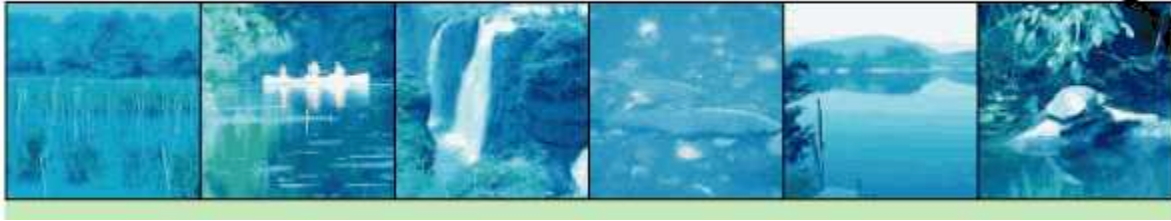


The Clean Water Council of New Jersey



Pamela S. Goodwin, Esq., Chairperson

Russell Furnari, Vice-Chair

December 21, 2006

The Honorable, Lisa P. Jackson
Commissioner
Department of Environmental Protection
P.O. Box 402
Trenton, NJ 08625-0402

**RE: Recommendations Derived from the Clean Water Council's 2006 Public
Hearing On Improving Water Quality Planning and Management**

Dear Commissioner Jackson:

On behalf of the New Jersey Clean Water Council ("CWC"), I am happy to report to you that in accordance with N.J.S.A. 58:25-12, the CWC conducted a public hearing on October 10, 2006. Following discussions with Larry Baier, the CWC convened the hearing on the subject of "Improving Water Quality Planning and Management". Our objective was to assist your department in crafting amendments to the existing rules Regulating Water Quality Management Plans (WQMPs) and Wastewater Management Plans (WMPs), N.J.A.C. 7:15. Please note that this letter represents our final report.

During the hearing, the CWC heard from ten invited panelists and ten members of the public representing diverse perspectives. Subsequently, we received correspondence from thirteen people concerned about these rules. The six recommendations contained in this letter summarize the most important ideas the CWC identified as a result of this hearing.

We recognize that your staff is nearing completion of the process of drafting the amendments, which must be completed by January 31, 2007. We appreciate the efforts that Larry Baier and Barbara Greenhalgh-Weidman, the primary rule writer, have made to inform the CWC about the substance of the existing rules and the process by which they are being amended. To assist them with this task, we have already given them copies of the transcript and all of the correspondence sent to the CWC as a result of the hearing.

c/o New Jersey Department of Environmental Protection
Division of Watershed Management
Box 418, Trenton, NJ 08625-0418
Phone: (609) 292-2113 FAX: (609) 633-1458
<http://www.state.nj.us/dep/watershedmgt/CWC%20website/cwc%20website.htm>
958703.1 12/22/06

RECOMMENDATIONS

1. **Resources:** The wastewater management planning process must have sufficient resources, including personnel, to ensure:

- a. adequate scientific analysis and data;
- b. comprehensive planning by WMP agencies; and
- c. timely and thorough administrative review.

Without resources, the best rules are meaningless. Two concerns were raised during the hearings that directly relate to this recommendation. First, whatever entities are designated to develop wastewater management plans, they will need both information from NJDEP and sufficient resources from appropriate sources for plan development. Second, NJDEP staff must be able to both provide planning assistance to the planning agencies in a true partnership, and then must be able to provide timely and thoughtful reviews. Therefore, resources are needed both for NJDEP and for its planning partners. It should be recognized that, in the end, these plans are adopted by NJDEP as State plans. NJDEP must have the resources to ensure that these plans are properly prepared and quickly processed.

2. **Relationship to the State Development and Redevelopment Plan.** During the hearing and in subsequent written comments, the need for changes to the SDRP and its relationship to the WQMP/WMP was identified from multiple points of view. The CWC has discussed this subject at length. It is clear from those discussions that the WQMP/WMPs provide substantive information that needs to be part of the broader SDRP process. With the long term goal of achieving consistency between the SDRP and the WQMP/WMP, it is generally acknowledged that the SDRP, to be a more valuable framework for WMP development, needs strengthening and upgrades regarding water resource issues. Given such SDRP improvements, WMPs and wastewater infrastructure investments would then be developed and implemented in ways that are compatible and supportive of the SDRP, while being in full compliance with all relevant water laws and objectives.

