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ENVIRONMENTAL PROTECTION

WATER RESOURCE MANAGEMENT

DIVISION OF WATER QUALITY

Water Quality Management Planning Rules

Adopted Repeals and New Rules: N.J.A.C. 7:15

Proposed Adopted Amendments: N.J.A.C. 7:14A-4.3 ad 7:38-1.1

Proposed: October 19, 2015, at 47 N.J.R. 2531(a).

Adopted: , by Bob Martin, Commissioner, Department of
Environmental Protection.

Filed: , as, **with non-substantial changes** not requiring
additional public notice and comment (see N.J.A.C. 1:30-6.3).

Authority:

As to N.J.A.C. 7:15: N.J.S.A. 13:1D-1 et seq., 13:1B-15.146 to -15.150, 13:19-1 et seq.,
13:20-1 et seq., 23:2A-1 et seq., 40:55D-93-99, 58:10A-1 et seq.,
58:11A-1 et seq., 58:16A-50 et seq., 58:11-23 et seq., and 58:29-1
et seq.

As to N.J.A.C. 7:14A-4.3: N.J.S.A. 13:1B-3 et seq., 13:1D-1 et seq., 13:1D-29 et seq., 13:1E-1
et seq., 26:2C-1 et seq., 26:3A2-21, 40:55D-1 et seq., 58:10-23.11
et seq., 58:10A-1 et seq., 58:11-23 et seq., 58:11-49 et seq., 58:11-
64 et seq., 58:11A-1 et seq., and 58:12A-1 et seq.

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As to N.J.A.C. 7:38: N.J.S.A. 13:1B-15.128 et seq., 13:1D-1 et seq., 13:9B-1 et seq.,
13:20-1 et seq., 23:2A-1 et seq., 58:1A-1 et seq., 58:10A-1 et seq.,
58:11-23 et seq., 58:11A-1 et seq., 58:12A-1 et seq., and 58:16A-
50 et seq.

DEP Docket Number: 08-15-09.

Effective Date:

Expiration Date: xxxxDATExxxx

The rule adoption can also be viewed or downloaded from the Department's website at
www.nj.gov/dep/rules.

Rule Summary

The Department of Environmental Protection (Department) is adopting the repeal of the Water Quality Management Planning (WQMP) rules and replacement of these rules with new WQMP rules, N.J.A.C. 7:15.

The adopted new rules represent a major departure from the rules being repealed at this time, which were adopted in 2008, as well as the practices of this program for the last two decades.

The new rules reflect the Department's determination that water quality planning should be based on the principle that "planning" involves the ability to consider a range of options to solve or avoid problems; planning should not be directive or rigid. As part of its revised approach, the Department is reducing the number of analyses required, and revising the timing of

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their required submission, simplifying the water quality planning process, and committing to providing assistance to local communities as necessary to address water quality issues within particular communities. The Department will no longer mandate that the wastewater management planning agencies conduct all of the analyses previously required as part of the wastewater management plan (WMP), or that local communities downzone or enact nonpoint source pollution prevention ordinances as a condition of WMP adoption. The adopted new rules recognize that determinations regarding the land use impacts of future development and the means to address wastewater treatment needs are more appropriate at the permitting stage, when detailed site-specific information is available. Because the rulemaking is a repeal and replacement of this chapter, adoption of the new rules will result in Executive Order 109 (2000) (EO109), which directed the Department to require appropriate alternatives analyses before approval of a WMP or amendment thereto, becoming inoperative.

The Department is additionally adopting amendments to the New Jersey Pollutant Elimination System (NJPDES) rules, N.J.A.C. 7:14A, and the Highlands Water Protection and Planning Act Rules, N.J.A.C. 7:38. Particularly, N.J.A.C. 7:14A-4.3 of the NJPDES rules, and N.J.A.C. 7:38-1.1(k) of the Highlands Water Protection and Planning Act Rules are amended to ensure that they remain consistent with the new WQMP rules.

Summary of Hearing Officer Recommendation and Agency Response

Three public hearings were held regarding these proposed rules. The hearings were held on November 10, 2016 at the Freylinghuysen Arboretum, Haggerty Room, 353 E. Hanover

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Avenue, Morris Township, New Jersey; November 17, 2016 at the Gloucester County Clayton Complex, Clayton Auditorium, 1200 Delsea Drive, Clayton, New Jersey; and November 30, 2016 at the Department's Public Hearing Room, 401 East State Street, Trenton, New Jersey. 30 people provided oral comments. Dan Kennedy, Assistant Commissioner of Water Resources Management, served as Hearing Officer for the November 10 and November 30 Public Hearings. Colleen Kokas, Director of the Office of Water Resource Management Coordination, served as Hearing Officer for the November 17 Hearing. After reviewing the comments received during the public comment period, the Hearing Officers have recommended that the proposal be adopted with the changes as described below in the Summary of Public Comments and Agency Responses and in the Summary of Agency-Initiated Changes. The Department accepts the Hearing Officer's recommendations.

Records of the public hearings are available for inspection in accordance with applicable law by contacting:

Department of Environmental Protection

Office of Legal Affairs

ATTN: Docket No. 10-15-09

401 East State Street, 7th Floor

Mail Code 401-04L

PO Box 402

Trenton, New Jersey 08625-0402

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Summary of Public Comments and Agency Responses

The following people submitted written comments and/or gave oral testimony on the proposal:

1. Pam Adamczyk
2. Karleen Aghevli
3. Karin Ahmed
4. Suzanne Aitken
5. Jennifer Amma
6. Ronald Anastasio, P.E., Executive Director, Somerset Raritan Valley Sewerage Authority
7. Christopher Aniello
8. David Approvato
9. Michael Arentoft
10. William Armbruster
11. Alice Artzt
12. Gary Auerbach
13. Howard Baker
14. Penny Bannister
15. Elizabeth Banwell
16. Elizabeth Barrett
17. Tom Beaver, Research Associate, New Jersey Farm Bureau
18. Lori Benton-Janetta
19. Sheryl Bergman, Science Department Chair, St. Rose High School

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20. Leonard Berkowitz
21. Richard G. Bizub, Director for Water Programs, Pinelands Preservation Alliance
22. R. Blaser
23. Dr. Wo Elmer Blu
24. Sara Bluhm, Vice President, Environment and Energy, New Jersey Business and Industry Association
25. Warren Bobrow
26. Andrea Bonette
27. Lauren Borkland
28. Ruth Boroshok
29. Barbara Bour
30. Elizabeth Bowman
31. Jeanne Bradbury
32. Maria Brewer
33. Kathy Broderick
34. Eileen Brown
35. Ada Brunner
36. Senator Anthony Bucco
37. Patricia Burke
38. Eric Butto
39. Lea Cahill
40. Rebecca Canright

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41. Barbara Carlbon
42. Robert Carnevale
43. Anne Carroll
44. Michael F. Cerra, Assistant Executive Director, New Jersey State League of
Municipalities
45. Bonnie Chalek
46. David J. Charette, PWS, LEED-AP, Principal, Langan Engineering and Environmental
Service, Inc.
47. Theodore Chase, Jr., Town Council Liaison, Franklin Township, Somerset County
48. Wanna Chin
49. Nancy Chismar
50. Susan Clark
51. John Cleary, Assistant Professor, Raritan Valley Community College
52. Lori Clifford
53. Barbara Cochran
54. Jennifer M. Coffey, Executive Director, Association of New Jersey Environmental
Commissions
55. Jill Collura
56. Joseph Corasio
57. James F. Cosgrove, Jr., P.E., Vice President/Principal, Kleinfelder
58. George Costich
59. Joanne Crandall

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60. Suzanne Curry
61. Amy Dallman
62. John Dannenbaum
63. Michael Darcy, Executive Director, New Jersey State League of Municipalities
64. Debra Davison
65. Noemi de la Puente, Executive Director, New Jersey Environmental Lobby
66. Robert M. Deems
67. Linda DeLap
68. Mark Demitroff
69. Emile DeVito
70. Nichole Diamond
71. Vincent DiBianca
72. Carmine DiLeo
73. Tim Dillingham, Executive Director, American Littoral Society
74. Elaine Dolsky
75. Kenneth Dolsky
76. Vincent Domidion
77. Elke D'Onofrio
78. Carolyn Dorflinger
79. Thomas Drewke
80. Michael Durell
81. Thomas Dyer

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82. Cheryl Dzubak
83. Edward Eastman
84. Michael Egenton
85. Styra Eisinger
86. Susan Faigle
87. Steven Fenster
88. James Fleming
89. Jim Florance
90. Leslie R. Floyd, AICP/PP, Planning Director, Mercer County Department of Planning
91. Judith Foys
92. Brian Frank
93. Wilma Frey
94. Robert Frost
95. Mary Lee Fulcher
96. Mike Furrey, Agra Environmental and Laboratory Services
97. Margaret N. Gallos, Executive Director, Association of Environmental Authorities
98. Denise Garner
99. Jean Garver
100. Shannon Gaudio
101. Elizabeth George-Cheniara, Vice President of Regulatory and Legal Affairs, New Jersey Builders Association
102. Tony Giordano

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- 103. Christine Girtain
- 104. Louis Ginsburg
- 105. Gertrude Glazer
- 106. Denise Gomolka
- 107. Toni Granato, Administrative Assistant, New Jersey Sierra Club
- 108. Henry Green
- 109. Austin Greitz
- 110. Warren Gross
- 111. Sally Gullette
- 112. Richard Hacku
- 113. Sallie Hadley
- 114. Eric Hadley
- 115. Jerry Haimowitz, P.E.
- 116. Evelyn Hamilton
- 117. Milena Harvey
- 118. Nancy Hedinger, President, League of Women Voters of New Jersey
- 119. Helen Henderson
- 120. Robert Hennessey
- 121. Enrique Hernandez
- 122. Sibylle Herzer
- 123. Bruce Hildebrandt
- 124. Nicholas Homyak

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- 125. Laurie Howard, Chairman of the Board, Passaic River Coalition
- 126. Karl Hunting
- 127. Tanja Israel
- 128. Anne Jackson
- 129. Josette Jackson
- 130. Shannon Jacobs
- 131. Monica Jelonnek
- 132. Erica Johanson
- 133. Amy Johnson
- 134. John Kantorek, P.E., Executive Director, Stony Brook Regional Sewerage

Authority

- 135. Stephen Kelleher
- 136. Ann Kelly
- 137. Charles D. Kerr
- 138. John Kerwin
- 139. Paul Kiernan, Jr., Monmouth County Planning Board
- 140. Maryann Kirchenbauer
- 141. Betty Lou Kishler
- 142. Seth Klibonoff
- 143. Karen Knight
- 144. Denise Kobylarz
- 145. Susanne Koch

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146. Victor Kolvites
147. James Kukura
148. Laura Kushner
149. Michele Largman
150. Dr. Janet Larson, Associate Professor and Director, English Graduate Program,
Rutgers University
151. Phyllis Lau
152. David Leader
153. Joan Leary Matthews, Clean Water Division, Region 2 Office, United States
Environmental Protection Agency
154. Gabrielle Leflore-Filistovich
155. Dorothea Leicher
156. Pete Lemoine
157. Andrea Leshak, Staff Attorney, Hackensack Riverkeeper and NY/NJ Baykeeper
158. Garrett Lesnevich
159. Andrew Levecchia, AICP/PP, New Jersey County Planners Association
160. Lynn Levin
161. Jeffrey Liebman
162. Lillian Liss
163. Alexander J. Litwornia, P.E.,PP, President, Litwornia Associates, Inc.
164. Ellen LoCicero
165. Laura Lynch

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- 166. Denise Lytle
- 167. Cinny MacGonagle
- 168. Christopher Manak, Superintendent, Madison-Chatham Joint Meeting
- 169. Deborah A. Mans, Executive Director, NY/NJ Baykeeper
- 170. Marilou March
- 171. Christine Marion, Planning Director, Morris County Planning Board
- 172. Agnes Marsala
- 173. Joyce Marshall, League of Women Voters of New Jersey
- 174. Greg Maurone
- 175. Kevin McDonald
- 176. Michael G. McGuinness, Chief Executive Officer, NAIOP, NJ
- 177. Antoinette Meale
- 178. Paul Meyers
- 179. Donna Mikulka
- 180. Mary Miller
- 181. Barbara Miller
- 182. Barbara Milloy
- 183. Regina Mills
- 184. Nick Mishoe
- 185. JoAnn Mondsini, Executive Director, Rockaway Valley Regional Sewerage Authority
- 186. Weldon Monsport

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187. Bess Morrison
188. Rachel Moulton
189. Paul Muir, Mayor, Township of Bethlehem
190. Peter Mulshine
191. Virginia Murchison
192. S. Murray
193. Rosalie Murray
194. Mark Nagelhout
195. A. Nap
196. Bernard V. Navatto, Jr., Chair, Somerset County Planning Board
197. Dr. Edith Neimark
198. Diane Nelson
199. Donato Nieman, Township Administrator, Montgomery Township
200. Lynne O'Carroll
201. Claire O'Connell
202. Maria O'Connor
203. Doug O'Malley
204. Karen Oliver
205. James Olszewski
206. Senator Steven V. Oroho
207. P.J. Parker

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208. