine sodium tabs 25mcg, 50mcg	Mova
Levothyroxine sodium tabs 75mcg, 100mcg	Mova
Loperamide capsules 2mg	Danbury
Loxapine succinate caps 5mg, 10mg, 25mg, 50mg	Danbury
Methylprednisolone tablets 4mg, 16mg	Danbury
Metoclopramide HCl tabs 10mg	Mutual
Metoclopramide HCl tabs 5mg	Danbury
Metoprolol tabs 50mg, 100mg	Mutual
Minocycline HCl tablets 50mg, 100mg	Danbury
Nadolol tablets 40mg, 80mg, 120mg	Danbury
Pindolol tabs 5mg, 10mg	Lemmon
Pindolol tabs 5mg, 10mg	Mutual
Piroxicam caps 10mg, 20mg	Novopharm
Propantheline Br tablets 15mg	Danbury
Propoxyphlene napsylate/APAP tablets 100/650	Danbury
Spironolactone tablets 25mg, 50mg, 100mg	Danbury
Spironolactone/HCTZ tablets 50/50	Danbury
Temazepam caps 15mg, 30mg	Danbury
Timolol maleate tabs 5mg, 10mg, 20mg	Novopharm
Tolmetin sodium capsules 400mg	Danbury
Tolmetin sodium tablets 200mg	Danbury
Trazodone HCl tablets 150mg	Danbury

(a)

DRUG UTILIZATION REVIEW COUNCIL
List of Interchangeable Drug Products
Adopted Amendments: N.J.A.C. 8:71

Proposed: May 4, 1992 at 24 N.J.R. 1674(a).
Adopted: January 5, 1993 by the Drug Utilization Review Council, Robert Kowalski, Chairman.
Filed: January 8, 1993 as R.1993 d.65, **with portions of the proposal not adopted but still pending.**
Authority: N.J.S.A. 24:6E-6(b).
Effective Date: February 1, 1993.
Expiration Date: February 17, 1994.

Summary of Public Comments and Agency Responses:
The Drug Utilization Review Council did not receive any comments pertaining to the product affected by this adoption.

Summary of Hearing Officer's Recommendations and Agency Responses:
A public hearing on the proposed additions to the list of interchangeable drug products was held on May 26, 1992. Mark A. Strollo, R.Ph., M.S., served as hearing officer. Ten persons attended the hearing. Four comments were offered, as summarized in previous issues of the New Jersey Register (see 24 N.J.R. 2557(b) and 4260(b)). The hearing officer recommended that the decisions made be based upon available biodata. The Council adopted the products specified as "adopted," and referred the products identified as "pending" for further study.

The following product and its manufacturer was **adopted**:

Berocca tabs substitute	Pioneer

The following products were **not adopted but are still pending**:

Amoxicillin caps 250, 500 mg	Atral
Ketoprofen caps 25 mg, 50 mg, 75 mg	Lederle
Lactulose soln 10g/15ml	Technilab
Metoclopramide HCl syrup 5mg/5ml	Lemmon
Metoprolol tartrate tabs 100 mg	Geneva
Metoprolol tartrate tabs 50 mg	Geneva
Piroxicam caps 10 mg, 20 mg	Royce
Sucralfate tabs 1g	Blue Ridge Labs
Vancomycin HCl oral soln powder 1g, 2g, 5g	Lederle

OFFICE OF ADMINISTRATIVE LAW NOTE: See related notices of adoption at 24 N.J.R. 2557(b), 3173(a) and 4260(b).

(b)

DRUG UTILIZATION REVIEW COUNCIL
List of Interchangeable Drug Products
Adopted Amendments: N.J.A.C. 8:71

Proposed: September 8, 1992 at 24 N.J.R. 2997(a).
Adopted: January 5, 1993 by the Drug Utilization Review Council, Robert Kowalski, Chairman.
Filed: January 8, 1993 as R.1993 d.66, **with portions of the proposal not adopted but still pending.**
Authority: N.J.S.A. 24:6E-6(b).
Effective Date: February 1, 1993.
Expiration Date: February 17, 1994.

Summary of Public Comments and Agency Responses:
The Drug Utilization Review Council received the following comments pertaining to the products affected by this adoption.

COMMENT: (From Dupont Pharmaceuticals in opposition to TEVA/Lemmon Company's carbidopa/levodopa 10/100, 25/100 & 25/250 tablets.) Dupont pointed out that biodata has not been submitted for the 10/100 and 25/100 tablets to establish bioequivalency. Dupont contended that a waiver based on proportionally similar ingredients would not be appropriate, since the excipients and active ingredients are not proportional to the 25/250 tablets.

Dupont informed the Council of the importance of the bioavailability of levodopa in the clinical management of Parkinson's disease. Dupont asserts that differences in peak plasma concentrations between the brand and generic could cause significant adverse reactions in patients in advanced stages of disease and necessitate reevaluation.

It is Dupont's position that a metabolite of levodopa, 3-0-methyldopa, should have been measured in TEVA/Lemmon's biostudy since it effects the bioavailability.

Dupont suggested that the TEVA/Lemmon's biostudy design for establishing bioequivalency should have been a multiple dose study in more appropriate subjects such as elderly Parkinson's patients. Dupont contended that the pharmacokinetics properties of levodopa differs between young healthy subjects and elderly Parkinson patients.

RESPONSE: The Council verified that all required information concerning the TEVA carbidopa/levodopa products had been submitted and received. After a review of the bioequivalency data, FDA biostudy guidelines, marketing information and expert testimony, the Council accepted TEVA's carbidopa/levodopa tablets as a generic substitute for the brand, Sinemet.

COMMENT: (From Lemmon Company in support of the TEVA/Lemmon Company's carbidopa/levodopa 10/100, 25/100 & 25/250 tablets.) Additional biodata for the carbidopa/levodopa 25/100 tablets was submitted, as well as a comparative dissolution profile for the 10/100 strength tablet. Lemmon noted that a waiver was granted for *in vivo* biodata on the carbidopa/levodopa 10/100 tablets, based on the dissolution data.

Lemmon confirmed that it has met all FDA bioequivalency requirements for this product, which addresses any concern of its bioavailability in treating Parkinson disease.

Lemmon noted that the FDA did not find the measurement of 3-0-methydopa to be significant. Lemmon questioned the relevance of measuring this metabolite, since bioavailability of its parent compound, levodopa, is measured.

Lemmon concluded that there are no requirements for biostudies to be conducted in targeted populations and noted that the Council has never required protocols over and above those used by the FDA.

RESPONSE: The Council agreed with the comments submitted by Lemmon Company. After a review of the bioequivalency data, FDA biostudy guidelines, marketing information and expert testimony, the Council accepted TEVA's carbidopa/levodopa tablets as a generic substitute for the brand, Sinemet.

Summary of Hearing Officer's Recommendations and Agency Responses:
A public hearing on the proposed additions to the list of interchangeable drug products was held on October 5, 1992. Mark A.

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Strollo, R.Ph., M.S., served as hearing officer. Two persons attended the hearing. Four comments were submitted, as summarized in a previous notice of adoption (see 24 N.J.R. 4261(a)). The hearing officer recommended that the decisions made be based upon available biodata. The Council adopted the products specified as "adopted," and referred the products identified as "pending" for further study.

The following products and their manufacturers were **adopted**:

Carbidopa/levodopa tabs 10/100, 25/100, 25/250	TEVA
Clofibrate caps 500 mg	Pharmacaps

The following products were **not adopted but are still pending**:

Albuterol sulfate inh. soln. 0.083%	Copley
Amiloride/HCTZ 5/50 tabs	Danbury
Atenolol tabs 50 mg, 100 mg	W-C
Betamethasone dipropionate cream 0.05%	ICN
Cephalexin caps 250 mg, 500 mg	Yoshitomi
Deconamine SR caps substitute	Nutripharm
Fluocinonide cream 0.05%	ICN
Granulex spray substitute	Topi-cana
Hydrocortisone cream 2.5%	ICN
Naproxen sodium tabs 275mg, 550mg	Danbury
Naproxen tabs 250mg, 375mg, 500mg	Danbury
Nitrofurantoin caps 50mg, 100mg	Zenith
Piroxicam caps 10 mg, 20 mg	Copley
Singlet caplet substitute	Nutripharm
Singlet LA caplet substitute	Nutripharm
Triamterene/HCTZ 37.5/25 tabs	Danbury

OFFICE OF ADMINISTRATIVE LAW NOTE: See related notice of adoption at 24 N.J.R. 4261(a).

(a)

DRUG UTILIZATION REVIEW COUNCIL

List of Interchangeable Drug Products

Adopted Amendments: N.J.A.C. 8:71

Proposed: July 6, 1992 at 24 N.J.R. 2414(b).
Adopted: January 5, 1993 by the Drug Utilization Review Council, Robert Kowalski, Chairman.
Filed: January 8, 1993 as R.1993 d.67, **with portions of the proposal not adopted but still pending.**
Authority: N.J.S.A. 24:6E-6(b).
Effective Date: February 1, 1993.
Expiration Date: February 17, 1994.

Summary of Public Comments and Agency Responses:
There were no comments submitted pertaining to the proposed products affected by this adoption.

Summary of Hearing Officer's Recommendations and Agency Responses:
A public hearing on the proposed additions to the list of interchangeable drug products was held on August 3, 1992. Mark A. Strollo, R.Ph., M.S., served as hearing officer. Two persons attended the hearing. No comments were submitted. The hearing officer recommended that the decisions made be based upon available biodata. The Council adopted the products specified as "adopted," and referred the products identified as "pending" for further study.

The following products and their manufacturers were **adopted**:

Loperamide HCl caps 2 mg	Geneva
Ketoprofen caps 25 mg, 50 mg, 75 mg	Biocraft

The following products were **not adopted but are still pending**:

Acetazolamide tabs 250 mg	ALRA
Atenolol tabs 25 mg	Geneva
Atenolol tabs 50 mg, 100 mg	Novopharm
Clemastine fumarate tabs 1.34 mg, 4.68 mg	Geneva
Clonidine HCl/chlorthalidone tabs 0.1/15 mg	Geneva
Clonidine HCl/chlorthalidone tabs 0.2/15 mg	Geneva
Clonidine HCl/chlorthalidone tabs 0.3/15 mg	Geneva
Clorazepate tabs 3.75 mg, 7.5 mg, 15 mg	ALRA
Diltiazem tabs 30 mg, 60 mg, 90 mg, 120 mg	Mutual
Fenoprofen caps 300 mg	W-C
Fenoprofen tabs 600 mg	W-C
Ibuprofen tabs 400 mg, 600 mg, 800 mg	ALRA
Imipramine tabs 10 mg, 25 mg, 50 mg	ALRA
Lactulose syrup 10g/15ml	ALRA
Loxapine caps 5 mg, 10 mg, 25 mg, 50 mg	Geneva
Metoclopramide tabs 5 mg	Biocraft
Naproxen sodium tabs 275 mg, 550 mg	Mutual
Naproxen tabs 250 mg, 375 mg	Mutual
Nucofed expectorant substitute	LuChem
Pediazole suspension substitute	ALRA
Potassium bicarbonate effervescent tabs 25 mEq	ALRA
Sucralfate tabs 1 gm	Biocraft
Tolbutamide tabs 500 mg	ALRA
Tolmetin sodium caps 400 mg	Geneva
Tolmetin sodium caps 400 mg	Lemmon
Triamterene/HCTZ tabs 37.5/25 mg	Geneva

OFFICE OF ADMINISTRATIVE LAW NOTE: See related notices of adoption at 24 N.J.R. 3174(c), 3728(a) and 4262(a).

HUMAN SERVICES

(b)

DIVISION OF MENTAL HEALTH AND HOSPITALS

Patient Supervision at State Psychiatric Hospitals

Readoption with Amendments: N.J.A.C. 10:36

Proposed: November 16, 1992 at 24 N.J.R. 4232(a).
Adopted: December 28, 1992 by William Waldman, Acting Commissioner, Department of Human Services.
Filed: December 29, 1992 as R.1992 d.58, **without change.**
Authority: N.J.S.A. 30:1-12 and 30:4-27.21a.
Effective Date: December 29, 1992, Readoption;
February 1, 1993, Amendments.
Expiration Date: December 29, 1997.

Summary of Public Comments and Agency Responses:
No comments were received.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 10:36.

Full text of the adopted amendments follows.

10:36-1.1 Introduction and purpose
(a)-(b) (No change.)
(c) The Interdisciplinary Treatment Team will determine the appropriate level for each patient upon admission with periodic review of the assigned level during the course of hospitalization. Level determinations will be made in accordance with guidelines set forth herein. Treatment teams should utilize these guidelines to promote increased responsibility, accountability and independence on the part of the patient while decreasing structure and intensity of supervision provided by the staff. Incremental steps taken towards this goal should be viewed as part of a continuum that progresses through each level of the system.
(d) (No change.)

10:36-1.2 General provisions
(a) (No change.)
(b) All "Not Guilty by Reason of Insanity and Incompetent to Stand Trial" status patients and others identified as appropriate for special treatment review procedures must have court approval prior to implementation of an increase in level recommended by the treatment team. Each hospital may determine whether the Interdisciplinary Treatment Teams need administrative approval in addition to court approval for their Level of Supervision determinations for these patients and, if so, in what manner the administrative approval shall be obtained.

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(c)-(h) (No change.)

10:36-1.3 Procedures

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

(c) Each patient's level will be evaluated minimally in accordance with the treatment plan review schedule or sooner if clinically indicated or requested by the patient. The treatment plan review schedule shall minimally comply with the standards set by the applicable accrediting body for the hospital.

(d)-(e) (No change.)

(f) All patients ordered "Conditional Extension Pending Placement" by the court will be considered to be on LEVEL IV unless there is documentation in the clinical record to show that the responsible treatment team has identified clinical considerations which require and justify that the patient be placed at a level which provides the necessary structure and supervision. In such instances, a treatment team note shall be entered into the clinical record which documents the clinical considerations which justify the level determined necessary by the treatment team.

10:36-1.4 Level I definition, criteria and program structure

(a) (No change.)

(b) Mental condition criteria include, but are not limited to:

1. Suicidal/homicidal ideation or behavior (High Suicide Risk);
2. Severe impulse control problems;
3. Imminent arson risk;
4. So severely confused or disoriented as to be unable to adjust to unfamiliar surroundings;
5. So grossly psychotic or mood disordered that an imminent risk of harm to self or others is present; and
6. High elopement/walkaway risk as indicated by verbal intent and/or recent history.

(c)-(d) (No change.)

10:36-1.5 Level II definition, criteria and program structure

(a) (No change.)

(b) Mental condition criteria include, but are not limited to:

1. No longer high suicide, elopement/walkaway, medical or assault risk;
2. Follows general directions and generally attends onward therapies and programs on a regular basis;
3. Psychotic symptoms or mood disturbances may be present but does not act in response to them in such a way as to create an imminent risk of harm;
4. Mildly confused and disoriented but able to adapt to unfamiliar surroundings; and
5. Able to control impulses except when severely stressed.

(c)-(d) (No change.)

10:36-1.6 Level III definition, criteria, and program structures

(a) (No change.)

(b) Mental condition criteria include, but are not limited to:

1. Absence of psychotic or mood disordered symptoms, or if chronic residual symptoms are still present, does not act in response to them;
2. Oriented and aware of surroundings;
3. Cooperative with established plan and schedule of activities;
4. Appropriate on and off ward behavior resulting in no precautions for a certain number of day/weeks (to be set by treatment team);
5. Minimal elopement/walkaway risk;
6. Able to control impulses except when severely stressed; and
7. If recent behavior indicates substance abuse risk, is willing to agree to search upon return if team determines necessary and documents in master treatment plan.

(c)-(d) (No change.)

10:36-1.7 Level IV definition, criteria and program structure

(a) (No change.)

(b) Mental condition criteria include, but are not limited to:

1. No recent instances of substance abuse;
2. Oriented to and capable of utilizing community or transportation services;
3. Resident exhibits sound judgement under reasonable conditions; and
4. Resident exhibits accountability and responsibility through adherence to treatment plan program schedule.

(c)-(d) (No change.)

10:36-2.1 Statement, purpose, and scope

(a) (No change.)

(b) The purpose of this procedure is to establish a mechanism which provides a comprehensive review of the clinical treatment and management of special status patients through insuring appropriate treatment interventions, levels of supervision and planning at the time of movement to less restrictive settings, decrease of structures and security, or discharge. However, nothing in these procedures is intended to alter the responsibility of hospital staff to comply with the provisions of valid court orders regarding specific patients.

(c) (No change.)

10:36-2.2 Committee composition

(a) (No change.)

(b) The composition of the Special Status Patient Clinical Review Committee should include, but need not be limited to: the Medical Director or Chief of Psychiatry, the Director of Psychology, the Director of Nursing Services, the Director of Rehabilitation Services, and the Director of Social Services. These individuals may appoint designees to the committee.

10:36-2.3 Procedures

(a)-(f) (No change.)

(g) The Clinical Director will periodically attend Clinical Review Committee meetings in his or her institution in order to monitor the thoroughness and quality of clinical recommendations and compliance with this policy and procedure. Additionally, the Quality Assurance Department within each hospital shall also monitor the hospital's compliance with the rules within this subchapter.

(a)

DIVISION OF FAMILY DEVELOPMENT

Food Stamp Program

Miscellaneous Program Requirements

Adopted New Rules: N.J.A.C. 10:87-2.39 and 6.20

Adopted Amendments: N.J.A.C. 10:87-2.4, 2.6, 2.31, 3.8, 3.14, 4.1, 4.8, 5.1, 5.9, 5.10, 6.9, 10.3, 10.6, 10.18, 11.26, 11.29 and 12.1

Proposed: September 21, 1992 at 24 N.J.R. 3207(b).

Adopted: January 5, 1993 by William Waldman, Acting Commissioner, Department of Human Services.

Filed: January 6, 1993 as R.1993 d.62, **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. 30:4B-2; 7 CFR Parts 273 and 274; P.L. 101-624, P.L. 100-649, P.L. 100-485, P.L. 100-426, P.L. 101-508, P.L. 100-435, P.L. 101-392, *West v. USDA,* U.S. Court of Appeals Third District (June 30, 1989), and P.L. 102-237.

Effective Date: February 1, 1993.

Expiration Date: January 27, 1994.

Summary of Public Comments and Agency Responses:

COMMENT: Somerset County Board of Social Services commented that the proposed statement "HEA benefits shall not be considered when making the comparison between energy assistance and utility expenses" is unnecessary in N.J.A.C. 10:87-5.10(a)5iv(8). The county welfare agency noted that a food stamp household which receives Home Energy Assistance (HEA) is automatically entitled to the Food Stamp Heating Utility Allowance (HUA) under N.J.A.C. 10:87-5.10(a)5iv(E), so there is no need to determine that a food stamp household receiving HEA would otherwise be entitled to the HUA.

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RESPONSE: The Department agrees with the commenter, and is deleting the aforementioned sentence from the proposed amendment at N.J.A.C. 10:87-5.10(a)5iv(8).

Full text of the adoption follows (deletions from proposal indicated in brackets with asterisks *[thus]*):

10:87-2.4 Residents of institutions and homeless individuals defined

(a) Individuals shall be considered residents of an institution when the institution provides them with the majority of their meals (over 50 percent of three meals daily) as part of the institution's normal services. Residents of institutions are not eligible for participation in the Food Stamp Program, with the following exceptions:

1.-2. (No change.)

3. Group living arrangements: Blind and/or disabled individuals who meet the definition of N.J.A.C. 10:87-2.38 and who reside in a public or private nonprofit group living arrangement that serves no more than 16 residents (see N.J.A.C. 10:87-2.7(f));

4.-5. (No change.)

(b) (No change.)

10:87-2.6 Head of household

(a) (No change.)

(b) For purposes of failure to comply with work registration, work and training requirements, and voluntary quit provisions, the head of household shall be considered to be the principal wage earner.

1. Principal wage earner: The principal wage earner shall be the household member (including excluded members, see N.J.A.C. 10:87-2.3(c)) who has the greatest source of earned income in the two months prior to the month of the work registration, work or training requirement or voluntary quit violation. This provision applies only if the employment involves 20 hours or more per week or provides weekly earnings at least equivalent to the Federal minimum wage multiplied by 20 hours.

i. (No change.)

ii. If there is no principal source of earned income in the household, the CWA shall determine who is the designated head of household as specified in (a) above. Additionally, a household may select an adult member with children as its head provided that all adult members agree to the selection. If the household either does not qualify to select its head, or does not opt to select its head, then all other rules in this subsection will be applied. The household may designate its head each time the household is certified, but may not change the designation during the certification period unless there is a change in household composition.

iii.-iv. (No change.)

10:87-2.31 Delays in processing

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

(c) Determining cause: The CWA shall determine the cause of the delay. A delay shall be considered the fault of the household if the household has failed to complete the application process even though the CWA has taken all the action required to assist the household. The CWA must have taken the following actions before a delay can be considered the fault of the household:

1.-2. (No change.)

3. Incomplete verification: In cases where verification is incomplete, the CWA must have provided the household with a Notice of Required Verification (Form FSP-33) offered to assist the household in obtaining required verification, and allowed the household sufficient time to provide the missing verification.

4.-5. (No change.)

(d)-(g) (No change.)

10:87-2.39 Categorically eligible GA households

(a) Any household, except those listed in (c) below, in which all members are authorized to receive GA benefits shall be considered categorically eligible for the Food Stamp Program. In addition, households comprised entirely of AFDC, SSI and/or GA recipients shall be categorically eligible for food stamp benefits.

(b) No individual shall be included as a member of an otherwise categorically eligible GA household if that individual is:

1. An ineligible alien, as defined at N.J.A.C. 10:87-3.9;

2. A student that does not meet the criteria at N.J.A.C. 10:87-3.14;

3. Disqualified for failure to provide or apply for a Social Security Number, as required by N.J.A.C. 10:87-3.15;

4. A household member not the household head, disqualified for failure to comply with a work registration requirement;

5. Disqualified for Intentional Program Violation; or

6. A resident of a non-exempt institution.

(c) A household shall not be considered as GA categorically eligible if:

1. It refuses to cooperate in providing information to the CWA which is necessary for making a determination of its eligibility or for completing any subsequent review of its eligibility;

2. The household is disqualified because the head of household failed to comply with a work registration requirement;

3. The household is ineligible under the striker provisions; or

4. The household is ineligible because it knowingly transferred resources for the purpose of qualifying or attempting to qualify for the Food Stamp Program.

(d) In determining whether a household is categorically eligible, the CWA shall verify that each member receives AFDC, SSI, or GA benefits, and that it includes no individuals who have been disqualified as described at (b) above. The CWA shall also verify household composition if it is questionable in order to determine that the household meets the definition of a household at N.J.A.C. 10:87-2.2.

(e) When determining the eligibility of a GA categorically eligible household, all Food Stamp Program requirements shall apply except the following:

1. None of the provisions of N.J.A.C. 10:87-4 (Financial Eligibility Resources) apply to categorically eligible households, with the exception of N.J.A.C. 10:87-4.1(b) (categorical eligibility provision) and 4.14 through 4.20 (transfer of resources). The provision at N.J.A.C. 10:87-6.8 shall not be applied to categorically eligible households;

2. With the exception of N.J.A.C. 10:87-5.1(b), none of the provisions of N.J.A.C. 10:87-5.1 (gross and net income limits) apply to categorically eligible households;

3. The provision at N.J.A.C. 10:87-6.5(c) which allows the CWA to deny the application of a household which is program eligible, but is entitled to no benefit because its net income exceeds the level at which benefits are issued, shall not be applied to categorically eligible households. The provisions at N.J.A.C. 10:87-6.20 shall be applied to categorically eligible households that are entitled to no benefit; and

4. Sponsored alien information, which otherwise is required under N.J.A.C. 10:87-2.20(b) and 7.18(f).

10:87-3.8 Eligible aliens; listing

(a) With the provision that all other eligibility requirements are met, the following aliens shall be eligible for participation in the Food Stamp Program:

1.-7. (No change.)

8. An alien who is defined as aged, blind or disabled in accordance with section 1614(a)(1) of the Social Security Act and is considered to be lawfully admitted for temporary residence pursuant to section 245A(b)(1) of the Immigration and Nationality Act. (Such aliens may obtain lawful permanent resident status under section 245A(b)(1) of the Immigration and Nationality Act no earlier than November 7, 1988). A maximum of 12 months in restored benefits shall be provided, upon request, to any aged, blind, or disabled person who was denied benefits because he or she was admitted for temporary residence under Section 245A(b)1 of the INA;

9.-11. (No change.)

(b) When an alien described at (a)9 above acquires permanent resident status, the family members of that alien acquire permanent resident status and can be included in the alien's household for food stamp purposes. This provision conforms with Section 301(d) of P.L. 100-649.

10:87-3.14 Procedures for students in an institution of higher education

(a) A student in an institution of higher education defined is any person who is between the ages of 18 and 50 who is physically and

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mentally fit and is enrolled at least half time in an institution of higher education. Excluded from this definition are persons who are attending high school, participating in on-the-job training programs and training programs which are not institutions of higher education.

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

(d) Student eligibility requirements: In order to be eligible to participate in the Food Stamp Program, any student (as defined in (a) above) must meet at least one of the following criteria:

1. (No change.)

2. Participate in a federally financed work study program (funded in full or in part under Title IV-C of the Higher Education Act of 1965 as amended) during the regular school year, or a state financed work study program. To be considered as participating in a work study program, the student must receive earnings or tuition credit for work performed. A student who anticipates starting a work study job in the near future is not to be considered participating in a work study program. A student who has stopped working because the work study program funding has been exhausted is no longer considered a work study program participant, even though the institution of higher education may be satisfied that the student has fulfilled the terms of the work study agreement;

3. (No change.)

4. Be responsible for the care of a dependent household member between the ages of six and 12 for whom adequate child care is not available to enable the student to either attend class and satisfy the 20 hour work requirement at (d)1 above, or to participate in a state or Federally-financed work study program during the regular school year;

i. (No change.)

ii. Only one person per dependent may qualify under this provision;

5. Be receiving benefits from the Aid to Families with Dependent Children (AFDC) program;

6. Be assigned to or placed in an institution of higher education through a program under the Job Training Partnership Act (JTPA);

7. Participate in the JOBS program under Title IV of the Social Security Act;

8. Participate in a component of the Food Stamp Employment and Training Program;

9. Participate in a program under Section 236 of the Trade Act of 1974;

10. Participate in a program for the purpose of employment and training operated by a state or local government; or

11. Be a full-time student who is a single parent with the responsibility for a dependent child under the age of 12, regardless of the availability of child care.

(e) (No change.)

10:87-4.1 Applicability

(a) (No change.)

(b) Households that are categorically eligible as defined at N.J.A.C. 10:87-2.36 and 2.39 do not have to meet the resource limits or definitions of this subchapter. Categorically eligible households cited at N.J.A.C. 10:87-2.39 are subject to the transfer of resource provisions at N.J.A.C. 10:87-4.14.

10:87-4.8 Identification of resource exclusions

(a) Only the following shall be classified as resource exclusions by the CWA:

1.-12. (No change.)

13. Inaccessible resources: Resources having a cash value which is not accessible to the household, such as, but not limited to, irrevocable trust funds (see (a)14 below for treatment of irrevocable trusts), security deposits on rental property or utilities, property in probate and real property which the household is making a good faith effort to sell at a reasonable price and which has not been sold.

i.-ii. (No change.)

iii. If the sale or other disposition of a resource is unlikely to produce any significant amount of funds for the support of the household, the resource shall be considered inaccessible. The CWA is not required to verify that a resource is inaccessible unless the information provided by the household is questionable. This resource exclusion does not apply to vehicles owned by the household.

14.-16. (No change.)

17. Resources excluded by Federal law: Resources which are excluded for food stamp purposes by express provision of Federal statute. The following is a listing of resources excluded by Federal statute:

i.-vi. (No change.)

vii. Energy assistance payments: Payments or allowances made under any Federal, State, or local law for the purpose of energy assistance. In order to qualify for this exclusion, the payments or allowances must be clearly identified as energy assistance by the legislative body authorizing the program or the funds. The State programs of Lifeline, the energy disregard portion of AFDC payments, and Home Energy Assistance qualify for this exclusion;

viii.-xi. (No change.)

xii. Earned income tax credits received before January 1, 1980, as a result of the Revenue Act of 1978 (Public Law 95-600). Earned income tax credits are always excluded in the month of receipt and the month following the month of receipt;

xiii. Payments received under the Civil Liberties Act of 1988 (P.L. 100-383);

xiv. Resources of a household member receiving AFDC and/or SSI benefits;

xv. Resources of a household member which are placed in a Plan for Achieving Self-Support (PASS) account; and

xvi. Payment received under the Radiation Exposure Compensation Act (P.L. 100-426).

18.-19. (No change.)

10:87-5.1 Applicability

(a) (No change.)

(b) Households that are categorically eligible as defined in N.J.A.C. 10:87-2.36 and 2.39 do not have to meet either the gross or net income eligibility standards.

10:87-5.9 Identification of income exclusions

(a) Only the following shall be excluded from household income; no other income shall be excluded.

1.-2. (No change.)

3. Utility allowance payments, rebates, and reimbursements to the individual, the utility or the landlord are excluded from countable income.

4.-14. (No change.)

15. Income excluded by Federal law: Any income that is specifically excluded by any other Federal statute from consideration as income for the purpose of determining eligibility for the Food Stamp Program shall be excluded. The following qualify under this provision:

i.-xii. (No change.)

xiii. Any educational assistance funded in whole or in part under Title IV of the Higher Education Act Amendments of 1986 (including education or dependent care benefits made under the Carl D. Perkins Vocational Act) or funded by the Bureau of Indian Affairs (BIA) Higher Education Grant Program to the extent it is used for tuition, mandatory school fee, and other specified costs of education (see N.J.A.C. 10:87-5.11).

xiv. (No change.)

xv. Amounts deemed necessary for the fulfillment of a Plan for Achieving Self-Support (PASS) under Title XVI of the Social Security Act.

xvi. Transitional child care payments made under the Family Support Act of 1988 (JOBS).

xvii. Payments made under the Radiation Exposure Compensation Act (P.L. 100-426).

xviii. The child care payments which are deducted from earned income when calculating the household's AFDC grant. This disregard shall not be greater than the remaining earned income after the application of the work expense and "30⅓" disregard (see N.J.A.C. 10:82-2.8(a)2 and 3).

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Strollo, R.Ph., M.S., served as hearing officer. Two persons attended the hearing. Four comments were submitted, as summarized in a previous notice of adoption (see 24 N.J.R. 4261(a)). The hearing officer recommended that the decisions made be based upon available biodata. The Council adopted the products specified as "adopted," and referred the products identified as "pending" for further study.

The following products and their manufacturers were **adopted**:

Carbidopa/levodopa tabs 10/100, 25/100, 25/250	TEVA
Clofibrate caps 500 mg	Pharmacaps

The following products were **not adopted but are still pending**:

Albuterol sulfate inh. soln. 0.083%	Copley
Amiloride/HCTZ 5/50 tabs	Danbury
Atenolol tabs 50 mg, 100 mg	W-C
Betamethasone dipropionate cream 0.05%	ICN
Cephalexin caps 250 mg, 500 mg	Yoshitomi
Deconamine SR caps substitute	Nutripharm
Fluocinonide cream 0.05%	ICN
Granulex spray substitute	Topi-cana
Hydrocortisone cream 2.5%	ICN
Naproxen sodium tabs 275mg, 550mg	Danbury
Naproxen tabs 250mg, 375mg, 500mg	Danbury
Nitrofurantoin caps 50mg, 100mg	Zenith
Piroxicam caps 10 mg, 20 mg	Copley
Singlet caplet substitute	Nutripharm
Singlet LA caplet substitute	Nutripharm
Triamterene/HCTZ 37.5/25 tabs	Danbury

OFFICE OF ADMINISTRATIVE LAW NOTE: See related notice of adoption at 24 N.J.R. 4261(a).

(a)

DRUG UTILIZATION REVIEW COUNCIL

List of Interchangeable Drug Products

Adopted Amendments: N.J.A.C. 8:71

Proposed: July 6, 1992 at 24 N.J.R. 2414(b).
Adopted: January 5, 1993 by the Drug Utilization Review Council, Robert Kowalski, Chairman.
Filed: January 8, 1993 as R.1993 d.67, **with portions of the proposal not adopted but still pending**.
Authority: N.J.S.A. 24:6E-6(b).
Effective Date: February 1, 1993.
Expiration Date: February 17, 1994.

Summary of Public Comments and Agency Responses:
There were no comments submitted pertaining to the proposed products affected by this adoption.

Summary of Hearing Officer's Recommendations and Agency Responses:
A public hearing on the proposed additions to the list of interchangeable drug products was held on August 3, 1992. Mark A. Strollo, R.Ph., M.S., served as hearing officer. Two persons attended the hearing. No comments were submitted. The hearing officer recommended that the decisions made be based upon available biodata. The Council adopted the products specified as "adopted," and referred the products identified as "pending" for further study.

The following products and their manufacturers were **adopted**:

Loperamide HCl caps 2 mg	Geneva
Ketoprofen caps 25 mg, 50 mg, 75 mg	Biocraft

The following products were **not adopted but are still pending**:

Acetazolamide tabs 250 mg	ALRA
Atenolol tabs 25 mg	Geneva
Atenolol tabs 50 mg, 100 mg	Novopharm
Clemastine fumarate tabs 1.34 mg, 4.68 mg	Geneva
Clonidine HCl/chlorthalidone tabs 0.1/15 mg	Geneva
Clonidine HCl/chlorthalidone tabs 0.2/15 mg	Geneva
Clonidine HCl/chlorthalidone tabs 0.3/15 mg	Geneva
Clorazepate tabs 3.75 mg, 7.5 mg, 15 mg	ALRA
Diltiazem tabs 30 mg, 60 mg, 90 mg, 120 mg	Mutual
Fenoprofen caps 300 mg	W-C
Fenoprofen tabs 600 mg	W-C
Ibuprofen tabs 400 mg, 600 mg, 800 mg	ALRA
Imipramine tabs 10 mg, 25 mg, 50 mg	ALRA
Lactulose syrup 10g/15ml	ALRA
Loxapine caps 5 mg, 10 mg, 25 mg, 50 mg	Geneva
Metoclopramide tabs 5 mg	Biocraft
Naproxen sodium tabs 275 mg, 550 mg	Mutual
Naproxen tabs 250 mg, 375 mg	Mutual
Nucofed expectorant substitute	LuChem
Pediazole suspension substitute	ALRA
Potassium bicarbonate effervescent tabs 25 mEq	ALRA
Sucralfate tabs 1 gm	Biocraft
Tolbutamide tabs 500 mg	ALRA
Tolmetin sodium caps 400 mg	Geneva
Tolmetin sodium caps 400 mg	Lemmon
Triamterene/HCTZ tabs 37.5/25 mg	Geneva

OFFICE OF ADMINISTRATIVE LAW NOTE: See related notices of adoption at 24 N.J.R. 3174(c), 3728(a) and 4262(a).

HUMAN SERVICES

(b)

DIVISION OF MENTAL HEALTH AND HOSPITALS

Patient Supervision at State Psychiatric Hospitals

Readoption with Amendments: N.J.A.C. 10:36

Proposed: November 16, 1992 at 24 N.J.R. 4232(a).
Adopted: December 28, 1992 by William Waldman, Acting Commissioner, Department of Human Services.
Filed: December 29, 1992 as R.1992 d.58, **without change**.
Authority: N.J.S.A. 30:1-12 and 30:4-27.21a.
Effective Date: December 29, 1992, Readoption;
February 1, 1993, Amendments.
Expiration Date: December 29, 1997.

Summary of Public Comments and Agency Responses:
No comments were received.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 10:36.

Full text of the adopted amendments follows.

10:36-1.1 Introduction and purpose
(a)-(b) (No change.)
(c) The Interdisciplinary Treatment Team will determine the appropriate level for each patient upon admission with periodic review of the assigned level during the course of hospitalization. Level determinations will be made in accordance with guidelines set forth herein. Treatment teams should utilize these guidelines to promote increased responsibility, accountability and independence on the part of the patient while decreasing structure and intensity of supervision provided by the staff. Incremental steps taken towards this goal should be viewed as part of a continuum that progresses through each level of the system.
(d) (No change.)

10:36-1.2 General provisions
(a) (No change.)
(b) All "Not Guilty by Reason of Insanity and Incompetent to Stand Trial" status patients and others identified as appropriate for special treatment review procedures must have court approval prior to implementation of an increase in level recommended by the treatment team. Each hospital may determine whether the Interdisciplinary Treatment Teams need administrative approval in addition to court approval for their Level of Supervision determinations for these patients and, if so, in what manner the administrative approval shall be obtained.

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(c)-(h) (No change.)

10:36-1.3 Procedures

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

(c) Each patient's level will be evaluated minimally in accordance with the treatment plan review schedule or sooner if clinically indicated or requested by the patient. The treatment plan review schedule shall minimally comply with the standards set by the applicable accrediting body for the hospital.

(d)-(e) (No change.)

(f) All patients ordered "Conditional Extension Pending Placement" by the court will be considered to be on LEVEL IV unless there is documentation in the clinical record to show that the responsible treatment team has identified clinical considerations which require and justify that the patient be placed at a level which provides the necessary structure and supervision. In such instances, a treatment team note shall be entered into the clinical record which documents the clinical considerations which justify the level determined necessary by the treatment team.

10:36-1.4 Level I definition, criteria and program structure

(a) (No change.)

(b) Mental condition criteria include, but are not limited to:

1. Suicidal/homicidal ideation or behavior (High Suicide Risk);
2. Severe impulse control problems;
3. Imminent arson risk;
4. So severely confused or disoriented as to be unable to adjust to unfamiliar surroundings;
5. So grossly psychotic or mood disordered that an imminent risk of harm to self or others is present; and
6. High elopement/walkaway risk as indicated by verbal intent and/or recent history.

(c)-(d) (No change.)

10:36-1.5 Level II definition, criteria and program structure

(a) (No change.)

(b) Mental condition criteria include, but are not limited to:

1. No longer high suicide, elopement/walkaway, medical or assault risk;
2. Follows general directions and generally attends onward therapies and programs on a regular basis;
3. Psychotic symptoms or mood disturbances may be present but does not act in response to them in such a way as to create an imminent risk of harm;
4. Mildly confused and disoriented but able to adapt to unfamiliar surroundings; and
5. Able to control impulses except when severely stressed.

(c)-(d) (No change.)

10:36-1.6 Level III definition, criteria, and program structures

(a) (No change.)

(b) Mental condition criteria include, but are not limited to:

1. Absence of psychotic or mood disordered symptoms, or if chronic residual symptoms are still present, does not act in response to them;
2. Oriented and aware of surroundings;
3. Cooperative with established plan and schedule of activities;
4. Appropriate on and off ward behavior resulting in no precautions for a certain number of day/weeks (to be set by treatment team);
5. Minimal elopement/walkaway risk;
6. Able to control impulses except when severely stressed; and
7. If recent behavior indicates substance abuse risk, is willing to agree to search upon return if team determines necessary and documents in master treatment plan.

(c)-(d) (No change.)

10:36-1.7 Level IV definition, criteria and program structure

(a) (No change.)

(b) Mental condition criteria include, but are not limited to:

1. No recent instances of substance abuse;
2. Oriented to and capable of utilizing community or transportation services;
3. Resident exhibits sound judgement under reasonable conditions; and
4. Resident exhibits accountability and responsibility through adherence to treatment plan program schedule.

(c)-(d) (No change.)

10:36-2.1 Statement, purpose, and scope

(a) (No change.)

(b) The purpose of this procedure is to establish a mechanism which provides a comprehensive review of the clinical treatment and management of special status patients through insuring appropriate treatment interventions, levels of supervision and planning at the time of movement to less restrictive settings, decrease of structures and security, or discharge. However, nothing in these procedures is intended to alter the responsibility of hospital staff to comply with the provisions of valid court orders regarding specific patients.

(c) (No change.)

10:36-2.2 Committee composition

(a) (No change.)

(b) The composition of the Special Status Patient Clinical Review Committee should include, but need not be limited to: the Medical Director or Chief of Psychiatry, the Director of Psychology, the Director of Nursing Services, the Director of Rehabilitation Services, and the Director of Social Services. These individuals may appoint designees to the committee.

10:36-2.3 Procedures

(a)-(f) (No change.)

(g) The Clinical Director will periodically attend Clinical Review Committee meetings in his or her institution in order to monitor the thoroughness and quality of clinical recommendations and compliance with this policy and procedure. Additionally, the Quality Assurance Department within each hospital shall also monitor the hospital's compliance with the rules within this subchapter.

(a)

DIVISION OF FAMILY DEVELOPMENT

Food Stamp Program
Miscellaneous Program Requirements

Adopted New Rules: N.J.A.C. 10:87-2.39 and 6.20
Adopted Amendments: N.J.A.C. 10:87-2.4, 2.6, 2.31, 3.8, 3.14, 4.1, 4.8, 5.1, 5.9, 5.10, 6.9, 10.3, 10.6, 10.18, 11.26, 11.29 and 12.1

Proposed: September 21, 1992 at 24 N.J.R. 3207(b).

Adopted: January 5, 1993 by William Waldman, Acting Commissioner, Department of Human Services.

Filed: January 6, 1993 as R.1993 d.62, **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. 30:4B-2; 7 CFR Parts 273 and 274; P.L. 101-624, P.L. 100-649, P.L. 100-485, P.L. 100-426, P.L. 101-508, P.L. 100-435, P.L. 101-392, *West v. USDA,* U.S. Court of Appeals Third District (June 30, 1989), and P.L. 102-237.

Effective Date: February 1, 1993.

Expiration Date: January 27, 1994.

Summary of Public Comments and Agency Responses:

COMMENT: Somerset County Board of Social Services commented that the proposed statement "HEA benefits shall not be considered when making the comparison between energy assistance and utility expenses" is unnecessary in N.J.A.C. 10:87-5.10(a)5iv(8). The county welfare agency noted that a food stamp household which receives Home Energy Assistance (HEA) is automatically entitled to the Food Stamp Heating Utility Allowance (HUA) under N.J.A.C. 10:87-5.10(a)5iv(E), so there is no need to determine that a food stamp household receiving HEA would otherwise be entitled to the HUA.

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RESPONSE: The Department agrees with the commenter, and is deleting the aforementioned sentence from the proposed amendment at N.J.A.C. 10:87-5.10(a)5iv(8).

Full text of the adoption follows (deletions from proposal indicated in brackets with asterisks *[thus]*):

10:87-2.4 Residents of institutions and homeless individuals defined

(a) Individuals shall be considered residents of an institution when the institution provides them with the majority of their meals (over 50 percent of three meals daily) as part of the institution's normal services. Residents of institutions are not eligible for participation in the Food Stamp Program, with the following exceptions:

1.-2. (No change.)

3. Group living arrangements: Blind and/or disabled individuals who meet the definition of N.J.A.C. 10:87-2.38 and who reside in a public or private nonprofit group living arrangement that serves no more than 16 residents (see N.J.A.C. 10:87-2.7(f));

4.-5. (No change.)

(b) (No change.)

10:87-2.6 Head of household

(a) (No change.)

(b) For purposes of failure to comply with work registration, work and training requirements, and voluntary quit provisions, the head of household shall be considered to be the principal wage earner.

1. Principal wage earner: The principal wage earner shall be the household member (including excluded members, see N.J.A.C. 10:87-2.3(c)) who has the greatest source of earned income in the two months prior to the month of the work registration, work or training requirement or voluntary quit violation. This provision applies only if the employment involves 20 hours or more per week or provides weekly earnings at least equivalent to the Federal minimum wage multiplied by 20 hours.

i. (No change.)

ii. If there is no principal source of earned income in the household, the CWA shall determine who is the designated head of household as specified in (a) above. Additionally, a household may select an adult member with children as its head provided that all adult members agree to the selection. If the household either does not qualify to select its head, or does not opt to select its head, then all other rules in this subsection will be applied. The household may designate its head each time the household is certified, but may not change the designation during the certification period unless there is a change in household composition.

iii.-iv. (No change.)

10:87-2.31 Delays in processing

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

(c) Determining cause: The CWA shall determine the cause of the delay. A delay shall be considered the fault of the household if the household has failed to complete the application process even though the CWA has taken all the action required to assist the household. The CWA must have taken the following actions before a delay can be considered the fault of the household:

1.-2. (No change.)

3. Incomplete verification: In cases where verification is incomplete, the CWA must have provided the household with a Notice of Required Verification (Form FSP-33) offered to assist the household in obtaining required verification, and allowed the household sufficient time to provide the missing verification.

4.-5. (No change.)

(d)-(g) (No change.)

10:87-2.39 Categorically eligible GA households

(a) Any household, except those listed in (c) below, in which all members are authorized to receive GA benefits shall be considered categorically eligible for the Food Stamp Program. In addition, households comprised entirely of AFDC, SSI and/or GA recipients shall be categorically eligible for food stamp benefits.

(b) No individual shall be included as a member of an otherwise categorically eligible GA household if that individual is:

1. An ineligible alien, as defined at N.J.A.C. 10:87-3.9;

2. A student that does not meet the criteria at N.J.A.C. 10:87-3.14;

3. Disqualified for failure to provide or apply for a Social Security Number, as required by N.J.A.C. 10:87-3.15;

4. A household member not the household head, disqualified for failure to comply with a work registration requirement;

5. Disqualified for Intentional Program Violation; or

6. A resident of a non-exempt institution.

(c) A household shall not be considered as GA categorically eligible if:

1. It refuses to cooperate in providing information to the CWA which is necessary for making a determination of its eligibility or for completing any subsequent review of its eligibility;

2. The household is disqualified because the head of household failed to comply with a work registration requirement;

3. The household is ineligible under the striker provisions; or

4. The household is ineligible because it knowingly transferred resources for the purpose of qualifying or attempting to qualify for the Food Stamp Program.

(d) In determining whether a household is categorically eligible, the CWA shall verify that each member receives AFDC, SSI, or GA benefits, and that it includes no individuals who have been disqualified as described at (b) above. The CWA shall also verify household composition if it is questionable in order to determine that the household meets the definition of a household at N.J.A.C. 10:87-2.2.

(e) When determining the eligibility of a GA categorically eligible household, all Food Stamp Program requirements shall apply except the following:

1. None of the provisions of N.J.A.C. 10:87-4 (Financial Eligibility Resources) apply to categorically eligible households, with the exception of N.J.A.C. 10:87-4.1(b) (categorical eligibility provision) and 4.14 through 4.20 (transfer of resources). The provision at N.J.A.C. 10:87-6.8 shall not be applied to categorically eligible households;

2. With the exception of N.J.A.C. 10:87-5.1(b), none of the provisions of N.J.A.C. 10:87-5.1 (gross and net income limits) apply to categorically eligible households;

3. The provision at N.J.A.C. 10:87-6.5(c) which allows the CWA to deny the application of a household which is program eligible, but is entitled to no benefit because its net income exceeds the level at which benefits are issued, shall not be applied to categorically eligible households. The provisions at N.J.A.C. 10:87-6.20 shall be applied to categorically eligible households that are entitled to no benefit; and

4. Sponsored alien information, which otherwise is required under N.J.A.C. 10:87-2.20(b) and 7.18(f).

10:87-3.8 Eligible aliens; listing

(a) With the provision that all other eligibility requirements are met, the following aliens shall be eligible for participation in the Food Stamp Program:

1.-7. (No change.)

8. An alien who is defined as aged, blind or disabled in accordance with section 1614(a)(1) of the Social Security Act and is considered to be lawfully admitted for temporary residence pursuant to section 245A(b)(1) of the Immigration and Nationality Act. (Such aliens may obtain lawful permanent resident status under section 245A(b)(1) of the Immigration and Nationality Act no earlier than November 7, 1988). A maximum of 12 months in restored benefits shall be provided, upon request, to any aged, blind, or disabled person who was denied benefits because he or she was admitted for temporary residence under Section 245A(b)1 of the INA;

9.-11. (No change.)

(b) When an alien described at (a)9 above acquires permanent resident status, the family members of that alien acquire permanent resident status and can be included in the alien's household for food stamp purposes. This provision conforms with Section 301(d) of P.L. 100-649.

10:87-3.14 Procedures for students in an institution of higher education

(a) A student in an institution of higher education defined is any person who is between the ages of 18 and 50 who is physically and

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mentally fit and is enrolled at least half time in an institution of higher education. Excluded from this definition are persons who are attending high school, participating in on-the-job training programs and training programs which are not institutions of higher education.

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

(d) Student eligibility requirements: In order to be eligible to participate in the Food Stamp Program, any student (as defined in (a) above) must meet at least one of the following criteria:

1. (No change.)

2. Participate in a federally financed work study program (funded in full or in part under Title IV-C of the Higher Education Act of 1965 as amended) during the regular school year, or a state financed work study program. To be considered as participating in a work study program, the student must receive earnings or tuition credit for work performed. A student who anticipates starting a work study job in the near future is not to be considered participating in a work study program. A student who has stopped working because the work study program funding has been exhausted is no longer considered a work study program participant, even though the institution of higher education may be satisfied that the student has fulfilled the terms of the work study agreement;

3. (No change.)

4. Be responsible for the care of a dependent household member between the ages of six and 12 for whom adequate child care is not available to enable the student to either attend class and satisfy the 20 hour work requirement at (d)1 above, or to participate in a state or Federally-financed work study program during the regular school year;

i. (No change.)

ii. Only one person per dependent may qualify under this provision;

5. Be receiving benefits from the Aid to Families with Dependent Children (AFDC) program;

6. Be assigned to or placed in an institution of higher education through a program under the Job Training Partnership Act (JTPA);

7. Participate in the JOBS program under Title IV of the Social Security Act;

8. Participate in a component of the Food Stamp Employment and Training Program;

9. Participate in a program under Section 236 of the Trade Act of 1974;

10. Participate in a program for the purpose of employment and training operated by a state or local government; or

11. Be a full-time student who is a single parent with the responsibility for a dependent child under the age of 12, regardless of the availability of child care.

(e) (No change.)

10:87-4.1 Applicability

(a) (No change.)

(b) Households that are categorically eligible as defined at N.J.A.C. 10:87-2.36 and 2.39 do not have to meet the resource limits or definitions of this subchapter. Categorically eligible households cited at N.J.A.C. 10:87-2.39 are subject to the transfer of resource provisions at N.J.A.C. 10:87-4.14.

10:87-4.8 Identification of resource exclusions

(a) Only the following shall be classified as resource exclusions by the CWA:

1.-12. (No change.)

13. Inaccessible resources: Resources having a cash value which is not accessible to the household, such as, but not limited to, irrevocable trust funds (see (a)14 below for treatment of irrevocable trusts), security deposits on rental property or utilities, property in probate and real property which the household is making a good faith effort to sell at a reasonable price and which has not been sold.

i.-ii. (No change.)

iii. If the sale or other disposition of a resource is unlikely to produce any significant amount of funds for the support of the household, the resource shall be considered inaccessible. The CWA is not required to verify that a resource is inaccessible unless the information provided by the household is questionable. This resource exclusion does not apply to vehicles owned by the household.

14.-16. (No change.)

17. Resources excluded by Federal law: Resources which are excluded for food stamp purposes by express provision of Federal statute. The following is a listing of resources excluded by Federal statute:

i.-vi. (No change.)

vii. Energy assistance payments: Payments or allowances made under any Federal, State, or local law for the purpose of energy assistance. In order to qualify for this exclusion, the payments or allowances must be clearly identified as energy assistance by the legislative body authorizing the program or the funds. The State programs of Lifeline, the energy disregard portion of AFDC payments, and Home Energy Assistance qualify for this exclusion;

viii.-xi. (No change.)

xii. Earned income tax credits received before January 1, 1980, as a result of the Revenue Act of 1978 (Public Law 95-600). Earned income tax credits are always excluded in the month of receipt and the month following the month of receipt;

xiii. Payments received under the Civil Liberties Act of 1988 (P.L. 100-383);

xiv. Resources of a household member receiving AFDC and/or SSI benefits;

xv. Resources of a household member which are placed in a Plan for Achieving Self-Support (PASS) account; and

xvi. Payment received under the Radiation Exposure Compensation Act (P.L. 100-426).

18.-19. (No change.)

10:87-5.1 Applicability

(a) (No change.)

(b) Households that are categorically eligible as defined in N.J.A.C. 10:87-2.36 and 2.39 do not have to meet either the gross or net income eligibility standards.

10:87-5.9 Identification of income exclusions

(a) Only the following shall be excluded from household income; no other income shall be excluded.

1.-2. (No change.)

3. Utility allowance payments, rebates, and reimbursements to the individual, the utility or the landlord are excluded from countable income.

4.-14. (No change.)

15. Income excluded by Federal law: Any income that is specifically excluded by any other Federal statute from consideration as income for the purpose of determining eligibility for the Food Stamp Program shall be excluded. The following qualify under this provision:

i.-xii. (No change.)

xiii. Any educational assistance funded in whole or in part under Title IV of the Higher Education Act Amendments of 1986 (including education or dependent care benefits made under the Carl D. Perkins Vocational Act) or funded by the Bureau of Indian Affairs (BIA) Higher Education Grant Program to the extent it is used for tuition, mandatory school fee, and other specified costs of education (see N.J.A.C. 10:87-5.11).

xiv. (No change.)

xv. Amounts deemed necessary for the fulfillment of a Plan for Achieving Self-Support (PASS) under Title XVI of the Social Security Act.

xvi. Transitional child care payments made under the Family Support Act of 1988 (JOBS).

xvii. Payments made under the Radiation Exposure Compensation Act (P.L. 100-426).

xviii. The child care payments which are deducted from earned income when calculating the household's AFDC grant. This disregard shall not be greater than the remaining earned income after the application of the work expense and "30⅓" disregard (see N.J.A.C. 10:82-2.8(a)2 and 3).

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10:87-5.10 Income deductions

(a) Deductions from income will be allowed only for the following expenses of the household:

1.-3. (No change.)

4. Dependent care deduction: Payments for the actual costs for the care of a child or other dependent when necessary for a household member to accept or continue employment, seek employment in compliance with the job-search criteria (or an equivalent effort by those not subject to job-search), or to attend training or pursue education which is preparatory to employment, shall be deducted. The amount of this deduction shall be the actual cost of such care, but shall not exceed $160.00 per each dependent for whom the household pays dependent care.

i. Child care payments which the CWA issues directly to the household's child care provider shall not qualify the household for the dependent care deduction.

ii. Households which pay child care expenses are entitled to the dependent care deduction, even when child care is disregarded from the AFDC grant when determining the countable AFDC grant for food stamp purposes (see N.J.A.C. 10:87-5.9(a)15xviii).

5. Shelter cost deduction: Monthly shelter costs in excess of 50 percent of the household's income after all other deductions in (a)1, 2, 3, and 4 above have been allowed, shall be deducted. However, in no event shall the shelter deduction exceed the amount in N.J.A.C. 10:87-12.1(b) unless the household contains a member who is elderly or disabled as defined in N.J.A.C. 10:87-2.38. These households shall receive an excess shelter deduction for the monthly costs that exceed 50 percent of the household's monthly income after all other applicable deductions. Households receiving Title II disability payments for dependents of a disabled individual are not eligible for the unlimited excess shelter deduction unless the disabled individual is a member of the household.

i.-iii. (No change.)

iv. Utility allowances: Households which incur certain utility costs separate and apart from their rent or mortgage payments are entitled to claim the appropriate utility allowance (see N.J.A.C. 10:87-12.1(d) or (e)) in accordance with the following provisions:

(1) Households that pay directly for their primary source of heat separate and apart from rent or mortgage payments may claim the heating utility allowance (HUA). The CWA shall verify that the household is responsible for primary heating costs.

(A)-(D) (No change.)

(E) Households that receive a Home Energy Assistance payment are always eligible for the HUA. Eligibility for the HUA based on receipt of HEA shall coincide with the 12-month October 1-September 30 HEA eligibility period. The household shall retain HUA eligibility provided that it either received, or anticipates receiving, HEA benefits during the 12-month period.

(2)-(3) (No change.)

(4) Once a household has made an election between the utility allowance and actual utility expenses, the CWA shall permit the household to switch between actual utility costs and the utility allowance at the time of recertification and one additional time during each 12 month period. If a household's circumstances change such that their responsibility for utilities changes (such as a change in residence), the household may switch between actual costs and the standard allowance at that time.

(5)-(7) (No change.)

(8) A household which has excluded energy assistance (for example, the AFDC or GA energy disregard, Lifeline or TLAP benefits, or utility allowances rebates, or reimbursements is entitled to the appropriate utility allowance only if during one month of the certification period the household will incur utility expenses in excess of the excluded energy assistance. *[HEA benefits shall not be considered when making the comparison between energy assistance and utility expenses.]* Lifeline and TLAP assistance shall be prorated over a 12-month period if it is provided as a one-time annual payment.

v. A household comprised entirely of homeless individuals, as defined at N.J.A.C. 10:87-2.4(b) may be entitled to the Homeless Shelter Allowance (HSA) at N.J.A.C. 10:87-12.1(f).

(1) To qualify for the HSA, the household must anticipate that it will incur an out-of-pocket housing expense each month. A household which receives some type of temporary rental assistance may qualify for the HSA, provided that it incurs out-of-pocket housing expense during the month. A household which elects to utilize the HSA may not claim any other shelter expense for the purpose of determining total household shelter expenses. A household claiming the HSA is not entitled to a food stamp utility allowance; a household receiving HEA benefits is entitled to the HUA.

(2) A household which claims actual housing expenses because those costs exceed the HSA may claim a food stamp utility allowance, if otherwise entitled. In that case, the CWA shall verify the household's housing expenses, if questionable, but shall not postpone certification if the household is unable to provide proof that its shelter expenses exceed the HSA. The CWA shall determine whether the expenses claimed are reasonable when compared to the shelter expenses of other homeless households in the area. The CWA shall then either accept or reject the household's statement.

10:87-6.9 Income determination

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

(c) Anticipated income: Income received during the most recent 30-day period shall be used as an indicator of anticipated income. However, the CWA shall not use past income as an indicator of income anticipated for the certification if changes in income have occurred or can be anticipated.

1.-3. (No change.)

4. For the purpose of determining countable energy assistance payments, the CWA shall consider similar assistance received by the household in the previous certification period, and project those monthly amounts over the next certification period. If the CWA cannot be reasonably certain that the household will receive those moneys, then those funds shall not be counted. The CWA shall also ascertain that the household's anticipated utility expenses, during any one month of the forthcoming certification period, will exceed the amount of excluded energy assistance.

(d)-(f) (No change.)

(g) Averaging scholarships, educational grants and loans: Households receiving scholarships, deferred education loans, or other educational grants shall have such income, after exclusions, averaged over the period for which it was provided. The CWA shall apply countable grants, loans, and scholarships beginning with the first month in which the student expects to receive those funds. In the event that the student cannot anticipate, with reasonable certainty, when he or she will receive the student income, then receipt of that income shall be treated and processed as a client reportable change, as per N.J.A.C. 10:87-9.5(b) and (c).

10:87-6.20 Suspension of categorically eligible households

(a) If a categorically eligible household of three or more individuals is found eligible, but for no actual benefit, in a month other than the initial month of eligibility, the CWA shall certify the household and shall suspend its participation, subject to the following conditions:

1. The CWA shall inform the household in writing of its suspended status and of its rights and responsibilities while it is in suspended status;

2. The CWA shall set the household's change reporting requirements and the manner in which those changes will be reported and processed;

3. The CWA shall specify which changes shall entitle the household to have its suspended status converted to active status, and which changes shall require the household to reapply for participation;

4. The household shall retain its right to submit a new application while it is suspended;

5. The CWA shall convert a household from suspended to active status, without requiring an additional certification interview, and issue its initial allotment within 10 days of the date the household reports the change;

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6. The CWA shall prorate the household's benefits for the first month of issuance after suspension period, in accordance with N.J.A.C. 10:87-6.2; and

7. The CWA may delay the work registration of the household's members until the household is determined to be entitled to benefits.

10:87-10.3 Employment and training program performance standards

(a)-(d) (No change.)

(e) Counting the "base of eligibles": The base of persons eligible to participate in an E&T program (the denominator) consists of all non-exempt work registrants in the month of October plus newly work-registered food stamp recipients who have not been exempted by the State Plan from participation in an E&T program. These groups are considered E&T mandatory participants. In addition, volunteers who are placed in an E&T component shall be counted in the base of eligibles. The State (DEA) need not count any individual in the base of eligibles (mandatory work registrants and volunteers) more than once in a fiscal year. Individuals who are exempt from the work registration requirement shall not be included in the base of eligibles.

(f)-(i) (No change.)

10:87-10.6 Registration procedure

(a)-(g) (No change.)

(h) Determination of work registration in case of FSETP/CWA disagreement: In the event that FSETP disagrees with the CWA determination that the individual is required to register for work, FSETP may request a reconsideration of the individual's nonexempt status. The CWA must respond to the reconsideration request within 30 days and FSETP must accept the response as final.

10:87-10.18 Job search training component

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

(c) During the job search training component, participants will be required to undertake a supervised job search similar to independent job search, or participate in a supervised job club.

1.-2. (No change.)

10:87-11.26 Collecting inadvertent household errors and administrative error claims

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

(c) The following procedures are to be followed when a household fails to respond to a demand letter:

1. When a household fails to respond to a written demand letter for repayment of an inadvertent household error claim within 10 days, the CWA shall reduce the household's monthly coupon allotment (see N.J.A.C. 10:87-11.31(d)).

2. (No change.)

(d)-(f) (No change.)

10:87-11.29 Collecting intentional program violation claims

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

(c) Household fails to respond to first demand letter: If the household fails to respond to the first demand letter, the following shall apply:

1. If the household is currently participating in the program and does not respond to the first demand letter immediately upon receipt of the letter, the CWA shall reduce the household's food stamp allotment.

2. (No change.)

(d)-(e) (No change.)

10:87-12.1 Income deductions

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

(f) The Homeless Shelter Allowance shall be that amount prescribed by the United States Department of Agriculture, as defined at 7 CFR 273.9(d)(5)(i).

INSURANCE

(a)

DIVISION OF EVALUATIONS AND LIQUIDATIONS

Annual Audited Financial Reports

Adopted Amendments: N.J.A.C. 11:2-26
Adopted Repeal and New Rule: N.J.A.C. 11:2-26.11
Adopted New Rule: N.J.A.C. 11:2-26.12
Adopted Repeals: N.J.A.C. 11:2-26.14 and 26.15

Proposed: June 1, 1992 at 24 N.J.R. 1940(a) (see also 24 N.J.R. 2708(a)).

Adopted: January 5, 1993 by Samuel F. Fortunato, Commissioner, Department of Insurance.

Filed: January 8, 1993 as R.1993 d.68, **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); 17:23-1 et seq.; and 17B:21-1 et seq.

Effective Date: February 1, 1993.

Expiration Date: November 30, 1995.

Summary of Public Comments and Agency Responses:

The proposed amendments, repeals and new rules were published on June 1, 1992. The original comment period ending July 1, 1992 was extended until August 7, 1992 by Public Notice published August 3, 1992 at 24 N.J.R. 2708(a). During the comment period, the Department received two comments from the New Jersey Society of Certified Public Accountants and State Farm Insurance Companies.

COMMENT: Both commenters noted that the Department's proposed language at N.J.A.C. 11:2-26.13(a) fails to reflect the NAIC model rule langauge establishing a seven-year maximum time period within which the insurer can require the auditing accountant to retain the audit workpapers and communications for review by the Department. One commenter noted that the NAIC model rule's seven-year time limit balances the need to retain audit workpapers and communications against the burden of record retention.

RESPONSE: The Department recognizes that it may be somewhat burdensome to require the accountants conducting these audits to retain their workpapers and communications indefinitely, as set forth in the rule as proposed. However, the Department proposed this indefinite time period in order to ensure that these items are retained for a long enough period of time for the Department to file its Report on Examination covering the period of the audit, which may not occur within the seven-year retention period suggested in the NAIC model rule. In order to more closely conform to the NAIC model rule, while at the same time ensuring that accountants retain their workpapers and communications until the Department files its Report on Examination, the Department is modifying its proposal by requiring that the auditing accountant's workpapers and communications be retained until the Department has filed its Report on Examination or for no longer than 10 years from the time the accountant's report is filed, whichever occurs first. Accordingly, the language in this subsection is being revised to reflect this change.

COMMENT: One commenter noted that the proposed language in the amendment at N.J.A.C. 11:2-26.7(b) requires that the auditing accountant submit to the Department a letter containing a certification that he or she is aware of the State insurance statutes and administrative rules relating to accounting and financial matters, while the NAIC model rule makes no reference to a certification. Additionally, the commenter stated that the proposed amendment to N.J.A.C. 11:2-26.7(c) does not reflect the NAIC model rule requirements that the insurer notify the Department within five days of any dismissal or resignation of the accountant, and that both the insurer and former accountant submit separate letters to the Department within 10 days concerning whether the insurer had any disagreements with the former accountant. The commenter suggested that the language in these subsections of the rule conform to the NAIC model.

RESPONSE: The Department agrees with the commenter's suggestion and, for the reasons set forth below, has changed the language in the subsections to conform to the language in the NAIC model rule.

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The purpose of the NAIC model rule requiring annual audited financial reports is for the states to improve their surveillance of the financial condition of insurers. Most insurers transacting business in New Jersey also transact business in other states. If all states were to strictly adopt the language of the NIAC model rule, those insurers transacting business in more than one state could more easily and efficiently carry out the rule's requirements. Concerning these two particular rule provisions, the Department has no reason to deviate from the language contained in the model rule. The Department further notes that development of the model rule by the NAIC included the opportunity for input by interested parties or their representatives, and the language adopted has been scrutinized during that process.

COMMENT: One commenter suggested that the Department's language in its proposed amendment of N.J.A.C. 11:2-26.10(a) conform to the NAIC model rule requirement that the auditing accountant report to the insurer's board of directors or audit committee any determination made by the accountant that the insurer has materially misstated its financial condition to the Commissioner. The Department's proposed language required the accountant to report any reasonable belief that the insurer has made such a misstatement.

RESPONSE: The Department has changed the language at N.J.A.C. 11:2-26.10(a) to conform to the NAIC model rule.

COMMENT: One commenter noted that the Department in its proposed new rule at N.J.A.C. 11:2-26.14(c)1 left out two words from the first sentence of that paragraph that would change the meaning of the sentence, and suggested that the Department include the words in the sentence. The Department's proposed language reads "A copy of the audited financial report on any significant deficiencies in internal controls . . . ," while the NAIC model rule language reads "A copy of the audited financial report, the report on any significant deficiencies in internal controls . . ."

RESPONSE: The Department recognizes that its erroneous omission of these two words clearly changes the meaning of the sentence, and is inserting the missing words.

Full text of the adoption follows (additions to proposal shown in boldface with asterisks ***thus***; deletion from proposal shown in brackets with asterisks *[thus]*).

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 accounts of the financial statements reporting the financial position 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. 11:2-26.14.

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.

. . .

"Accountant" and "independent certified 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.

. . .

"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 audit planning documentation, 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 her examination of the financial statements of an insurer and which support his or her opinion thereof.

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

(a) All insurers (unless exempted pursuant to N.J.A.C. 11:2-26.14) 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 1 for the year ended December 31 immediately preceding. The Commissioner may require an insurer to file an audited financial report earlier than June 1 upon 90 days advance written notice to the insurer.

(b) Extensions of the June 1 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 position of the insurer as of the end of the most recent calendar year and the results of its operations, cash flows 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 operations;

4. A statement of cash flows;

5. A statement of changes in capital and surplus; and

6. Notes to financial statements. These notes shall be those required by the appropriate NAIC Annual Statement Instructions and any other notes required by generally accepted accounting principles and shall also 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;

ii. A summary of ownership and relationships of the insurer and all affiliated companies; and

iii. Such other information as may be specifically requested.

(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).

11:2-26.6 Qualifications of independent certified public accountant

(a) The Commissioner shall not recognize any person or firm as a qualified independent certified public accountant unless they are 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 similarly certified accountant.

(b) Except as otherwise provided herein, an independent certified public accountant shall be recognized as qualified 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.

(c) No partner or other person responsible for rendering a report may act in that capacity for more than seven consecutive years. Following any period of service such person shall be disqualified

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from acting in that or a similar capacity for the same company or its insurance subsidiaries or affiliates for a period of two years. An insurer may make application to the Commissioner for relief from the above rotation requirement on the basis of unusual circumstances. The Commissioner may consider the following factors in determining if the relief should be granted:

1. The number of partners, expertise of the partners or the number of insurance clients in the currently registered firm;

2. The premium volume of the insurer; or

3. The number of jurisdictions in which the insurer transacts business.

(d) The Commissioner shall not recognize as a qualified independent certified public accountant, nor accept any annual Audited Financial Report, prepared in whole or in part by, any natural person who:

1. Has been convicted of fraud, bribery, a violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. Sections 1961-1968, or any dishonest conduct or practices under Federal or state law, or similar conduct under any foreign law;

2. Has been found to have violated the insurance laws of this State with respect to any previous reports submitted under this rule; or

3. Has demonstrated a pattern or practice of failing to detect or disclose material information in previous reports filed under the provisions of this subchapter.

(e) Whenever it appears that the certified public accountant or accounting firm retained by the insurer to conduct the annual audit is not a qualified independent certified public accountant as provided under these rules, the Department shall notify the insurer that it does not recognize the certified public accountant or accounting firm as qualified, and the Department will not accept any annual audited Financial Report prepared by that accountant or accounting firm.

1. Upon receipt of such notice from the Department, the insurer may, within 20 days, request an administrative review on the issue of the qualifications of the independent certified public accountant or accounting firm retained by the insurer.

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 within 60 days after becoming subject to such requirement, register with the Commissioner in writing the name and address of the independent certified public accountant or accounting firm retained to conduct the annual audit set forth in this subchapter. Insurers not retaining an independent certified public accountant on the effective date of this rule as amended shall register the name and address of their retained certified public accountant not less than six months before the date when the audited financial report is to be filed.

(b) The insurer shall also obtain a letter from the accountant, and file a copy with the Commissioner, *[containing a certification by such]* ***stating that the*** accountant *[that he or she]* is aware of the provisions of the insurance statutes and administrative rules 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.

(c) In addition to the requirements in (a) and (b) above, if the accountant for the immediately preceding filed audited financial report is dismissed or resigns, *[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.]* ***the insurer shall within five business days notify the Department of this event. The insurer shall also furnish the Commissioner with a separate letter within 10 business days of the above notification stating whether in the 24 months preceding such event there were any disagreements with the former accountant on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure; which disagreements, if not resolved to the satisfaction of the former accountant, would have caused him to make reference to the subject matter of the disagreement in connection with his opinion. The disagreements required to be reported in response to this subsection include both those resolved to the former accountant's satisfaction and those not resolved to the former accountant's satisfaction. Disagreements contemplated by this subsection are those that occur at the decision-making level (that is, between personnel of the insurer responsible for presentation of its financial statements and personnel of the accounting firm responsible for rendering its report). The insurer shall also request in writing that such former accountant furnish a letter addressed to the insurer stating whether the accountant agrees with the statements contained in the insurer's letter and, if not, stating the reasons for which he does not agree; and the insurer shall furnish such responsive letter from the former accountant to the Commissioner together with its own.****

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 if the insurer is part of a group of insurance companies which utilizes a pooling or 100 percent reinsurance agreement that affects the solvency and integrity of the insurer's reserves and such insurer cedes all of its direct and assumed business to the pool. In such cases, a columnar consolidating or combining worksheet shall be filed with the report as follows:

1.-5. (No change.)

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. Consideration should also 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 report in writing within five business days to the board of directors or its audit committee any *[reasonable belief]* ***determination*** by the 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. An insurer who has received a report pursuant to this section shall forward a copy of the report to the Commissioner within five business days of receipt of such report and shall provide the independent certified public accountant making the report with evidence of the report being furnished to the Commissioner. If the independent certified public accountant fails to receive such evidence within the required five business day period, the independent certified public accountant shall furnish to the Commissioner a copy of its report within the next five business days. No independent public accountant shall be liable in any manner to any person for any statement made in connection with this subsection if such statement is made in good faith in compliance with this subsection.

(b) (No change.)

11:2-26.11 Report on significant deficiencies in internal controls

(a) In addition to the annual audited financial report, each insurer shall file with the Commissioner a written report prepared by the accountant describing any significant deficiencies known as "reportable conditions" in the insurer's internal control structure noted by the accountant during the audit which an accountant is required to report to appropriate parties within an entity pursuant to SAS No. 60, Communication of Internal Control Structure Matters Noted in an Audit (AU Section 325 of the Professional Standards of the American Institute of Certified Public Accountants).

(b) No report should be issued if the accountant does not identify one or more significant deficiencies.

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(c) If one or more significant deficiencies are noted, the written report shall be filed annually by the insurer with the Department within 60 days after the filing of the annual audited financial report. The insurer shall provide a description of remedial actions taken or proposed to correct significant deficiencies, if such actions are not described in the accountant's report.

11:2-26.12 Accountant's letter of qualifications

(a) The accountant shall furnish the insurer in connection with, and for inclusion in, the filing of the annual audited financial report, a letter stating:

1. That the accountant is independent with respect to the insurer and conforms to the standards of the profession as contained in the Code of Professional Ethics and pronouncements of the American Institute of Certified Public Accountants and the Rules of Professional Conduct of the New Jersey Board of Public Accountancy, or similar code;

2. The background and experience in general, and the experience in insurance audits of the staff assigned to the engagement and whether each is an independent certified public accountant. Nothing within this rule shall be construed as prohibiting the accountant from utilizing such staff as he or she deems appropriate where such use is consistent with the standards prescribed by generally accepted auditing standards;

3. That the accountant understands the annual audited financial report and the accountant's opinion thereon will be filed in compliance with this subchapter, and that the Commissioner will be relying on this information in the monitoring and regulation of the financial position of insurers;

4. That the accountant consents to the requirements of N.J.A.C. 11:2-26.13 and that the accountant consents and agrees to make available for review by the Commissioner, his or her designee or his or her appointed agent, the workpapers, as defined in N.J.A.C. 11:2-26.3;

5. A representation that the accountant is properly licensed by an appropriate state licensing authority and that he is a member in good standing in the American Institute of Certified Public Accountants; and

6. A representation that the accountant is in compliance with the requirements of N.J.A.C. 11:2-26.6.

11:2-26.13 Availability and maintenance of workpapers

(a) Every insurer required to file an audited financial report pursuant to this subchapter shall require the accountant to make available for review by the Commissioner, all the workpapers prepared in the conduct of his or her examination and any communications related to the audit between the accountant and the insurer, at the offices of the insurer, at the Department or at any other reasonable place designated by the Commissioner. The insurer shall require that the accountant retain the audit workpapers and communications until the Department has filed a Report on Examination covering the period of the audit and determined that the audit workpapers and communications need no longer be retained ***or for no longer than 10 years from the date the accountant submits the audit report to the insurer, whichever occurs first***.

(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 and communications obtained during the course of such investigations shall be afforded the same confidentiality as other examination workpapers generated by the Department.

11:2-26.14 Exemptions

(a) Insurers having direct premiums written in this State of less than $1,000,000 in any calendar year and less than 1,000 policyholders or certificateholders of directly written policies nationwide at the end of such calendar year shall be exempt from this subchapter for such year (unless the Commissioner makes a specific finding that compliance is necessary for the Commissioner to carry out statutory responsibilities) except that insurers having assumed premiums pursuant to contracts and/or treaties of reinsurance of $1,000,000 or more will not be so exempt.

(b) 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).

(c) 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***, the report*** on any significant deficiencies in internal controls, and the accountant's letter of qualifications 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, 26.11 and 26.12 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.

(d) 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 specific period or periods.

Recodify existing 11:2-26.16 through 26.19 as 26.15 through 26.18 (No change in text.)

(a)

DIVISION OF FINANCIAL EXAMINATIONS

Financial Examinations Monitoring System Data Submission Requirements for All Domestic Insurers

Adopted New Rules: N.J.A.C. 11:19-2

Proposed: September 8, 1992 at 24 N.J.R. 2999(a).

Adopted: January 8, 1993 by Samuel F. Fortunato, Commissioner, Department of Insurance.

Filed: January 8, 1993 as R.1993 d.69, **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), 17:17-1 et seq., 17B:18-1 et seq., 17:23-1 et seq., 17B:21-1 et seq., 17:46A-1 et seq. and 17:46B-1 et seq.

Effective Date: February 1, 1993.

Expiration Date: February 1, 1998.

Summary of Public Comments and Agency Responses:

Six public comments were received from insurance companies (Chubb and Son, Incorporated, The Home Insurance Company, The Health Care Insurance, Prudential Property and Casualty Insurance Company), an insurance association (New Jersey Association of Mutual Insurance Companies) and an insurance software company (Micro Insurance Software, Incorporated).

COMMENT: One commenter stated that the proposed rules require custodians of an insurer's deposits or securities to provide certain information to the Department. The commenter stated that in some cases an insurer may have deposits on file with regulatory authorities of another state. The commenter stated that these regulatory bodies (which may include an Insurance Department, another regulatory agency of the state or a commercial bank which is holding the securities for the Insurance Department) may not have the ability to provide the information and confirmation being requested by the New Jersey Insurance Department. The commenter suggested that the Department amend the definition of "custodian" to exclude those entities of other state regulatory bodies which are holding deposits or securities on behalf of an insurer.

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RESPONSE: The Department does not believe it is necessary to amend its definition of "custodian." These rules do not apply to an insurer's special deposits with regulatory agencies but requires insurers to provide the Department with a report on its securities held.

COMMENT: One commenter questioned whether there are any provisions for the Financial Examinations Monitoring System ("FEMS") to accept the current diskette filing with the National Association of Insurance Commissioners ("NAIC"). The commenter states that the NAIC has all of this information already and questioned whether the Department realizes that the IVS information that is submitted by tape will come from the same system that provides the diskette information to the NAIC. The commenter aruged that this appears to diminish the value of any cross verification.

RESPONSE: Department disagrees with the commenter. The Department will analyze the information on securities held by custodians and subsequently reconcile and confirm that with the securities information provided by domestic insurers as reported on Schedule D of their Annual Statement.

COMMENT: Four commenters objected to N.J.A.C. 11:19-2.3, which provides the general data filing requirements for all domestic insurers. This provision requires all domestic insurers to file with the Department the information required by this subchapter by January 31, 1993. One commenter asked whether the Department intends that 1992 data is subject to this filing. The commenter further stated that the January 31st compliance date provides little time to comply with these rules and places a considerable burden on insurance companies to have the data by January 31, since the rules have not yet been adopted. The commenter stated that as a software vendor its users in New Jersey are depending on it to provide software that complies with these rules. The commenter argued that it is almost impossible to comply with these rules given the fact that the regulation is still being developed. Additionally, the commenter believes that compliance should be moved to January 31, 1994 especially since the annual statement is not due until March 1.

A second commenter stated that the investment data required by the Department may be updated until March 1 of each year which is also the date upon which the annual statement is filed. The commenter suggests a submission deadline of March 31 or thereafter.

RESPONSE: The Department has amended N.J.A.C. 11:19-2.3 in order to clarify that all domestic insurers shall annually file the information requested by this subchapter for the prior calendar year ending December 31 on January 31 of the next year. This means that 1993 data is scheduled to be filed January 31, 1994, and 1994 data is scheduled to be filed January 31, 1995 and so forth. For the purpose of this subchapter, 1992 data shall be submitted by March 1, 1993.

The Department is permitting a March 1, 1993 filing date only for this initial filing in order to provide insurers with sufficient time to notify their custodians of the adopted rules.

The second commenter is incorrect in that the investment data required by the Department cannot be updated until March 1 of each year. The information filed by the custodian should reflect what is actually held by that custodian as of December 31 of that preceding year.

COMMENT: One commenter stated that a reconciling variance could occur if a security is sold on December 31 and not settled until January. The commenter asserts that it would report the security on Schedule D, yet it would not be recorded in the custodian account. The commenter questioned what should be done under this scenario.

RESPONSE: The IVS subsystem would report this as an exception and as a result the Department would have to do a follow-up. The Department notes that this problem would occur regardless of the date selected.

COMMENT: One commenter stated that in reconciling Schedule D to the custodian account, it could have several variances if the custodian bank values the security from a different source than that which is used for Schedule D as directed by the NAIC. The commenter questions what should be done under this scenario.

RESPONSE: The IVS subsystem would report this as an exception and as a result the Department would have to do a follow-up.

COMMENT: One commenter questioned whether the filing requirements of these rules apply to all domestic insurers qualified and registered to transact business in the State of New Jersey.

RESPONSE: These rules apply to all domestic insurers regulated under the laws of New Jersey unless specifically stated otherwise.

COMMENT: One commenter questioned whether the IVS filing requirements apply to insurance companies that own more than one entity. Additionally, the commenter asked whether the requirements apply to each entity on a consolidated basis.

RESPONSE: These rules apply to each domestic entity individually.

COMMENT: One commenter stated that since the Department will be assigning custodian codes, the commenter requested that the Department provide it with a list of the custodian codes that are required in the record layout. The commenter asserts that since there are thousands of possible custodians all over the world it is not sure that the Department can realistically assign and maintain a custodian code for every custodian.

RESPONSE: Once an insurer notifies the Department of its respective custodian(s), the Department will assign the custodian(s) a code number and notify the insurer, who will in turn advise each custodian(s) of its code.

COMMENT: A commenter stated that in the trailer record layout (Appendix A, Exhibit 6), the Department requires total quantity of total par/shares. The commenter stated that unless this number is going to be used as a hash total, it does not recognize the value of combining par with shares.

RESPONSE: The total quantity of total par value of bonds or shares of stocks will be used as a hash total. The Department has amended Appendix A, Exhibit 4 to clarify "Field 8—Quantity" with respect to the total number of shares held or total par value of bonds.

COMMENT: A commenter stated that on the header and trailer records the Department requires custodian codes which are assigned by the Department. The commenter stated that it is unclear as to which custodian code should be placed in this field. The commenter stated that it is assuming that the Department wants one header record and one trailer record and all the detail in between, and that there is an unlimited number of custodian codes that will be in the detailed records. Therefore, the commenter argued that it is unclear as to which code should be placed in the header and trailer record. The commenter further stated that there are other alternatives to having a header and trailer record for each custodian code in the portfolio and having the detail related to each code in between the respective header and trailer.

RESPONSE: There is only one custodian code number to be used per tape, which number is assigned by the Department.

COMMENT: One commenter expressed concern with the reference to the Market Price Source, which is provided in Appendix A, Exhibit 3, Detail Record Layout and Appendix A, Exhibit 4, Detail Record Layout Description. The commenter asked if the Department means that the Market Price Source is at the discretion of the insurance company. The commenter stated that companies may use WSJ, WS, Wall Street, Wall Street Journal, Wall St., or W.S. Journal, as a source of the Wall Street Journal and the commenter is not sure of the Department's intention. The commenter asked if there are standard codes for the market sources that are similar to the custodian codes.

RESPONSE: There is not a standard set of codes for the Market Price Source. The Market Price Source is at the discretion of the company but in reporting this information on the Detail Record Layout and the Detail Record Layout Description, insurers must be consistent in their references to the Market Price Source.

COMMENT: One commenter stated that it is assuming that the record descriptions are final and requested that the Department provide a tape layout using the standard tape layout forms in this description. The commenter further requested that the Department provide these layouts for both the 3480 cartridge tapes and the 6250 BPI nine-track reel to reel tape.

RESPONSE: The Department does not believe that this is necessary. The layouts in the Appendix provide the necessary information in order to comply with the requirements of this subchapter.

Full text of the adoption follows (additions to the proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*).

CHAPTER 19
FINANCIAL EXAMINATIONS MONITORING SYSTEM

SUBCHAPTER 1. (RESERVED)

SUBCHAPTER 2. DATA SUBMISSION REQUIREMENTS FOR ALL DOMESTIC INSURERS

11:19-2.1 Purpose and Scope

(a) The purpose of this subchapter is to set forth the filing

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requirements and procedures for the submission of financial data under various Financial Examinations Monitoring System (FEMS) subsystems, for all domestic insurers to the Department.

(b) These rules apply to all domestic insurers regulated under the laws of New Jersey unless specifically stated otherwise.

11:19-2.2 Definitions

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

"ADAS" means the Actuarial Data and Analysis Subsystem, which provides tools to help the Department's actuaries to value the reserves of domestic life insurance companies.

"BASS" means the Billing and Scheduling Subsystem, which facilitates the examination activities of the Department. This system provides for automated time and expense entry, produces examination schedules and generates company bills.

"Certificate of Verification or statement of assets held" means a certified listing from the custodian of the securities held as of a specified date (for example, year end) for a specified insurance company.

"CINS" means CUSIP International Numbering Standard.

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

"CUSIP" means the American Banking Association's (ABA) Committee on Uniform Security Identification Procedures, a uniform security identification system for securities which are obtained, selected, arranged and published by Standard and Poors.

"Custodian" means an entity that is in custody of securities on behalf of an insurer or the insurer itself.

"DDS" means the Descriptive Data Subsystem, which provides online access to demographic information and a financial snapshot of all insurance and other risk assuming entities regulated by the Department. A tracking system for admissions and extensions of authority is also provided.

"Department" means the Department of Insurance.

"Domestic insurer" means an insurer formed under the laws of this State pursuant to N.J.S.A. 17:17-1 et seq., 17:46A-1 et seq., 17:46B-1 et seq., and 17B:18-1 et seq.

"DTC" means Depository Trust Corporation.

"Due date" means a date prior to or on which a submission must be received by the Department.

"EBCDIC" means the Extended Binary Coded Decimal Interchange Code which is a computer code for representing data. This is used in all IBM mainframe systems.

"EXSSS" means the Examination Statistical Sampling Subsystem, which is a statistical sampling package that runs on a personal computer to provide the field examiners with random number and statistical sample support tools.

"FAS" means the Financial Analysis Subsystem, which performs analysis on the annual/quarterly statement data filed with the NAIC under mandate of the Department. A series of solvency related tests are performed and companies are stratified based upon test results.

"FED" means Federal Reserve Book Entry.

"GASSS" means the General Application Spreadsheet Software Subsystem, which provides insurance analysts with a series of spreadsheet and query tools to analyze a specific company's data.

"GLARS" means the General Ledger Analytical Review Subsystem, which is a general ledger package that assists the Department's field examiners in their company examination activity by reconciling the company chart of accounts to the annual statement filing.

"Insurer" or "insurance company" means an entity authorized or eligible to transact the business of insurance in New Jersey.

"IRS" means the Information Retrieval Subsystem, which is an information retrieval tool that will aid the field examiner in reviewing insurance company files.

"IVS" means the Investment Valuation Subsystem, which analyzes the investment data submitted with the Annual Statement (Schedule D) and reconciles custodian information to the statement data.

"NAIC" means the National Association of Insurance Commissioners.

"PPN" means Privately Placed Securities.

"Risk assuming entity" means any entity regulated by the Department pursuant to New Jersey statutes.

"SLPS" means the Surplus Lines Processing Subsystem, which assists the Department in monitoring the activities of persons which sell surplus lines insurance to New Jersey residents and matches quarterly agent tax data to quarterly company policy data.

"SVO" means the Securities Valuation Office. This entity was created by the NAIC to provide insurers with a source for uniform prices and quality ratings for their securities holdings.

"TASS" means the Taxes and Assessments Subsystem, which calculates and verifies premium tax information filed by companies, and calculates various assessments which are levied by the DOI.

"VOS Manual" means the Valuation of Securities manual; this document is published annually by the NAIC SVO and contains market prices and NAIC Designations for all bonds and stocks owned by United States domiciled insurers when such securities have been filed with the SVO for this purpose.

11:19-2.3 General data filing requirements for all domestic insurers

(a) All domestic insurers shall file with the Department ***on an annual basis*** the information required by this subchapter *[on an annual basis beginning]* ***for the prior calendar year ending December 31 by*** January 31, *[1993]* ***of the next year***, in accordance with Appendix A to this subchapter incorporated herein by reference. ***Data for 1992 shall be filed by March 1, 1993.***

(b) Upon request by the Commissioner, any domestic insurer shall provide the information required by this subchapter to the Department in accordance with formats set forth in this subchapter.

11:19-2.4 IVS subsystem filing requirements

(a) All domestic insurers shall provide the Department with a report on their securities by either cartridge (3480 model) or computer tape (6250 BPI, IBM compatible) in accordance with (c) below.

(b) Domestic insurers owning securities which are held by custodians shall utilize custodians which shall:

1. Submit to the Department a certification of securities held; and

2. Provide the Department with an independent report of the insurer's securities by either cartridge (3480 model) or computer tape (6250 BPI, IBM compatible) in accordance with (c) below.

(c) All reports of securities held by domestic insurers filed with the Department shall include the information and be submitted in the format set forth in the record layouts in Appendix A to this subchapter. The report shall include the following information:

1. An internal IBM standard tape label containing:

i. Data set name ("INF.XXXXX.ZZZZZ"). The five Xs shall be replaced with the custodian code assigned by the Department and the give Zs shall be replaced with the company's NAIC number;

ii. The data must be EBCDIC character set and alphas in upper case;

iii. Volume serial number (six characters, shall be unique for each tape in a multi-volume data set);

iv. Tape density;

v. Record format;

vi. Record length;

vii. Block size; and

viii. Create date.

2. Tapes and cartridges may be delivered or mailed but shall be received by the Department by the due date to:

New Jersey Department of Insurance
FEMS-IVS Project
20 W. State Street
CN-325
Trenton, NJ 08625

i. If mailed, they shall be mailed in standard secure containers with a pre-addressed, prepaid return address label enclosed or attached.

3. Tapes and cartridges shall be clearly labeled with the custodian's name, company's name and the date. The box and the label shall be printed or typed in capital letters.

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4. Domestic insurers and/or the custodian shall submit either IBM compatible 3480 cartridges, or 6250 BPI tapes (3480 cartridges are preferred, with 6250 BPI tapes as a secondary preference.)

5. An external label shall be affixed to the tapes or cartridges and include the following information:

i. The custodian's name and custodian's code;

ii. The company's name and NAIC number;

iii. The volume sequence number if file is multi-volume (for example 1 of 5);

iv. The date when the tape or cartridge was mailed;

v. The letters "SL" on the external label indicating that the internal IBM standard tape information is included as provided in (c)1 above;

6. A cover letter indicating the same information on the internal and external labels; and

7. A signed affidavit of the custodian which shall accompany all transmissions attesting to the accuracy of the cartridges/tapes.

8. Domestic insurers and/or custodians that are not technically capable of providing the Department with an IBM standard internal label pursuant to (c)1 above, shall indicate that no internal label is included by writing the letters "NL" on the external label and on the cover letter.

(d) Domestic insurers and/or the custodian shall adhere to the attached record layouts in the appendices. In addition to transaction records, header and trailer records shall be included in all electronic media (that is, tapes and cartridges), in the format set forth in Appendix A to this subchapter.

11:19-2.5 through 11:19-2.8 (Reserved)

11:19-2.9 Penalties

Failure to comply with the provisions of this subchapter shall subject the insurer to penalties as provided in N.J.S.A. 17:23-2 and 17B:21-2.

APPENDIX A
Exhibit 1

Header Record Layout

Field No.	Field Name	Start Pos	Field Type & Length	Comments
1	Record Type	1	X(1)	Must fill w/"1"
2	Custodian Code	2	X(5)	DOI assigned custodian code
3	Insurance Company Code	7	X(5)	NAIC Code
4	Year Ended	12	X(4)	Format CCYY; CC = the century, YY = the year
5	Filler	16	X(135)	Space fill
			150	

Note:

X denotes alphanumeric

Alphanumeric fields containing numeric values should be right adjusted and zero filled to the left with the sign in the left most character (specific instructions for each field are documented in the comment section).

APPENDIX A
Exhibit 2

Header Record Layout
Description

Field No.	Field Name	Comments
1	Record Type	This field must contain the number "1" for this record type.
2	Custodian Code	This field must contain the custodian's code assigned by the DOI.
3	Insurance Company Code	This field must contain the Insurance company's NAIC company code.
4	Year Ended	This field must contain the year of the period for which the data applies.
5	Filler	Spaces

APPENDIX A
Exhibit 3

Detail Record Layout

Field No.	Field Name	Start Pos	Field Type & Length	Comments
1	Record Type	1	X(1)	Must fill w/"2"
2	Custodian Code	2	X(5)	DOI Custodian Code
3	Insurance Company Code	7	X(5)	NAIC Code
4	CUSIP/PPN/CINS Number	12	X(9)	If no assigned number, fill w/nine zeroes. This number must be unique. There may not be two records with the same CUSIP. The first 8 digits must be unique (e.g. 123456789—1 through 8 must be unique).
5	Issuer	21	X(30)	
6	Description	51	X(30)	
7	Stock/Bond Indicator	81	X(1)	S or B
8	Quantity	82	X(15)	Total Par Value or Number of Shares—12 digits to left of implied decimal point, 3 digits to right—sign is NOT included since this value should always be positive.
9	Market Value	97	X(12)	Market Value Per Security 8 digits to left of implied decimal point, 3 digits to right, the sign (+, -) should be in the first character
10	Market Price Source	109	X(20)	Source of Price (e.g. Wall Street Journal)
11	Filler	139	X(22)	Space fill
			150	

Note:

X denotes alphanumeric

Alphanumeric fields containing numeric values should be right adjusted and zero filled to the left with the sign in the left most character (specific instructions for each field are documented in the comment section).

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APPENDIX A
Exhibit 4

Detail Record Layout
Description

Field No.	Field Name	Comments
1	Record Type	This field must contain the number "2" for this record type.
2	Custodian Code	This field must contain the custodian's code which was assigned by the DOI.
3	Insurance Company Code	This field must contain the Insurance company's NAIC company code.
4	CUSIP/PPN/CINS Number	Must contain approved CUSIP, PPN, or CINS Number or (foreign issues) Agency number as assigned by Standard & Poor's Corporation. This number must be unique. There may be no duplicate CUSIP. It is the first 8 digits of the CUSIP that must be unique. For example, 222222212 and 222222222 are unique CUSIPs. However, the following are duplicate CUSIPs: 222222222 and 222222221. Therefore, each record must be a unique CUSIP according to the first 8 digits. The "first 8" refers to the first eight digits, starting from the left.
5	Issuer	Must contain name of company issuing security.
6	Description	Must contain shortened CUSIP security description.
7	Stock/Bond Indicator	Must contain an S to indicate security quantity is reported as number of shares or a B to indicate security quantity is reported as par value.
8	Quantity	Must contain total number of shares ***of stocks held*** or total par value of bonds ***(where the value of bonds owned are adjusted for repayment of principal)***.
9	Market Value	Must contain market value per security. For stocks this field should contain market value per share. For bonds this field should contain market value per unit.
10	Market Price Source	Must contain the source of pricing for example, Wall Street Journal, Dow Jones, etc.
11	Filler	Spaces

APPENDIX A
Exhibit 5

Trailer Record Layout

Field No.	Field Name	Start Pos	Field Type & Length	Comments
1	Record Type	1	X(1)	Must fill w/"3"
2	Custodian Code	2	X(5)	DOI Custodian Code
3	Insurance Company Code	7	X(5)	NAIC Code
4	Total Records	12	X(8)	Exclude header & trailer
5	Total Quantity	20	X(18)	15 digits to the left of the implied decimal point, 3 digits to the right, no sign should be included, this should be a total of the quantity field for every detail record.
6	Filler	38	X(113)	Space fill
			150	

Note:
X denotes alphanumeric
Alphanumeric fields containing numeric values should be right adjusted and zero filled to the left with the sign in the left most character (specific instructions for each field are documented in the comment section).

APPENDIX A
Exhibit 6

Trailer Record Layout
Description

Field No.	Field Name	Comments
1	Record Type	This field must contain the number "3" for this record type.
2	Custodian Code	This field must contain the custodian's code assigned by the DOI.
3	Insurance Company Code	This field must contain the Insurance company's NAIC company code.
4	Total Records	Total number of detail records submitted.
5	Total Quantity	Cash total of total shares/par value (total of quantity field for all detail records).
6	Filler	Spaces

LABOR

(a)

DIVISION OF WORKPLACE STANDARDS

Procedural Standards for Public Employees

Readoption with Amendment: N.J.A.C. 12:110

Proposed: November 16, 1992 at 24 N.J.R. 4234(a).
Adopted: January 8, 1993 by Raymond L. Bramucci, Commissioner, Department of Labor.
Filed: January 8, 1993 as R.1993 d.71, **without change**.
Authority: N.J.S.A. 34:6A-25 et seq., specifically 34:6A-32.
Effective Date: January 8, 1993, Readoption;
February 1, 1993, Amendment.
Expiration Date: January 8, 1998.

Summary of Public Comments and Agency Responses:
No comments were received.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 12:110.

Full text of the adopted amendment follows.

CHAPTER 110

OCCUPATIONAL SAFETY AND HEALTH PROCEDURAL STANDARDS FOR PUBLIC EMPLOYEES

(b)

DIVISION OF WORKPLACE STANDARDS

Explosives

Adopted New Rule: N.J.A.C. 12:190

Proposed: November 16, 1992 at 24 N.J.R. 4235(a).
Adopted: January 8, 1993 by Raymond L. Bramucci, Commissioner, Department of Labor.
Filed: January 8, 1993 as R.1993 d.72, **without change**.
Authority: N.J.S.A. 21:1A-128, specifically 21:1A-131.
Effective Date: February 1, 1993.
Expiration Date: February 1, 1998.

Summary of Public Comments and Agency Responses:
No comments were received.

N.J.A.C. 12:190 expired on January 4, 1993. In accordance with N.J.A.C. 1:30-4.4(f), these rules proposed for readoption are adopted as new rules, effective February 1, 1993.

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Full text of the adopted new rules, which were proposed for readoption, can be found in the New Jersey Administrative Code at N.J.A.C. 12:190.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF CONSUMER AFFAIRS
BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS

Land Surveyors; Corner Markers

Adopted Amendment: N.J.A.C. 13:40-5.1

Proposed: January 6, 1992 at 24 N.J.R. 51(a) (see also 24 N.J.R. 554(a)).

Adopted: November 5, 1992 by the Board of Professional Engineers and Land Surveyors, Joseph Wiseman, President.

Filed: January 4, 1993 as R.1993 d.60, **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. 45:8-27 et seq.; 45:8-28(e); 45:8-58(c) and 45:1-21(h).

Effective Date: February 1, 1993.

Expiration Date: August 3, 1995.

The Board of Professional Engineers and Land Surveyors afforded all interested parties an opportunity to comment on the proposed amendment to N.J.A.C. 13:40-5.1. Announcement of the opportunity to respond to the Board appeared in the New Jersey Register on January 6, 1992 (see 24 N.J.R. 51(a)). The official comment period, scheduled to end on February 5, 1992, was extended to March 3, 1992 (see 24 N.J.R. 554(a)). Announcements were also forwarded to the Star Ledger, the Trenton Times, the New Jersey Society of Professional Engineers, the New Jersey Society of Professional Land Surveyors, and to other interested parties.

A full record of this opportunity to be heard can be inspected by contacting the Board of Professional Engineers and Land Surveyors, Post Office Box 45015, Newark, New Jersey 07101.

Summary of Public Comments and Agency Responses:

The Board received 64 written comments submitted by attorneys, land surveyors, title insurance companies, professional associations, the Department of Environmental Protection and Energy and other interested parties.

The attorneys who commented are: A. Edward Hook, George W. Parsons, Jr., R. Jerome Jabbour, Daniel P. Mecca, Bruce K. Byers, Christopher G. Weigl, John Gero, Howard M. Kaplan, Alfred Daniel Fierro, Thomas E. Weinstock, Ronald F. Pitman, Mark Turnamian, James M. O'Brien, William R. Postman, Jr., and Carmelo R. Iaria.

The land surveyors who commented are: R.S. Butryn, Thomas F. Lynch, Irving E. Kinney, Wm. N. Fritzinger, James M. Cahill, Theodore A. Hallard, Daniel E. Parker, J. Peter Borbas, Steven D. Parent, Vincent J. Rigelon, Jr., Guntis Bole (2 letters), Robert Watson, Nicholas J. Wunner, Franklyn C. Gluckler, Gary Paparozzi, Nancy Jean Scott, Eugene E. O'Connell, Steven H. Mazurek, Daniel E. Yukas, William N. Scott, Frank A. Intessimoni, Patrick H. Fatton, Thomas H. Whitehead, Mark J. Mantyla, Barry S. Jones, Ted W. Pivovarnick, John C. Hoffman, William G. Hollows, Alexander J. Lapatka, Bernard R. Berson, Robert J. Raba, Jr., Donald R. Ackerman, Walter Scharfenberg, Charles J. Riebel, Jr., Robert J. Curley and Richard E. Garnett.

The title companies which commented are: TRW Title Insurance, Vested Title, Inc. and Investors Title Agency, Inc.

The professional associations which commented are: The New Jersey State Bar Association, the New Jersey Society of Professional Land Surveyors, and the Professional Land Surveyors Association of New Jersey.

Individual commenters are: William Doward, Catherine A. Evans, Felicity M. Belloff, Mary McKenna, and Edward Marks.

The amendment as proposed continues the Board's basic requirement that corner markers be set in all surveys but redefines "ultimate user" to permit only the property purchaser, and not the purchaser's attorney or other representative, to waive the setting of corner markers. Twenty land surveyors expressed the opinion that the setting of corner markers should be mandatory (that is, that no waiver at all should be permitted), while four land surveyors supported the amendment as written. Two letters were received from land surveyors who mistakenly believed the proposal did not permit the property purchaser to waive the setting of corner markers. The remaining commenters were opposed to the amendment. A summary of the comments received and the Board's responses follows.

COMMENT: In support of the proposal, a municipal surveyor noted that in his experience representatives of property owners are waiving corner marker setting in a majority of cases without the property owner's knowledge. Similarly, another commenter noted instances of property owners having to pay a higher total price for a survey because corners were not set initially and the surveyor had to return to set corners. One commenter agreed that surveyors should work only with the property purchaser because, in his experience, there was rarely a problem when the surveyor worked directly with the purchaser. Finally, a commenter stated that the proposed amendment is excellent and can only be made better by compulsory setting of all corners.

RESPONSE: The Board acknowledges and appreciates the commenters' support for the proposed amendment.

COMMENT: Twenty commenters stated that the setting of corner markers should be mandatory, for diverse reasons. The New Jersey Society of Professional Land Surveyors stated that the collective experience of the over 700 surveyors represented by the Society demonstrates that the public wants corner markers. The Society and several other commenters suggested that permitting the consumer to waive the setting of corner markers will not cure the problem which generated the proposal: the absence of corner markers. These commenters believed the consumer will continue to waive corner marker setting based upon inadequate advice from their representatives regarding the benefits of corner markers. Other commenters stated that mandatory corner marker setting is beneficial because it will permit identification of the surveyor who did the work; it will eliminate improper "drive-by" surveys; it will save the purchaser extra paperwork and expense should corners be required subsequent to the initial site visit; and it will eventually reduce the cost of doing all surveys. One commenter stated that consumers often realize only after closing that they need to know boundaries and that if markers were mandatory a second site visit to set markers would not be necessary. A land surveyor pointed out that a surveyor has to be physically present in any event to look for encroachments and that setting an iron pin costs about $.50 and takes five minutes. Additional comments advocating mandatory corner markers include that permitting the consumer to waive will benefit surveyors who choose not to comply: consumers will choose these surveyors and attorneys will direct clients to them because they can offer lower prices.

RESPONSE: In December 1989, the Board proposed mandatory corner marker setting (see 21 N.J.R. 3715(a)). Among the comments received in opposition to that proposal were many stating that denying the consumer the right to waive corner marker setting infringed upon the consumer's right to contract freely. While the Board agrees that mandatory corner marker setting would have an overall beneficial impact upon the public and the profession, in response to the concerns raised by these commenters and upon further consideration the Board has determined to permit the property purchaser or owner, but not his or her attorney, to waive the corner setting requirement, as reflected in the proposal published on January 6, 1992. This will ensure that the consumer has been personally advised of the availability of corner markers and will permit the consumer to make an informed decision as to whether to have his or her property corners marked. In response to the comment that permitting the consumer to waive will benefit surveyors who choose not to comply, it remains the surveyor's responsibility, under his or her contract with the consumer as well as under Board regulations, to ensure that the consumer has been advised of the availability of corner markers and to obtain the required waivers when necessary. Surveyors who do not comply with Board regulations will continue to be subject to disciplinary action.

COMMENT: The New Jersey State Bar Association stated that requiring attorneys to obtain a waiver of the corner marker requirement suggests that clients of attorneys are not being properly informed of their choices. The Bar Association, as well as several other commenters, contends this is an unwarranted interference in the relationship between attorneys and their clients. The Bar Association points out that attorneys are regulated by the New Jersey Supreme Court's Rules of Professional

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Conduct, which require an attorney to "keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information," and that these rules require attorneys to notify clients with regard to corner marker issues.

RESPONSE: It is the position of the Board that this amendment does not interfere with the attorney-client relationship. The sole change manifested by this amendment relates to the fact that only the client and not the attorney may sign the waiver. This amendment does nothing to alter the present attorney-client relationship in that an attorney must still advise a client of waiver rights in the same manner as under the present rule. In fact, the amendment clarifies the attorney's role in advising a client of the waiver rule.

COMMENT: One commenter asked how the number of complaints the Board received compares with the number of surveys prepared annually. Another commenter stated that since there has been no showing of gross negligence or abuse, the inconvenience and cost of complying outweigh any benefit.

RESPONSE: The Board has no way of knowing the number of surveys prepared annually since surveys are not recorded. In proposing this amendment in response to consumer complaints, the Board is fulfilling its statutory duty to protect the public safety and welfare. For the reasons set forth in more detail below, the Board does not anticipate that compliance with the rule will be inconvenient or costly.

COMMENT: The statement in the proposal that the cost of setting corners is minimal is untrue; the cost is substantial when compared to the cost of the survey itself.

RESPONSE: The Board disagrees and reiterates its position that corner marking requires only a minor additional effort by the surveyor when performed in conjunction with a properly prepared routine survey. Board survey standards, which have been in place since 1977, require a field survey when a property survey is to be performed. See N.J.A.C. 13:40-5.1(c). The field survey must include all measurements and data necessary to perform an accurate survey. Once these measurements have been taken and data collected, the additional effort to set the corners is minimal and should not result in greatly increased survey costs, either for the surveyor's time or for materials. The Board considers this small additional expense to be significantly outweighed by the benefits to the purchaser in having property corners marked. These benefits include the purchaser's full use and enjoyment of his or her property, avoidance of expensive boundary disputes and avoidance of extra fees involved in having markers set after a survey has been performed.

COMMENT: One commenter suggested that surveyors will simply place corner markers on every property rather than contacting each ultimate user to obtain a waiver, and this cost will be passed on to the consumer.

RESPONSE: The Board does not view this as likely. The surveyor is required under the existing rule to obtain necessary waivers. The proposed amendment does not enlarge the surveyor's responsibilities in that regard; it merely requires that the waiver be signed only by the purchaser and not the purchaser's representative. In the Board's opinion, any effort involved in obtaining the signature of the purchaser rather than the purchaser's representative will be more than outweighed by the assurance that the consumer will be advised of the availability of corner markers.

COMMENT: The New Jersey Bar Association stated that in many cases it is not practical for an attorney to obtain a written waiver from his or her client, which will ensure that corner staking will be more often required, whether needed or not, further increasing closing costs.

RESPONSE: Attorneys who wish to assist the surveyor in obtaining the client's signature on the waiver form may submit the form to the client at any time prior to closing. With modern technology, a client's signature on the waiver form may be obtained in a timely manner and delays avoided.

COMMENT: Contacting the purchaser will delay the closing process. Surveys are often not ordered until a mortgage commitment is issued, leaving little time for the survey to be ordered and the closing to take place. Because the consumer does not have time to deal with the logistics of waiving corner markers prior to closing, the consumer may be forced to accept the additional cost of corner markers. Survey affidavits of no change and survey inspection reports will replace property surveys if the consumer is confronted with delays and higher survey costs.

RESPONSE: Again, an agreement to omit corner markers is required under existing rules. The Board does not foresee that requiring the surveyor to obtain the signature of the purchaser rather than the purchaser's representative will further delay survey preparation. As stated, the setting of corner markers in conjunction with a properly prepared survey should not result in significantly higher survey costs.

COMMENT: Several attorneys and title insurance companies argued that the majority of consumers do not want corner markers. They stated that clients are not concerned with corner markers, which they believe are too costly, but are concerned with whether the survey is accurate, acceptable for title policy purposes, and completed in a reasonable amount of time and at a reasonable cost. One attorney stated that none of his clients had ever complained that they were not given the opportunity to have markers set, and one attorney stated that none of his clients had ever requested that corner markers be set.

RESPONSE: The Board has no knowledge that consumers do not want surveys set and in fact has received many comments to the contrary. In any event, consumers may omit corner markers from the survey by signing a waiver in the form outlined in the proposed amendment. The Board repeats that the setting of corner markers in conjunction with a properly prepared survey should not significantly increase survey costs and will enhance the accuracy of the survey.

COMMENT: Corner markers are unnecessary. They can be set at a later date for the same additional charge that would have been imposed had the corners originally been marked.

RESPONSE: On the contrary, if markers are set when the property is first surveyed, the only additional cost is the price of the marker. A second visit to the site to set corners would, of necessity, result in a higher fee to cover the cost of the surveyor's additional visit to the site.

COMMENT: Corner markers do not enhance surveys provided for title transfer or mortgage closings.

RESPONSE: The Board believes corner markers enhance all surveys. In setting corners, previously undiscovered corners are often found and disputes can be resolved. If corners are not set, inconsistencies will be perpetuated. The placement of physical, personally identifying information on the ground commits the surveyor to his or her work, thereby promoting high professional standards and protecting the consumer from negligent surveyors. Additionally, the Board anticipates that as markers proliferate in the field, the time and cost involved in survey preparation will decrease, resulting in lower survey costs. In response to the Board's previous corner markers proposal, the Board received a letter from a former Board licensee, now practicing in Florida where corner markers are mandatory, citing just such a result. The commenter stated that the existing monumentation of all corners has resulted in a direct cost benefit to the Florida consumer, as well as a simplification of the surveyor's work, since 75 percent of the corners of any property are usually located. Furthermore, Florida property owners enjoy the benefit of few boundary disputes. The Board anticipates that an abundance of corner markers in New Jersey will produce a similar cost savings to New Jersey consumers.

COMMENT: Two commenters objected to the proposal based upon the erroneous belief that it did not permit the property purchaser to waive corner markers.

RESPONSE: The proposed amendment does permit the property purchaser or owner to waive the setting of corner markers.

COMMENT: A representative of the Department of Environmental Protection's Green Acres Program stated that, in connection with its acquisition of vast areas of land for "open space" in New Jersey, it would not be useful to set thousands of interior corners which would become meaningless with a merger of title of adjoining properties. It was suggested that in such cases the perimeter only should be marked.

RESPONSE: The setting of perimeter corners under these circumstances will comply with Board regulations.

COMMENT: The sole purpose of the proposal is to make more money for surveyors and engineers. If the proposal is adopted, a provision should be added requiring the surveyor or engineer to provide the ultimate user with a statement as to the extra expense that will be involved if markers are set.

RESPONSE: The Board points out initially that only surveyors are authorized to prepare surveys. As stated in the notice of proposal, the amendment was in response to consumer complaints and is intended to ensure that the consumer is adequately advised of the availability of corner markers. The Board is confident that in connection with a properly prepared survey the small additional cost involved in setting corner markers will continue to be disclosed to the consumer. Accordingly, a regulation requiring such disclosure is unnecessary at this time.

COMMENT: The present rules are not being enforced; enforcement should be provided for the present rules before they are amended.

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RESPONSE: It is the position of the Board that all of its rules must be enforced. Information concerning nonenforcement of its rules should be brought to the attention of the Board immediately and the Board will address each allegation in a timely fashion.

COMMENT: Since the surveying profession will be required to inform the legal, banking and title industry about the proposed amendment, the Board should include in the proposal a public awareness program approved by the New Jersey Society of Professional Land Surveyors.

RESPONSE: While the Board is unaware of the type of program this commenter believes is necessary, it does not believe the proposed amendment necessitates any type of public awareness program. The amendment merely requires the surveyor to have the waiver signed by the property purchaser and not the purchaser's representative.

COMMENT: If a corporation asks for a survey, must the president sign the waiver? If a person is representing an ill parent, must the parent sign the waiver even if he or she is not physically or mentally capable?

RESPONSE: The waiver would be signed in the same manner as that required for all business documents.

Summary of Agency-Initiated Change:

In order to clarify its intention that ultimate users other than purchasers in the case of transfer of title may also waive the required setting of corner markers during a survey of their property, the Board has added the following upon adoption: "In all instances other than transfer of title, "ultimate user" shall mean the owner of the property."

Full text of the adopted amendment follows (addition to proposal indicated in boldface with asterisks ***thus***):

13:40-5.1 Land surveyors; preparation of land surveys

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

(d) Appropriate corner markers, such as stakes, iron pipes, cut crosses, monuments, and such other markers as may be authorized by (d)2 below, shall be set either by the licensed land surveyor or under the supervision of the licensed land surveyor. Such markers shall be set at each property corner not previously marked by a property marker, unless the actual corner is not accessible, or unless a written waiver signed by the ultimate user is obtained and retained for a period of six years by the surveyor performing the survey. A waiver obtained from a purchaser pursuant to this subsection shall be in the following format, or its substantial equivalent:

WAIVER AND DIRECTION NOT TO
SET CORNER MARKERS

TO: _____

(Name, address and telephone number of Land Surveyor)

FROM: _____

(Name, address and telephone number of Purchaser)

Re: _____

Property (Lot & Block number, municipality or other identifier)

This is to advise that I/we have been made aware of my/our right to have corner markers set as part of a survey to be performed on property which is being purchased by me/us. That right is hereby waived and you are directed to perform the land survey without the setting of corner markers as provided by the regulation of the New Jersey Board of Professional Engineers and Land Surveyors.

_____
Purchaser(s)

Dated: _____

For the purpose of this section "ultimate user" shall mean, in the case of a transfer of title, the purchaser of the property. ***In all instances other than the transfer of title, "utlimate purchaser" shall mean the owner of the property.*** When a waiver is obtained to omit corner markers, a specific notation stating that such omissions have been made by direction of the ultimate user shall be clearly displayed on the plat or plan of survey by the following notation or its equivalent:

Waiver of setting corner markers obtained from ultimate user pursuant to the Board of Professional Engineers and Land Surveyors regulation, N.J.A.C. 13:40-5.1(d).

This notation must relate specifically to that plat or plan of survey and may not be included as a preprinted title block, standard form, or other reproducible medium.

1.-5. (No change.)

(e)-(n) (No change.)

TRANSPORTATION

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Restricted Parking and Stopping

Routes N.J. 138 in Monmouth County (Redesignation from Route N.J. 38)

Adopted New Rule: N.J.A.C. 16:28A-1.112

Proposed: December 7, 1992 at 24 N.J.R. 4334(b).

Adopted: January 7, 1993 by Richard C. Dube, Director, Division of Traffic Engineering and Local Aid.

Filed: January 7, 1993 as R.1993 d.63, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:6-1, 27:7-1 et seq., 39:4-138.1 and 39:4-198.

Effective Date: February 1, 1993.

Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

16:28A-1.112 Route 138

(a) The certain parts of State highway Route 138 described in this subsection shall be designated and established as "no stopping or standing" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139. In accordance with the provisions of N.J.S.A. 39:4-198, proper signs shall be erected.

1. No stopping or standing along both sides for the entire length within the corporate limits, including all ramps and connections thereto, which are under the jurisdiction of the Commissioner of Transportation, except in areas covered by other parking restrictions adopted in accordance with the Administrative Procedures Act and N.J.A.C. 1:30, in the following municipalities in Monmouth County:

i. In Wall Township.

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PUBLIC NOTICES

ENVIRONMENTAL PROTECTION AND ENERGY

(a)

OFFICE OF ENERGY

Notice of Submission of the State Implementation Plan for Ozone and Carbon Monoxide

Take notice that the New Jersey Department of Environmental Protection and Energy (the Department) completed two submittals which provide New Jersey's plan to attain the National Ambient Air Quality Standards (NAAQS) for ozone and carbon monoxide. These submittals, which revise New Jersey's State Implementation Plan (SIP), are required pursuant to the Federal Clean Air Act, as amended November 15, 1990, 42 U.S.C.A. sections 7401 et seq., (the Act), Public Law 101-549-Nov. 15, 1992. The Act required that these revisions to the SIP be submitted by the State to the United States Environmental Protection Agency (USEPA) by November 15, 1992. The Department submitted the SIP revisions on November 13, 1992, thus meeting the Federal requirements.

One of the submittals pertains to actions the Department is taking to attain the National Ambient Air Quality Standards (NAAQS) for ozone within the State, and the other submittal pertains to actions the State is taking to attain the NAAQS for carbon monoxide within the State. Both submittals contain a copy of the legal announcement that appeared in the New Jersey Register, Monday, October 5, 1992 at 24 N.J.R. 3559(b), an executive summary, a summary of the relevant Act requirements, a number of specific submittals detailing actions taken or committed to be taken, a summary of future submittals to be made, a description of the State Certified Organization (SCO) formed to oversee development of the SIP, and attachments.

The specific submittals included in the ozone SIP include an Emission Inventory; a commitment to amend New Jersey's existing rules regarding its motor vehicle Inspection and Maintenance (I/M) program, in order to develop and implement an Enhanced I/M Program; a commitment to identify and adopt specific and enforceable Transportation Control Strategies and Transportation Control Measures (TCMs) to offset any growth in emissions from growth in Vehicle Miles Traveled (VMT) and/or the number of vehicle trips; a commitment to adopt and implement an Emission Statement Rule; a commitment to amend the State's existing New Source Review (NSR) permit program rule; a commitment to amend the State's existing rule to control Volatile Organic Compounds (VOC) from stationary sources through the application of Reasonably Available Control Technology (RACT) by major sources of VOC's; a commitment to adopt and implement a Reasonably Available Control Technology (RACT) rule for major stationary sources of oxides of nitrogen (NO_x); a plan to develop and implement a Small Business Stationary Source Technical and Compliance Assistance Program; and a commitment for the New Jersey Department of Transportation to develop, adopt and implement an Employer Trip Reduction (ETR) Program.

The specific submittals included in the carbon monoxide submittal include an Emission Inventory; the SIP revision to implement an oxygenated gasoline program; the plan for forecasting and tracking the Vehicle Miles Traveled (VMT) in the designated tracking area until 1995; the SIP revision containing contingency measures that are effective upon exceedance of the VMT forecasts in the tracking area; a commitment to amend the State's existing New Source Review (NSR) permit program rules; a commitment to amend the State's existing rules regarding its motor vehicle Inspection and Maintenance (I/M) program, in order to develop and implement an Enhanced I/M Program; and a commitment to develop, adopt and implement an Employer Trip Reduction (ETR) Program.

Any persons who wish to receive a copy of either or both of these two final SIP submittals may request them from:

Attn: SIP Document Request
Bureau of Air Quality Planning
New Jersey Department of Environmental Protection and Energy
CN 418
Trenton, New Jersey 08625-0418
(Fax number: 609-633-6198)

(b)

WASTEWATER FACILITIES REGULATION ELEMENT

Notice of Proposed Termination of NJPDES/SIU Permits

Take notice that the New Jersey Department of Environmental Protection and Energy (Department) proposes to terminate individual New Jersey Pollutant Discharge Elimination System (NJPDES)/Significant Indirect User (SIU) Permits issued to the following facilities:

Permit Name	Permit Number NJ00	City	Delegated Local Agency	Discharge/ SIC Code(s)	Flow MGD
Burlington County					
R.R. Complex	82007	Florence	Mount Holly SA	4953	0.050
Parklands SLF	31640	Bordentown	Mount Holly SA	4953	0.020
Spectraserve	36030	Kearny	Passaic Valley SC	4952	0.140
Hexcel Corp.	81507	Lodi	Passaic Valley SC	CGW*	0.007
Taylor Forge	82252	Sommerville	Somerset-Raritan VSA	3498	0.055
Lone Pine	68641	Freehold	Ocean County UA—N	4953	0.216
Cogen Technologies	78417	Linden	Linden-Roselle SA	4931	0.825
Witco	29483	Perth Amboy	Middlesex County UA	2869, 2821	0.331
AT&T	00833	Whippany	Hanover SA	8731	0.080
AT&T	00442	Murray Hill	Essex/Union Jt Mtg	8731	0.250

The aforementioned NJPDES/SIU permits were issued for the above facilities' wastewater discharges to the above listed delegated local agencies. The Department has approved industrial pretreatment programs for these delegated local agencies in accordance with 40 CFR 403 and N.J.A.C. 7:14A-13.1(a), into which the aforementioned facilities discharge. The above facilities may continue discharging after the permits are terminated in accordance with the delegated local agencies' approved industrial pretreatment program requirements. In addition, the permittee shall be deemed to possess a NJPDES/SIU Permit-by-Rule consistent with requirements as specified in N.J.A.C. 7:14A-13.5.

It was the Department's original intent not to issue individual permits to the industries discharging to those local agencies with approved pretreatment programs. However, due to the delegated local agencies' limited enforcement authority, the Department issued individual NJPDES/SIU permits to selected SIUs, which the local agencies felt had the potential for the greatest impact to their facilities.

Pursuant to recently adopted amendments to N.J.A.C. 7:14A, discharges from the above listed facilities to delegated local agencies no longer need individual NJPDES/SIU permits. Furthermore, the Clean Water Enforcement Act, P.L. 1990, c.28, as revised by P.L. 1991, c.8, provides adequate enforcement authority to local agencies with approved pretreatment programs. Hence, the Department, in order to eliminate duplicate permitting and enforcement of permit violations, proposes to terminate the aforementioned permits in accordance with N.J.A.C. 7:14A-2.13(a)7 and 10.5(g).

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This notice is being given to inform the public that the Department intends to terminate the aforementioned individual NJPDES/SIU permits in accordance with the Regulations Concerning the New Jersey Pollutant Discharge Elimination System (N.J.A.C. 7:14A), which were promulgated pursuant to the authority of the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.

Copies of the administrative records related to these permits are on file at the offices of the NJDEPE, located at the address below. They are available for inspection, by appointment, between 8:30 A.M. and 4:00 P.M., Monday through Friday. Appointments for inspection of the files may be scheduled by calling (609) 292-0400. Copies of these records may be obtained for a nominal charge by contacting the Department.

Interested persons may submit written comments on the proposed termination to the Administrator, Wastewater Facilities Regulation Program, CN 029, Trenton, NJ 08625-0029. Written comments must be submitted by March 3, 1992. All persons, including the permittees, who believe that any condition of this proposed termination is inappropriate or that the Department's decision to issue this proposed termination is inappropriate, must raise all reasonably ascertainable issues and submit all reasonably available arguments and factual grounds supporting their position, including all supporting material, by the close of the public comment period. All comments submitted by interested persons in response to this notice, within the time limit, will be considered by the NJDEPE with respect to the proposal. At the close of the public comment period, the Department will either terminate these permits, or leave them in place, or take other appropriate action. The Department will respond to all significant and timely comments when a final notice is issued. The applicant and each person who has submitted written comments will receive notice of the NJDEPE's final decision.

Any interested person may request in writing that the NJDEPE hold a non-adversarial public hearing regarding this proposed termination. This request shall state the nature of the issues to be raised in the proposed hearing as detailed above, and shall be submitted to the Administrator at the address above by March 3, 1992. A public hearing will be conducted whenever the NJDEPE determines that there is a significant degree of public interest. If a public hearing is held, the public comment period in this notice shall automatically be extended to the close of the public hearing.

Additional information concerning the proposed termination may be obtained between the hours of 8:00 A.M. and 4:00 P.M., Monday through Friday from: Nilesh Naik at (609) 292-4860.

(a)

WASTEWATER FACILITIES REGULATION ELEMENT

Final Notice of Revocation of NJPDES/SIU Permits

Take notice that the New Jersey Department of Environmental Protection and Energy (Department) is terminating the individual New Jersey Pollutant Discharge Elimination System (NJPDES)/Significant Indirect User (SIU) permits previously noticed at 24 N.J.R. 491(a), February 3, 1992.

The subject NJPDES/SIU permits were issued for wastewater discharges to delegated local agencies, which have Departmentally approved industrial pretreatment programs in accordance with 40 CFR 403 and N.J.A.C. 7:14A-13.1(a). Facilities, whose State-issued NJPDES-SIU permit is terminated by this action, may continue discharging after this termination in accordance with the delegated local agencies' approved industrial pretreatment program requirements. In addition, the permittee shall be deemed to possess a NJPDES/SIU Permit-by-Rule consistent with requirements as specified in N.J.A.C. 7:14A-13.5.

The Department received one request for a public hearing from the Rutgers Environmental Law Clinic (RELC) on the aforementioned February 3, 1992 notice. The Department determined that this request, standing alone, did not constitute significant public interest. Therefore, the hearing request was denied. Nine commenters submitted written comments. The Department notes that major rule amendments to the NJPDES program, promulgated simultaneously with the termination notice, addressed the aforementioned SIU termination. The RELC attended the public hearing and gave testimony on the SIU termination.

The Department's responses to the comments received on the February 3, 1992 notice to terminate will be sent to all commenters. Interested parties may obtain a **copy of the response document** from the Wastewater Facilities Regulation Program at CN 029, Trenton, NJ 08625-0029.

This notice is being given to inform the public that the Department, pursuant to its authority under the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., is terminating the previously noticed individual NJPDES/SIU permits effective February 1, 1993 in accordance with N.J.A.C. 7:14A-2.13(a)7 and 10.5(g).

(b)

OFFICE OF REGULATORY POLICY

Amendment to the Upper Delaware Water Quality Management Plan

Public Notice

Take notice that the New Jersey Department of Environmental Protection and Energy (NJDEPE) is seeking public comment on a proposed amendment to the Upper Delaware Water Quality Management (WQM) Plan. This amendment, requested by Lopatcong Township, would expand the Town of Phillipsburg Sewage Treatment Plant (STP) sewer service area in Lopatcong Township, Warren County. The SACKS Associates (Block 86, Lot 22) and Overlook at Lopatcong (Block 98, Lot 4, Block 99, Lots 3.2, 4, 4.1, 4.2 and 5) residential development sites would be included in the sewer service area. The proposal would amend the Town of Phillipsburg, Borough of Alpha, Pohatcong Township, Lopatcong Township Wastewater Management Plan. Population and flow projects for Lopatcong Township would be updated.

This notice is being given to inform the public that a plan amendment has been proposed for the Upper Delaware WQM Plan. All information relating to the WQM Plan and the proposed amendment is located at the NJDEPE, Office of Regulatory Policy, 401 East State Street, 3rd Floor, CN-423, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling the Office of Regulatory Policy at (609) 633-7021.

Interested persons may submit written comments on the amendment to Mr. Barry Chalofsky, Office of Regulatory Policy, at the NJDEPE address cited above with a copy sent to Mr. Eugene F. Buczynski, P.E., Lopatcong Township Engineer, Canger and Cassera, Inc., 550 Marshall Street, Phillipsburg, New Jersey 08865. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEPE with respect to the amendment request.

Any interested person may request in writing that NJDEPE hold a nonadversarial public hearing on the amendment or extend the public comment period in this notice up to 30 additional days. These requests must state the nature of the issues to be raised at the proposed hearing or state the reasons why the proposed extension is necessary. These requests must be submitted within 30 days of the date of this public notice to Mr. Chalofsky at the NJDEPE address cited above. If a public hearing is held, the public comment period in this notice shall be extended to close 15 days after the public hearing.

(c)

OFFICE OF REGULATORY POLICY

Amendment to the Tri-County Water Quality Management Plan

Public Notice

Take notice that on January 4, 1993, pursuant to the provisions of the New Jersey Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Managment Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Tri-County Water Quality Management Plan was adopted by the Department. This amendment, which was proposed by the Crown/Vista Energy Project, identifies new industrial treatment works to serve the proposed CVEP facility. The new treatment works consist of an on-site lagoon for recycled water, an on-site lagoon for industrial runoff and wastewater pretreatment facilities. The CVEP will be located at Block 328, Lot 1-B of West Deptford Township, Gloucester County.

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(a)

OFFICE OF REGULATORY POLICY

Amendment to the Ocean County Water Quality Management Plan

Public Notice

Take notice that the New Jersey Department of Environmental Protection and Energy (NJDEPE) is seeking public comment on a proposed amendment to the Ocean County Water Quality Management (WQM) Plan. This amendment has been proposed by the Stafford Township Municipal Utilities Authority. This amendment would add portions of Cedar Bonnet Island north of Route 72 (Block 297, Lots 1, 2, 3, 4, 4R, 8 and 9) to the sewer service area of the Ocean County Utilities Authority (OCUA) Southern Water Pollution Control Facility as mapped in the Stafford Township Wastewater Management Plan adopted July 3, 1991. The area will be served by the original OCUA interceptor which crosses the island and which was designed to accommodate flow from Cedar Bonnet Island. Proposed development in this area must demonstrate compliance with the Rules on Coastal Zone Management.

This notice is being given to inform the public that a plan amendment has been proposed for the Ocean County WQM Plan. All information related to the WQM Plan and the proposed amendment is located at the Ocean County Planning Board, Court House Square, CN2191, Toms River, New Jersey 08754; and the NJDEPE, Office of Regulatory Policy, 3rd Floor, 401 East State Street, CN-423, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling the Office of Regulatory Policy at (609) 633-7021.

Interested persons should submit written comments on the proposed amendment to Mr. Alan Avery, Ocean County Planning Board, at the address cited above. A copy of the comments should be sent to Mr. Barry Chalofsky, Office of Regulatory Policy, at the NJDEPE address cited above. All comments must be submitted within 30 days of the date of this notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEPE with respect to the amendment request.

Any interested person may request in writing that NJDEPE hold a nonadversarial public hearing on the amendment or extend the public comment period in this notice up to 30 additional days. These requests must state the nature of the issues to be raised at the proposed hearing or state the reasons why the proposed extension is necessary. These requests must be submitted within 30 days of the date of this public notice to Mr. Chalofsky at the NJDEPE address cited above. If a public hearing is held, the public comment period in this notice shall be extended to close 15 days after the public hearing.

(b)

DIVISION OF PARKS AND FORESTRY

Natural Areas System

Management Plan and Boundary Revision for Cedar Swamp 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; and N.J.A.C. 7:5A.

Take notice that in accordance with N.J.A.C. 7:5A-1.8 and 1.12, and the recommendation of the Natural Areas Council, Scott A. Weiner, Commissioner, Department of Environmental Protection and Energy, has adopted a management plan for the Cedar Swamp Natural Area and revised the boundary of the Natural Area.

The Cedar Swamp Natural Area, located within Lebanon State Forest in Woodland Township, Burlington County, is a State-owned parcel administered by the Department's Division of Parks and Forestry through Lebanon State Forest (hereinafter referred to as the administering agency). The designation objective for Cedar Swamp Natural Area is preservation of southern swamp and floodplain habitat, southern white cedar, red maple and pine/oak forest communities, and rare species habitat. The primary purposes of a natural area management plan are to describe the natural features of the area and prescribe specific long and short term management techniques and public uses to ensure preservation of the area in accordance with its designation objective (see N.J.A.C. 7:5A-1.8). Revisions to the boundary of a natural area, that result in a net change of not more than 25 percent of the total acreage of the natural area, may be made, effective upon public notice, if the boundary change conforms with physical features identifiable in the field and serves to protect the natural area or further its designation objective (see N.J.A.C. 7:5A-1.12).

At the April 28, 1992 Council meeting, the Natural Areas Council reviewed a draft management plan prepared by the Department and received staff recommendations regarding the management of the Cedar Swamp Natural Area and the proposal to revise the boundary of the natural area. By unanimous resolution, the Council adopted recommendations for management of the Cedar Swamp Natural Area, including revisions to the boundary, and submitted these recommendations in the form of a management plan to the Commissioner of Environmental Protection and Energy for his approval in accordance with the procedures at N.J.A.C. 7:5A-1.8 and 1.12. The Commissioner of Environmental Protection and Energy agreed with all of the recommendations of the Council and approved the Cedar Swamp Natural Area Management Plan, including the boundary revision, on January 7, 1993.

Following is a summary of the management techniques prescribed in the Cedar Swamp Natural Area Management Plan along with the reason for each:

1. Although techniques to preserve the Atlantic white cedar community are not currently needed, if the administering agency determines that the integrity of the Atlantic white cedar community is being compromised, a plan summarizing specific methods to recover or enhance the cedar forest tract will be submitted to the Natural Areas Council for review and to the Commissioner of Environmental Protection and Energy for approval.

This management requirement was included in accordance with N.J.A.C. 7:5A-1.9(e)12, which specifies that habitat manipulation may be undertaken if preservation of a particular habitat type is included in the designation objective of the natural area. The designation objective for Cedar Swamp Natural Area includes preservation of habitat for southern white cedar, also known as Atlantic white cedar. See N.J.A.C. 7:5A-1.13(a)11.

2. The Office of Natural Lands Management (ONLM), in conjunction with the administering agency, will determine the exact location and extent of the swamp pink population by July 31, 1993 and perform periodic inspections to assess future management needs of this species.

This management requirement was included to help ensure the preservation of this State endangered and Federally threatened plant species.

3. The ONLM, in conjunction with the administering agency, will monitor the Pine Barrens treefrog, pine barren bellwort, pine barren reedgrass, New Jersey rush, pine barren gentian and northern red salamander on a periodic basis. Should any additional endangered or threatened species be discovered in the natural area, they will be monitored on a periodic basis.

This management requirement was included to help ensure the preservation of these species, which experience various degrees of rarity in the State and nation.

4. The ONLM will provide the administering agency with a map indicating known and possible locations of all endangered and threatened animals and all endangered plants and plant species of concern by July 31, 1993. The map will be updated by ONLM should locations for any additional species be discovered.

This management requirement was included so that the administering agency can more effectively manage the natural area and the species within it, and to ensure consideration of these species in future planning in the natural area.

5. The administering agency will not widen Norlemon Road or any other road during grading or other activity. The roadside adjacent to Shinns Road where the pine barren gentian occurs will be mowed only in the fall (late October-early November).

This management requirement was included to avoid destruction of endangered plant species populations and to allow the roadside population of pine barren gentian to flower and set seed prior to mowing.

6. The administering agency will post State Natural Area boundary signs at trail access points and along the natural area boundary at a maximum of five per mile by April 30, 1993. These signs will be replaced as needed.

Posting of the boundaries of all natural areas is required in accordance with N.J.A.C. 7:5A-1.9(e)1.

7. The ONLM will provide the administering agency with State Natural Area boundary signs as needed.

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The ONLM, which is responsible for overall administration of the Natural Areas System, designs and distributes paper boundary signs for posting of all State Natural Areas.

8. The boundary of the natural area is revised to include a 62-acre State-owned parcel currently located within Lebanon State Forest at the intersection of Coopers Road and Buzzard Hill Road, Woodland Township, Burlington County. The resulting acreage of the Cedar Swamp Natural Area is 735 acres.

In accordance with N.J.A.C. 7:5A-1.12, revisions to the boundary of a natural area that result in a net change of not more than 25 percent of the total acreage of the natural area may be made, upon public notice, if the boundary change conforms with physical features identifiable in the field and serves to protect the natural area or further its designation objective. The existing boundary of the southeast corner of the Cedar Swamp Natural Area is defined by an artificial, not easily identifiable transect running north-south from Coopers Road to Buzzards Hill Road. Addition of the 62-acre State-owned parcel located between the existing natural area boundary and the intersection of Coopers Road and Buzzards Hill Road will provide a physically identifiable boundary that will be posted with signs. The boundary change will also serve to protect the natural area and serve to protect its designation objective by including within the natural area the headwaters of the Shinns Branch, which flows through the natural area.

9. The administering agency will maintain the cleared access along the natural area boundary where it shares the State Forest boundary.

This management requirement was included in accordance with N.J.A.C. 7:5A-1.12(b).

10. The administering agency will determine an appropriate location for an entrance sign and construct the sign by April 30, 1993.

This management requirement was included to identify the natural area for visitors.

11. The administering agency will obtain all applications to conduct research or collect specimens, forward a copy to the ONLM, and provide a response within 30 days of application submittal. The administering agency shall coordinate a response with the ONLM.

This requirement is included in accordance with procedures for conducting research and collecting specimens in natural areas as outlined in N.J.A.C. 7:5A-1.10, and to ensure thorough review of all proposals.

12. If the Mount Misery Trail is extended into the natural area, then the administering agency will post appropriate signage along existing sand roads. No expansion of the existing trail and road system will be permitted to accomplish this trail delineation.

The administering agency has proposed that a loop trail, to be called the Mount Misery Trail, be delineated between the Pakim Pond recreation area located east of the natural area and Mount Misery to the north. This management requirement was included to allow for delineation of the proposed trail through the natural area along an existing road, thereby preventing any destruction of native vegetation. According to the administering agency, the trail will be completed and marked within two years.

13. The administering agency will remove all deer stands in the natural area by December 31, 1993.

Removal of permanent deer stands is required in accordance with N.J.A.C. 7:5A-1.9(e)16 and N.J.A.C. 7:5A-1.9(e)7.

14. The administering agency will remove all surface refuse from the disturbed areas along Prongfoot Road and Sloans Fireline by December 31, 1993, and thereafter on an ongoing basis if needed. The administering agency will take appropriate measures to discourage future dumping in these areas.

Rubbish or any other waste material may be removed in accordance with N.J.A.C. 7:5A-1.9(e)7.

15. The administering agency will meet with staff from Forest Fire Management and the ONLM to assess the fire hazard situation within the natural area and prepare a prescribed burning plan, if needed, by April 30, 1993. The administering agency may perform prescribed burning on the upland portion of the natural area upon review of the prescribed burning plan by the Natural Areas Council and approval by the Commissioner of Environmental Protection and Energy.

Prescribed burning to eliminate safety hazards and to manage habitat may be conducted in accordance with N.J.A.C. 7:5A-1.9(e)10.

16. Prior to conducting any ground disturbing activities, except for road closures, the administering agency will consult with the Office of New Jersey Heritage for evaluation.

This management requirement was included to prevent impacts to potentially significant cultural remains. According to the Office of New Jersey Heritage, the Cedar Swamp Natural Area possesses a reasonable potential for containing prehistoric archaeological sites.

Copies of the adopted plan may be obtained from:

Office of Administrative Law
Quakerbridge Plaza, Building 9
CN 049
Trenton, New Jersey 08625

Department of Environmental Protection and Energy
Division of Parks and Forestry
Office of Natural Lands Management
CN 404
Trenton, New Jersey 08625

This notice is published as a matter of public information.

RIGHT TO KNOW ADVISORY COUNCIL

HEALTH

(a)

DIVISION OF EPIDEMIOLOGY ENVIRONMENTAL AND OCCUPATIONAL HEALTH SERVICES

ENVIRONMENTAL PROTECTION AND ENERGY

DIVISION OF ENVIRONMENTAL SAFETY, HEALTH AND ANALYTICAL PROGRAMS

LABOR

DIVISION OF WORKPLACE STANDARDS, AND OFFICE OF COMPTROLLER, FINANCE AND ACCOUNTING

Worker and Community Right to Know Act
Notice of Public Hearing

Take notice that pursuant to the "Worker and Community Right to Know Act," N.J.S.A. 34:5A-1 et seq., the Right to Know Advisory Council in conjunction with the Department of Health, Department of Environmental Protection and Energy, and Department of Labor, will hold a **public hearing** to receive testimony, information and recommendations from the public concerning the implementation of the Act. Specifics of the meeting are as follows:

Friday, March 26, 1993
10:00 A.M. to 5:00 P.M.
Department of Personnel
Human Resources Development Institute
600 College Road East
Princeton, New Jersey 08540

The purpose of the hearing will be to receive public comments about the implementation of the Right to Know Act and problems that employers and employees may be having concerning compliance with the law, and the benefits that have occurred as a result of the law.

The Departments of Health and Environmental Protection and Energy will hear testimony about substances which should be added to or deleted from the Right to Know Hazardous Substance List and the Environmental Hazardous Substance List. Any suggested revisions to the lists should be based on and accompanied by documented scientific evidence. In addition, the Departments would like to hear about other program concerns including Universal Labeling and reporting.

Persons who wish to testify should call Eva McGovern at (609) 984-2202. The record will be kept open for 15 days beyond March 26, 1993 for the receipt of written comments, which should be sent to: Richard Willinger, Program Manager, Right to Know Program, New Jersey Department of Health, CN 368, Trenton, New Jersey 08625-0368.

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HUMAN SERVICES

(a)

OFFICE OF THE COMMISSIONER

Notice of Keys Amendment Certification

Take notice that the Keys Amendment to the Federal Social Security Act requires an annual certification by states that there are standards in facilities where significant numbers of Supplemental Social Security Income (SSI) recipients reside. The publication of a summary of standards is also required.

Three State departments have licensing and enforcement authority for facilities housing significant numbers of SSI residents in New Jersey. Each department maintains standards and enforces its own regulations.

Within the Department of Human Services, three divisions license or otherwise regulate facilities housing a significant number of SSI recipients.

The Division of Developmental Disabilities licenses group homes, family care homes, skill development homes and supervised apartment programs for persons with developmental disabilities. Comprehensive standards for each program have been developed and codified. Full text of the standards can be found in N.J.A.C. 10:44A and B, or by contacting the following office:

New Jersey Department of Human Services
Division of Developmental Disabilities
Bureau of Operations
CN 726
Trenton, New Jersey 08625

The Division of Youth and Family Services maintains standards for both large residential and smaller community based facilities for clients under its jurisdiction. Specific programs include: foster care homes, residential child care facilities, group homes for children and victims of domestic violence, and teaching family homes. Full text of the standards can be found in N.J.A.C. 10:127 and 10:128, or by contacting the following office:

New Jersey Department of Human Services
Division of Youth and Family Services
Bureau of Licensing
CN 717
Trenton, New Jersey 08625

The Division of Mental Health and Hospitals licenses residential services which include group homes, family care homes, and supervised apartment programs for mentally ill adults and children. Comprehensive standards have been developed and codified as N.J.A.C. 10:39. A copy of the standards may be obtained by contacting the following office:

New Jersey Department of Human Services
Division of Mental Health and Hospitals
Bureau of Standards and Inspections
CN 727
Trenton, New Jersey 08625

In all three Divisions, the standards are enforced through site visits conducted at least annually, time-limited corrective-action plans, and facility closure in the event of noncompliance.

The Department of Community Affairs licenses Rooming Houses (Class A) and Class B, C, D, and E Boarding Homes. The Bureau of Rooming and Boarding House standards has a legitimate mandate to annually evaluate the physical and social conditions of all rooming and boarding houses as defined under N.J.S.A. 55:13B-1-16, the Rooming and Boarding House Act of 1979. Full text of the standards can be found in N.J.A.C. 5:27, or by contacting:

New Jersey Department of Community Affairs
Bureau of Rooming and Boarding House Standards
South Broad and Front Streets
CN 800
Trenton, New Jersey 08625

The Department of Health licenses Residential Health Care Facilities and enforces standards through annual inspections. Full text of the standards can be found in N.J.A.C. 8:43. The rules govern the physical plant and operation of such facilities. Full text of the standards can be obtained by contacting:

New Jersey Department of Health
Division of Health Facilities Evaluation
John Fitch Way
CN 360
Trenton, New Jersey 08625

(b)

OFFICE OF EDUCATION

Notice of Availability of State Funds

Title of Funding Source: State Facilities Education Act (P.L. 1979, c.207).

Take notice that, in compliance with N.J.S.A. 52:14-34.4, 34.5 and 34.6, the Department of Human Services, Office of Education hereby announces the availability of the following State funds:

A. Name of program: Educational Related Services for fiscal year 1994.

B. Purpose: To provide the delivery of physical, occupational, speech/language therapy and rehabilitative engineering services in State-operated/Office of Education facilities located throughout New Jersey. These facilities provide special education programs to children with severe disabilities, ages three to 21.

C. Amount of money in the program: Approximately $5,000,000.

D. Organizations which may apply for funding under the program: Individuals, agencies, hospitals, clinics, and any other interested third-party providers.

E. Qualifications needed by an applicant to be considered for funding: Physical therapists must be licensed and school certified. Speech/language therapists must be licensed and school certified. Occupational therapists must be registered and school certified. The rehabilitation engineer must possess a minimum of a Bachelor's degree in human factors, electrical, mechanical and/or biomedical engineering. All therapists and the rehabilitation engineer must carry professional liability insurance.

F. Procedure for eligible organizations to apply: All interested applicants should write to the address listed below or call 609-588-3164 for a Request for Proposal (RFP) package.

G. Address to which application must be submitted:

Dr. Patricia Holliday, Director
Department of Human Services
Office of Education
10 Quakerbridge Plaza, CN 700
Trenton, NJ 08625

H. Deadline by which applications must be submitted: April 2, 1993.

I. Date by which applicant shall be notified of approval or disapproval: No later than June 1, 1993.

STATE

(c)

NEW JERSEY STATE COUNCIL ON THE ARTS

Notice of Grants Application Process and Revised Deadlines

Organizational Grants in Aid to the Arts, Fiscal Year 1994 (July 1, 1993-June 30, 1994)

Take notice that the New Jersey State Council on the Arts, acting under the authority of P.L. 1966, c.214, hereby announces in accordance with N.J.S.A. 52:14-34.4 et seq., the availability of the following grant program:

Name of Program: Organizational Grants in Aid to the Arts, Fiscal Year 1994.

General Operating Support (for arts organizations)
Special Project Support (for arts projects)
Arts Basic to Education Expansion Project Support (for arts organizations)

Purpose: To stimulate and encourage the production and presentation of the arts in New Jersey, and to foster public interest in and support of the arts in New Jersey through the award of matching grants to eligible organizations.

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Eligible applicants: Must be a New Jersey incorporated, nonprofit organization that is tax exempt as 501(c)(3) or (4) by determination of the Internal Revenue Service, or a unit of government; must have been in existence and active in presenting, producing or servicing the fine, performance or literary arts for at least two years prior to making application; must have a board of trustees empowered to formulate policies and be responsible for the administration of the organization, its programs and its finance; and must comply with all existing State and Federal regulations and laws as described in the Guidelines and Application.

Ineligible applicants: Organizations that are unincorporated, incorporated in another state or incorporated as profit-making entities.

Grant size: Grants will range in size, but generally will not exceed 20 percent of projected general operating expenses or 50 percent of project expenses.

Amount of available funding for the program: Will depend on the finalization of the Council's legislative appropriation for Fiscal Year (FY) 94.

Match: All grants offered under this program must be matched at least dollar-for-dollar. In-kind contributions and indirect costs are not allowed as any part of the match. All grants offered through this program must be matched with cash. General Operating Support applicants must be able to project a 4:1 match of applicant cash to NJSCA dollars; Special Project applicants who are arts organizations, a 1:1 match of applicant cash to NJSCA dollars and Special Project applicants who are *not* arts organizations, a 3:1 match of applicant cash to NJSCA dollars.

Projected deadline for submission: Complete applications, including all support materials, must be postmarked or delivered to Council Offices no later than February 10, 1993 (5:00 P.M. if delivered in person to office). All prospective applicants that *are not* direct recipients of FY 93 NJSCA Grants must submit a Letter of Intent. **Projected deadline for letters of intent is** January 6, 1993 (5:00 P.M. Receipt). These deadlines are subject to change that would place them later in the year. The NJSCA urges all organizations interested in applying for FY 94 support to call the Grants Office immediately to discuss issues related to deadlines and eligibility.

Decisions: All complete applications by eligible applicants will be evaluated by an independent panel of experts and by the NJSCA according to the published criteria for evaluation. The Council reviews the evaluations of all applications as well as Council funding priorities and issues. Its final recommendations are voted upon by the full Council at its annual meeting, tentatively scheduled for July 27, 1993. Applicants are notified in writing of the Council's decision within six weeks following the annual meeting.

To receive a set of guidelines and application forms, call (609) 292-6130 or write GRANTS 94, New Jersey State Council on the Arts, CN-306, Trenton, NJ 08625.

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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 December 7, 1992 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 promulgation of the rule and its chronological ranking in the Registry. As an example, R.1993 d.1 means the first rule filed for 1993.

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.

MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: SUPPLEMENT NOVEMBER 16, 1992

NEXT UPDATE: SUPPLEMENT DECEMBER 21, 1992

Note: If no changes have occurred in a Title during the previous month, no update will be issued for that Title.

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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
24 N.J.R. 165 and 318	January 21, 1992	24 N.J.R. 2753 and 2970	August 17, 1992
24 N.J.R. 319 and 508	February 3, 1992	24 N.J.R. 2971 and 3202	September 8, 1992
24 N.J.R. 509 and 672	February 18, 1992	24 N.J.R. 3203 and 3454	September 21, 1992
24 N.J.R. 673 and 888	March 2, 1992	24 N.J.R. 3455 and 3578	October 5, 1992
24 N.J.R. 889 and 1138	March 16, 1992	24 N.J.R. 3579 and 3784	October 19, 1992
24 N.J.R. 1139 and 1416	April 6, 1992	24 N.J.R. 3785 and 4144	November 2, 1992
24 N.J.R. 1417 and 1658	April 20, 1992	24 N.J.R. 4145 and 4306	November 16, 1992
24 N.J.R. 1659 and 1840	May 4, 1992	24 N.J.R. 4307 and 4454	December 7, 1992
24 N.J.R. 1841 and 1932	May 18, 1992	24 N.J.R. 4455 and 4606	December 21, 1992
24 N.J.R. 1933 and 2102	June 1, 1992	25 N.J.R. 1 and 218	January 4, 1993
24 N.J.R. 2103 and 2314	June 15, 1992	25 N.J.R. 219 and 388	January 19, 1993
24 N.J.R. 2315 and 2486	July 6, 1992	25 N.J.R. 389 and 618	February 1, 1993
24 N.J.R. 2487 and 2650	July 20, 1992		
24 N.J.R. 2651 and 2752	August 3, 1992		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
ADMINISTRATIVE LAW—TITLE 1				
1:13A-1.2, 18.1, 18.2	Lemon Law hearings: exceptions to initial decision	24 N.J.R. 1843(a)		
	Most recent update to Title 1: TRANSMITTAL 1992-5 (supplement November 16, 1992)			
AGRICULTURE—TITLE 2				
2:6	Animal health: biological products for diagnostic or therapeutic purposes	24 N.J.R. 2974(a)		
2:6	Animal health: extension of comment period regarding biological products for diagnostic or therapeutic purposes	24 N.J.R. 3981(a)		
2:32-2.4	Sire Stakes Program: stallion standing full season	24 N.J.R. 3981(b)	R.1993 d.70	25 N.J.R. 463(a)
2:76-3.12, 4.11	Farmland preservation programs: deed restrictions on enrolled lands	25 N.J.R. 222(a)		
2:76-6.15	Agriculture Retention and Development Program: lands permanently deed restricted	25 N.J.R. 223(a)		
2:90-1.4, 1.5	Certification of soil erosion and sediment control plans	24 N.J.R. 3587(a)	R.1993 d.13	25 N.J.R. 65(a)
	Most recent update to Title 2: TRANSMITTAL 1992-5 (supplement October 19, 1992)			
BANKING—TITLE 3				
3:1-2.1–2.9, 2.18, 2.20, 2.21	Branch and charter application procedures for banks, savings banks, and savings and loan associations	24 N.J.R. 3034(a)	R.1992 d.483	24 N.J.R. 4341(a)
3:18	Secondary Mortgage Loan Act rules	24 N.J.R. 3982(a)	R.1993 d.55	25 N.J.R. 463(b)
3:18-1, 2.1, 3, 4.1, 4.2, 5.1, 5.2, 5.3, 7.4, 7.5, 8.1, 8.2, 9, 10.5, 10.7, 10.8, 11	Secondary Mortgage Loan Act rules	24 N.J.R. 2760(a)	R.1993 d.50	25 N.J.R. 285(a)
3:42	Pinelands Development Credit Bank	25 N.J.R. 223(b)		
	Most recent update to Title 3: TRANSMITTAL 1992-8 (supplement November 16, 1992)			
CIVIL SERVICE—TITLE 4				
	Most recent update to Title 4: TRANSMITTAL 1992-1 (supplement September 21, 1992)			
PERSONNEL—TITLE 4A				
4A:3-5.3, 5.6, 5.9	Comparable time off restrictions	24 N.J.R. 3588(a)	R.1993 d.44	25 N.J.R. 290(a)
4A:4-2.6, 2.15	Promotional examinations	24 N.J.R. 3589(a)	R.1993 d.45	25 N.J.R. 291(a)
4A:4-6.4, 6.6	Selection and placement appeals	24 N.J.R. 4467(a)		
4A:4-6.5	Medical and psychological examinations as condition of employment	24 N.J.R. 3596(a)	R.1993 d.46	25 N.J.R. 292(a)
4A:6	Leaves, hours of work, employee development, and awards program	24 N.J.R. 3590(a)	R.1993 d.47	25 N.J.R. 293(a)
	Most recent update to Title 4A: TRANSMITTAL 1992-3 (supplement October 19, 1992)			
COMMUNITY AFFAIRS—TITLE 5				
5:10-25.2	Indirect apportionment of heating costs in multiple dwellings	24 N.J.R. 3597(a)	R.1993 d.39	25 N.J.R. 299(a)
5:14-1.6, 2.2, 3.1, 4.1, 4.5, 4.6, 4.7	Neighborhood Preservation Balanced Housing Program: per unit developer fees and costs; other revisions	24 N.J.R. 1144(a)		
5:19	Continuing care retirement communities	24 N.J.R. 1146(a)		

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
5:23	Uniform Construction Code	24 N.J.R. 1420(b)		
5:23-2.1, 2.15	Uniform Construction Code: licensing disputes	24 N.J.R. 4(a)	Expired	
5:23-2.5	UCC: increase in building size	24 N.J.R. 1421(a)	R.1993 d.61	25 N.J.R. 463(c)
5:23-2.17, 8	Asbestos Hazard Abatement Subcode	24 N.J.R. 1422(a)		
5:23-3.4, 4.4, 4.18, 4.20, 5.3, 5.5, 5.19A, 5.21, 5.22, 5.23, 5.25	Uniform Construction Code: mechanical inspector license and mechanical inspections	24 N.J.R. 3457(a)		
5:23-4.18, 4.20	UCC enforcing agencies: minimum fees	24 N.J.R. 169(b)		
5:23-5.4, 5.5	Uniform Construction Code: licensure of elevator subcode officials and inspectors	24 N.J.R. 4309(a)		
5:23-5.5	UCC: administrative correction regarding elevator inspector licensure	———	———	24 N.J.R. 4344(a)
5:23-9.7	Uniform Construction Code: manufacturing, production and process equipment exemption	24 N.J.R. 3458(a)		
5:27-3.5	Rooming and boarding houses: conformity with Fair Housing Act amendments	24 N.J.R. 4310(a)		
5:80-32	Housing and Mortgage Finance Agency: project cost certification	24 N.J.R. 2208(a)		
5:91	Council on Affordable Housing: procedural rules	24 N.J.R. 2671(a)	R.1992 d.491	24 N.J.R. 4344(b)

Most recent update to Title 5: TRANSMITTAL 1992-11 (supplement November 16, 1992)

MILITARY AND VETERANS' AFFAIRS—TITLE 5A

Most recent update to Title 5A: TRANSMITTAL 1992-2 (supplement September 21, 1992)

EDUCATION—TITLE 6

6:3-2.6	Conditions for access to pupil records	24 N.J.R. 3038(a)	R.1992 d.490	24 N.J.R. 4362(a)
6:8	Thorough and efficient system of public schools	24 N.J.R. 3039(a)	R.1992 d.510	24 N.J.R. 4508(a)
6:8-5.4	Corrective action by Commissioner: administrative correction	———	———	25 N.J.R. 299(b)
6:8-6	Programs and services for pupils at risk	24 N.J.R. 3494(a)	R.1993 d.40	25 N.J.R. 299(c)
6:8-9.4, 9.8	Educational improvement plans in special needs districts: fiscal, strategy and program requirements	24 N.J.R. 4467(b)		
6:12-1.2, 1.7–1.10, 1.14	Governor's Teaching Scholars Program	24 N.J.R. 3050(a)	R.1992 d.489	24 N.J.R. 4362(b)
6:29-3.4	Medical examination requirement for interscholastic athletic participation	24 N.J.R. 4150(a)		
6:29-8	Nonpublic school nursing services	24 N.J.R. 3495(a)	R.1993 d.41	25 N.J.R. 300(a)
6:31-1.1–1.7, 1.9–1.16	Multiple indicators for exit from bilingual programs	24 N.J.R. 3497(a)	R.1993 d.14	25 N.J.R. 66(a)

Most recent update to Title 6: TRANSMITTAL 1992-6 (supplement November 16, 1992)

ENVIRONMENTAL PROTECTION AND ENERGY—TITLE 7

7:0	Well construction and sealing: request for public comment regarding comprehensive rules	24 N.J.R. 3286(a)		
7:1-1.3, 1.4	Delegations of authority within the Department	23 N.J.R. 3276(a)	R.1992 d.473	24 N.J.R. 4363(a)
7:1A-2.13, 5.2	Water supply loan programs: administrative corrections concerning eligible project costs and priority determination	———	———	24 N.J.R. 4364(a)
7:1C-1.5, 1.6, 1.7	Ninety-day construction permit fees	24 N.J.R. 2768(a)		
7:1J	Spill Compensation and Control Act: processing of damage claims (repeal 17:26)	24 N.J.R. 1255(a)	R.1993 d.2	25 N.J.R. 68(a)
7:1K	Pollution Prevention Program	24 N.J.R. 3609(a)		
7:6-1.24, 9.2	Boating rules: rotating lights; "personal watercraft"	24 N.J.R. 1694(a)	R.1992 d.506	24 N.J.R. 4556(a)
7:6-1.45	Seven Presidents Park, Long Branch: boating restrictions within jetty areas	25 N.J.R. 57(a)		
7:7-1.7	Coastal Permit Program fees	24 N.J.R. 2768(a)		
7:7A-1.4, 2.7, 8.10	Freshwater wetlands protection: project permit exemptions; hearings on contested letters of interpretation	24 N.J.R. 912(b)		
7:7A-16.1	Freshwater wetlands permit fees	24 N.J.R. 2768(a)		
7:7E-7.4	Coastal zone management: Outer Continental Shelf oil and gas exploration and development	25 N.J.R. 5(a)		
7:7E-7.5	Alternative traffic reduction programs in Atlantic City	24 N.J.R. 1986(a)		
7:8	Stormwater management	24 N.J.R. 4469(a)		
7:8	Stormwater runoff and nonpoint source pollution control: public meeting and request for comment	24 N.J.R. 4470(a)		
7:9-4	Surface water quality standards: request for public comment on draft Practical Quantitation Levels	24 N.J.R. 4008(a)		
7:9-4 (7:9B-1), 6.3	Surface water quality standards	24 N.J.R. 3983(a)		
7:9-4.14 (7:9B-1.14)	NJPDES program and surface water quality standards: request for public comment regarding total phosphorous limitations and criteria	24 N.J.R. 4008(b)		

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:9-4.14, 4.15 (7:9B-1.14, 1.15)	Surface water quality standards: administrative corrections to proposal	24 N.J.R. 4471(a)		
7:9-6	Ground water quality standards	24 N.J.R. 181(a)	R.1993 d.73	25 N.J.R. 464(a)
7:9A-1.1, 1.2, 1.6, 1.7, 2.1, 3.3, 3.4, 3.5, 3.7, 3.9, 3.10, 3.12, 3.14, 3.15, 5.8, 6.1, 8.2, 9.2, 9.3, 9.5, 9.6, 9.7, 10.2, 12.2–12.6, App. A, B	Individual subsurface sewage disposal systems	24 N.J.R. 1987(a)		
7:11-2.2, 2.3, 2.9	Delaware and Raritan Canal-Spruce Run/Round Valley Reservoir System: rates for sale of water	24 N.J.R. 4472(a)		
7:11-2.9	Delaware and Raritan Canal-Spruce Run/Round Valley Reservoir System: administrative correction concerning standby charge	———	———	24 N.J.R. 4518(a)
7:11-4.3, 4.4, 4.9	Manasquan Reservoir Water Supply System: rates for sale of water	24 N.J.R. 4474(a)		
7:12	Shellfish-growing water classifications	24 N.J.R. 3657(a)	R.1992 d.508	24 N.J.R. 4518(b)
7:13-7.1	Flood plain redelineation of Green Brook in Scotch Plains and Watchung	24 N.J.R. 4475(a)		
7:14A-1, 2, 3, 5–14, App. F	NJPDES program and Clean Water Enforcement Act requirements	24 N.J.R. 344(b)	R.1993 d.59	25 N.J.R. 547(a)
7:14A-1.8, 3.9, App. A, B; 10.3, App. H	Statewide Stormwater Permitting Program: administrative corrections and changes	———	———	24 N.J.R. 4364(a)
7:14A-1.9, 3.14	Surface water quality standards	24 N.J.R. 3983(a)		
7:14A-3.13	Statewide Stormwater Permitting Program: administrative correction regarding DSW permit conditions	———	———	24 N.J.R. 4522(a)
7:14B	Underground storage tanks	24 N.J.R. 2975(a)	R.1992 d.498	24 N.J.R. 4523(a)
7:14B	Underground storage tanks: public hearing	24 N.J.R. 3286(b)		
7:15-1.5, 3.4, 3.6, 4.1, 5.22	Statewide water quality management planning	24 N.J.R. 344(b)	R.1993 d.59	25 N.J.R. 547(a)
7:22-3.4, 3.7, 3.8, 3.9, 3.11, 3.17, 3.20, 3.26, 3.27, 3.32, 3.34, 3.37, 4.4, 4.7, 4.8, 4.9, 4.11, 4.13, 4.17, 4.20, 4.26, 4.29, 4.32, 4.34, 4.37, 4.46, 5.4, 5.11, 5.12, 6.17, 6.27, 10.2, 10.3, 10.8, 10.9, 10.11, 10.12	Financial assistance programs for wastewater treatment facilities	24 N.J.R. 4310(b)		
7:25-6.13	1993-94 Fish Code: harvest of largemouth and smallmouth bass	25 N.J.R. 224(a)		
7:25-11	Introduction of imported or non-native shellfish or finfish into State's marine waters	24 N.J.R. 3660(a)		
7:25-16.1	Defining freshwater fishing lines	24 N.J.R. 204(a)		
7:25-16.1	Freshwater fishing line for Rahway River in Union County	24 N.J.R. 2977(a)		
7:25-18.1	Filleting of flatfish at sea	24 N.J.R. 1456(a)	R.1992 d.476	24 N.J.R. 4368(b)
7:25-18.1, 18.5	Atlantic sturgeon management	24 N.J.R. 205(a)		
7:25-18.1, 18.12, 18.14	Summer flounder management; otter and beam trawls	24 N.J.R. 4249(a)	R.1993 d.56	25 N.J.R. 303(a)
7:25-18.16	Taking of horseshoe crabs	24 N.J.R. 2978(a)		
7:26-1.4, 2.13, 6.3, 6.8	Solid waste management: scrap metal shredding residue, animal manure, interdistrict and intradistrict flow	24 N.J.R. 1995(a)	R.1993 d.27	25 N.J.R. 92(a)
7:26-2.11, 2.13, 2B.9, 2B.10, 6.2, 6.8	Solid waste flow through transfer stations and materials recovery facilities	24 N.J.R. 3286(c)		
7:26-4.3	Thermal destruction facilities: compliance monitoring fees and postponed operative date	24 N.J.R. 1999(a)		
7:26-4.3	Thermal destruction facilities: extension of comment period regarding compliance monitoring fees	24 N.J.R. 2687(a)		
7:26-4A.6	Hazardous waste program fees: annual adjustment	24 N.J.R. 2001(a)		
7:26-5.4, 7.4, 7.6, 9.4, 12.4	Hazardous waste manifest discrepancies	23 N.J.R. 3607(a)	R.1993 d.5	25 N.J.R. 98(a)
7:26-6.5, 6.6	Interdistrict and intradistrict solid waste flow	24 N.J.R. 3291(a)		
7:26-8.2	Hazardous waste exclusions: household waste	23 N.J.R. 3410(a)	R.1992 d.496	24 N.J.R. 4523(b)
7:26-8.20	Used motor oil recycling	24 N.J.R. 2383(a)		
7:26-12.3	Hazardous waste management: interim status facilities	24 N.J.R. 4253(a)		
7:26A-6	Used motor oil recycling	24 N.J.R. 2383(a)		
7:26B	Environmental Cleanup Responsibility Act rules	24 N.J.R. 2773(b)	R.1992 d.497	24 N.J.R. 4524(a)

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:26B-1.3, 1.5, 1.6, 1.8, 1.9, 1.10, 1.13, 5.4, 13.1, App. A	Environmental Cleanup Responsibility Act rules	24 N.J.R. 720(a)	R.1993 d.3	25 N.J.R. 100(a)
7:26B-1.3, 1.5, 1.6, 1.8, 1.9, 1.10, 1.13, 5.4, 13.1, App. 1	ECRA rules: extension of comment period	24 N.J.R. 1281(a)		
7:26B-7, 9.3	Remediation of contaminated sites: Department oversight	24 N.J.R. 1281(b)		
7:26C	Remediation of contaminated sites: Department oversight	24 N.J.R. 1281(b)		
7:26D	Cleanup standards for contaminated sites	24 N.J.R. 373(a)		
7:26D	Cleanup standards for contaminated sites: additional public hearing and extension of comment period	24 N.J.R. 1458(b)		
7:26D	Cleanup standards for contaminated sites: additional public hearing and extension of comment period	24 N.J.R. 2003(b)		
7:26E	Technical requirements for contaminated site remediation	24 N.J.R. 1695(a)		
7:27-1.4, 1.6–1.30, 8.4, 8.14–8.24, 16.9, 21	Air contaminant emission statements from stationary sources	24 N.J.R. 2979(a)		
7:27-1.4, 1.36, 1.37, 1.38, 8.1, 8.3, 8.4, 8.24, 18	Control and prohibition of air pollution from new or altered sources: emission offsets	24 N.J.R. 3459(a)		
7:27-8.1, 8.3, 8.27	Air pollution control: requirements and exemptions under facility-wide permits	24 N.J.R. 4323(a)		
7:27-25.1, 25.3	Control and prohibition of air pollution by vehicular fuels: administrative corrections	_____	_____	24 N.J.R. 4524(b)
7:27-25.7, 27.9, 27.10	Control and prohibition of air pollution by vehicular fuels: administrative corrections	_____	_____	25 N.J.R. 309(a)
7:27-26	Low Emissions Vehicle Program	24 N.J.R. 1315(a)		
7:27-26	Low Emissions Vehicle Program: correction to proposal	24 N.J.R. 1458(c)		
7:27A-3.10	Civil administrative penalties for violations of emission statement requirements	24 N.J.R. 2979(a)		
7:27A-3.10	Air pollution civil administrative penalties: administrative correction	_____	_____	24 N.J.R. 4524(b)
7:28-15, 16.2, 16.8	Medical diagnostic x-ray installations; dental radiographic installations	25 N.J.R. 7(a)		
7:28-42.3	Radio frequency protection guides: administrative corrections	_____	_____	24 N.J.R. 4526(a)
7:28-42.4	Radio frequency protection guides for whole body exposure: administrative correction	_____	_____	24 N.J.R. 4371(a)
7:30	Pesticide Control Code	24 N.J.R. 2776(a)	R.199d d.509	24 N.J.R. 4526(b)
7:36-9	Green Acres Program: nonprofit land acquisition	24 N.J.R. 2405(a)		
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7:61	Commissioners of Pilotage: licensure of Sandy Hook pilots	24 N.J.R. 3477(a)		

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8:21-3A	Registration of manufacturers and wholesale distributors of non-prescription drugs, and manufacturers and wholesale distributors of devices	24 N.J.R. 3100(a)		
8:31B-4.40	Uncompensated care collection procedures	24 N.J.R. 1124(c)		
8:33-3.11	Certificate of Need process for demonstration and research projects	24 N.J.R. 3104(a)		
8:33A	Hospital Policy Manual	24 N.J.R. 3280(a)	R.1992 d.512	24 N.J.R. 4528(a)
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8:33C-10.1	Regionalized perinatal services: administrative correction to adoption notice	_____	_____	25 N.J.R. 580(a)
8:33G	Computerized tomography services: certification of need	24 N.J.R. 4221(a)		
8:33I-1	Megavoltage radiation oncology services: certification of need	24 N.J.R. 4222(a)		
8:33M-1.6	Bed need methodology for adult comprehensive rehabilitation services	24 N.J.R. 4225(a)		
8:33R	Psychiatric health care facilities and services: policy manual for planning and certificate of need reviews	24 N.J.R. 3598(a)	R.1993 d.29	25 N.J.R. 111(a)
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8:41	Mobile intensive care programs	24 N.J.R. 3255(b)		

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8:43	Residential health care facilities: standards for licensure	24 N.J.R. 2506(a)	R.1992 d.502	25 N.J.R. 109(a)
8:43	Licensure of residential health care facilities	25 N.J.R. 25(a)		
8:43A	Ambulatory care facilities: public meeting and request for comments regarding Manual of Standards for Licensure	24 N.J.R. 3603(a)		
8:43E	Recodification (see 8:33R)	24 N.J.R. 3598(a)	R.1993 d.29	25 N.J.R. 111(a)
8:43I	Hospital Policy Manual (recodified as 8:33A)	24 N.J.R. 3280(a)	R.1992 d.512	24 N.J.R. 4528(a)
8:65-2.5	Controlled dangerous substances: physical security controls	24 N.J.R. 174(a)		
8:71	Interchangeable drug products (see 24 N.J.R. 1896(a), 2560(b), 3174(a))	24 N.J.R. 735(a)		
8:71	Interchangeable drug products (24 N.J.R. 2559(a))	24 N.J.R. 1673(a)		
8:71	Interchangeable drug products (see 24 N.J.R. 2557(b), 3173(a), 4260(b))	24 N.J.R. 1674(a)	R.1993 d.65	25 N.J.R. 582(a)
8:71	Interchangeable drug products (see 24 N.J.R. 3174(c), 3728(a), 4262(a))	24 N.J.R. 2414(b)	R.1993 d.67	25 N.J.R. 583(a)
8:71	Interchangeable drug products (24 N.J.R. 4261(a))	24 N.J.R. 2997(a)	R.1993 d.66	25 N.J.R. 582(b)
8:71	Interchangeable drug products	24 N.J.R. 4009(a)	R.1993 d.64	25 N.J.R. 580(b)
8:71	Interchangeable drug products	25 N.J.R. 55(a)		
8:100	State Health Planning Board: public hearings on draft chapters of State Health Plan	24 N.J.R. 3788(a)		
8:100	State Health Plan: draft chapters	24 N.J.R. 3789(a)		
8:100	State Health Plan: draft chapters on AIDS, and preventive and primary care	24 N.J.R. 4151(a)		

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9:1-5.11	Regional accreditation of degree-granting proprietary institutions	24 N.J.R. 3207(a)		
9:4-3.12	Noncredit courses at county colleges	25 N.J.R. 227(a)		
9:6A	State college personnel system	24 N.J.R. 3052(a)		
9:7	Student Assistance Programs	24 N.J.R. 2510(a)	R.1992 d.486	24 N.J.R. 4373(a)
9:16-1	Primary Care Physician and Dentist Loan Redemption Program	24 N.J.R. 1192(a)	R.1993 d.30	25 N.J.R. 310(a)

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10:8	Administration of State-provided Personal Needs Allowance	24 N.J.R. 681(a)		
10:16	Child Death and Critical Incident Review Board concerning children under DYFS supervision	24 N.J.R. 3506(a)	R.1992 d.513	24 N.J.R. 4536(a)
10:36	Patient supervision at State psychiatric hospitals	24 N.J.R. 4232(a)	R.1993 d.58	25 N.J.R. 583(b)
10:38A	Pre-Placement Program for patients at State psychiatric facilities	24 N.J.R. 4326(a)		
10:46-1.3, 2.1, 3.2, 4.1, 5	Developmental Disabilities: determination of eligibility for division services	24 N.J.R. 211(a)		
10:51	Pharmaceutical Services Manual	24 N.J.R. 3053(a)		
10:52-1.9, 1.13	Reimbursement methodology for distinct units in acute care hospitals and for private psychiatric hospitals	24 N.J.R. 4477(a)		
10:52-1.23	Inpatient hospital services: adjustments to Medicaid payer factors	24 N.J.R. 4478(a)		
10:53-1.1	Reimbursement methodology for special hospitals	24 N.J.R. 4477(a)		
10:69	Hearing Aid Assistance to the Aged and Disabled Eligibility Manual	25 N.J.R. 228(a)		
10:69-5.8; 69A-5.4, 5.6, 6.12, 7.2; 69B-4.13	HAAAD, PAAD, and Lifeline programs: fair hearing requests, prescription reimbursement, benefits recovery	24 N.J.R. 4329(a)		
10:69A	Pharmaceutical Assistance to the Aged and Disabled Eligibility Manual	24 N.J.R. 4479(a)		
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10:81-11.4, 11.9	Public Assistance Manual: provision of information regarding services to AFDC clients; legal representation in child support matters	24 N.J.R. 2327(a)	R.1993 d.1	25 N.J.R. 115(a)
10:81-11.5, 11.7, 11.9, 11.20, 11.21	Public Assistance Manual: child support and paternity services	24 N.J.R. 2328(a)		
10:83	Service Programs for Aged, Blind or Disabled Persons	24 N.J.R. 3074(a)	R.1992 d.477	24 N.J.R. 4379(a)
10:83-1.2	Emergency Assistance benefits for SSI recipients	24 N.J.R. 326(a)	R.1992 d.488	24 N.J.R. 4379(b)
10:83-1.2	Emergency Assistance benefits for SSI recipients: public hearing and extension of comment period	24 N.J.R. 1204(a)		

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10:84-1	Administration of public assistance programs	24 N.J.R. 4480(b)		
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10:87-2.4, 2.6, 2.31, 2.39, 3.8, 3.14, 4.1, 4.8, 5.1, 5.9, 5,10, 6.9, 6.20, 10.3, 10.6, 10.18, 11.26, 11.29, 12.1	Food Stamp Program revisions	24 N.J.R. 3207(b)	R.1993 d.62	25 N.J.R. 584(a)
10:89-2.3, 3.1, 3.4, 3.6, 4.1	Home Energy Assistance	Emergency (expires 2-6-93)	R.1992 d.517	24 N.J.R. 4593(a)
10:97-1.3, 7.3	Business Enterprise Program for the blind and visually impaired: promotion and transfer	24 N.J.R. 2798(a)	R.1992 d.515	24 N.J.R. 4551(a)
10:120-1.2	Youth and Family Services: scope of responsibilities and services	23 N.J.R. 3420(b)	R.1992 d.471	24 N.J.R. 4386(a)
10:121A	Manual of Requirements for Adoption Agencies	24 N.J.R. 3500(a)	R.1992 d.514	24 N.J.R. 4552(a)
10:122B	Division of Youth and Family Services: requirements for foster care	23 N.J.R. 3693(a)	R.1993 d.15	25 N.J.R. 116(a)
10:122C	DYFS: approval of foster homes	23 N.J.R. 3696(a)	R.1993 d.16	25 N.J.R. 117(a)
10:122D	DYFS: foster care services	23 N.J.R. 3703(a)	R.1993 d.17	25 N.J.R. 124(a)
10:122E	DYFS: removal of foster children and closure of foster homes	23 N.J.R. 3708(a)	R.1993 d.18	25 N.J.R. 127(a)
10:123-3.4	Personal needs allowance for eligible residents of residential health care facilities and boarding houses	24 N.J.R. 3088(a)		
10:123-3.4	Personal needs allowance for eligible residents of residential health care facilities and boarding houses: annual adjustment	25 N.J.R. 229(a)		
10:124	Children's Shelter Facilities and Homes: manual of standards	24 N.J.R. 3089(a)	R.1992 d.485	24 N.J.R. 4387(a)
10:124-5.1	Children's shelter facilities and homes: local government physical facility requirements	24 N.J.R. 4482(a)		
10:133	DYFS: initial response and service delivery	23 N.J.R. 3714(a)	R.1993 d.19	25 N.J.R. 132(a)
10:133A	DYFS: initial response and screening	23 N.J.R. 3717(a)	R.1993 d.20	25 N.J.R. 134(a)
10:133B	DYFS: information and referral	23 N.J.R. 3720(a)	R.1993 d.21	25 N.J.R. 136(a)
10:133C-3	DYFS: assessment of family service needs	24 N.J.R. 217(a)	R.1993 d.22	25 N.J.R. 136(b)

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10A:6	Inmate access to courts	24 N.J.R. 2799(a)	R.1992 d.470	24 N.J.R. 4390(b)
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11:1-34	Surplus lines: exportable list procedures	24 N.J.R. 4331(a)		
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11:2-17.11	Payment of third-party claims: written notice to claimant	24 N.J.R. 522(a)		
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11:3-16.7	Automobile insurance: rating programs for physical damage coverages	24 N.J.R. 3604(a)		
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11:3-29.2, 29.4, 29.6	Automobile insurance PIP coverage: medical fee schedules	25 N.J.R. 229(b)		
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11:3-33.2	Appeals from denial of automobile insurance: failure to act timely on written application for coverage	24 N.J.R. 2128(b)		
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11:5-1.9	Real Estate Commission: transmittal of funds to lenders	24 N.J.R. 4268(a)		
11:5-1.15	Real Estate Commission: advertising by brokers and licensees	24 N.J.R. 3484(a)	R.1993 d.9	25 N.J.R. 178(b)
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11:5-1.36	Real Estate Guaranty Fund assessment	25 N.J.R. 56(b)		
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11:13	Commercial lines insurance	24 N.J.R. 2830(a)	R.1992 d.492	24 N.J.R. 4408(a)
11:16-2	Reports to National Insurance Crime Bureau regarding motor vehicle theft or salvage	24 N.J.R. 3606(a)	R.1993 d.48	25 N.J.R. 311(a)
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12:235-9.4	Workers' Compensation: appeal procedures regarding discrimination complaint decisions	24 N.J.R. 1684(a)	R.1993 d.51	25 N.J.R. 313(b)

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13:20-37	Motor vehicles with modified chassis height	24 N.J.R. 3662(a)		
13:20-37	Motor vehicles with modified chassis height: extension of comment period	24 N.J.R. 4333(b)		
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13:30-8.5	Board of Dentistry: complaint review procedures	24 N.J.R. 2800(a)		
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16:28-1.72	School zones along U.S. 206 in Lawrence Township	24 N.J.R. 4499(a)		
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16:54	Licensing of aeronautical and aerospace facilities: extension of comment period	24 N.J.R. 3026(a)		
16:54	Licensing of aeronautical and aerospace facilities: extension of comment period	24 N.J.R. 4025(a)		
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