3. **Scale and Scope of Wastewater Management Plans:** The CWC heard testimony advocating that WMPs be developed at the county scale and that counties play the role of WMP agency. We also heard testimony in favor of regional planning entities as NJDEP's planning partners. The CWC has reached the following conclusions:

- a. Resource analysis, facilitation and coordination will all work best if DEP coordinates with a relatively small and manageable number of planning partners in contrast to hundreds of municipalities or wastewater utilities.
- b. The CWC recommends that wastewater utilities should not be the lead agencies for WMP development, but rather should provide relevant information on infrastructure and other issues to the WMP agencies.
- c. WMP agencies should either be county planning departments or regional planning entities that have a broad mandate for land use and water resources planning (e.g., the Pinelands Commission).

d. The CWC envisions that whatever entities serve as DEP's planning partners, they should act as interpreters of DEP rules and the facilitators of development of WMPs that are consistent with those rules at a minimum.

e. All WMPs should be consistent with local zoning and master plans, except where the WQMP rules and other statutory environmental mandates are more protective of the environment. In such cases, the WMPs should reflect the requirements of relevant water resources laws and, to the extent consistent with such laws, include restrictions on wastewater management if necessary. However, where a municipality's master plan and zoning ordinance(s), based upon site specific environmental features, are more protective of the environment than state *regulations and statutes*, the county or regional agency should use that municipality's master plan and zoning as the basis for the WMP with regard to that municipality.

f. NJDEP must be an active partner in the planning process, providing available data, analysis, planning models and decision support systems to the WMP agencies. This will require additional DEP staff dedicated to this effort.

g. Individual municipalities should be precluded from holding up county or regional planning efforts. If a municipality won't cooperate, then the WMP should be able to move forward but no site-specific amendments should be allowed in the recalcitrant municipality. After a grace period to allow for WMP development, there is merit to removing approval of sewer service areas where no development yet exists until such time as the recalcitrant municipality receives approval for its portion of the WMP.

h. NJDEP must retain ultimate review and approval authority. However, there needs to be clear delegation of limited authority to the WMP agencies, together with provisions to fund the work they are being charged with doing on behalf of NJDEP, so that the WMP development and amendment processes moves smoothly.

i. WMPs must be developed at a scale and accuracy to be compatible with NJDEPs Geographic Information System (GIS).

4. **E.O. 109:** The requirements for data and analysis embodied in E.O.109 should be codified in the proposed amendments so that no separate, independent guidance is needed.

5. **WMP Amendment Process:** The ideal way to have local governments review and update their portion of the broader Wastewater Management Plans periodically would be to amend the MLUL to require municipalities to have Water Supply and Wastewater Management Elements included in their Master Plans. Since municipalities are required by the MLUL to re-examine their Master Plan every six years, incorporating these elements into that process would be most efficient. Since this would require legislative action, in the meantime NJDEP should state as strongly as possible (perhaps through a policy statement in the WQMP rules) that it considers it a sign of good planning that municipalities include wastewater management and water supply facilities in the Utilities Element of the Master Plans. In addition, wastewater management facilities should be clearly defined as including individual septic systems. Likewise, water supply systems should be defined as including surface and ground water supplies, public, community and individual private wells.

6. **Public Outreach:** NJDEP has amassed a great amount of information that is relevant to the WQMP and WMP development processes. A well-informed citizenry which understands and appreciates the synergy between water quality and water supply is needed to support the NJDEP's efforts to develop and maintain a sufficient supply of high quality water to meet the State's needs now and into the future. Therefore, NJDEP must make greater efforts to disseminate the information it possesses to the people at the local level who could use it to support the WQMP and WMP development processes.

We hope you will take these recommendations into consideration as you and your staff finalize the proposed rule amendments. If you have any questions, please feel free to contact me.

Very truly yours,

A handwritten signature in cursive script that reads "Pamela S. Goodwin".

Pamela S. Goodwin
Chair, New Jersey Clean Water Council

cc: Clean Water Council Members
Ray Nichols
Kerry Kirk-Pflugh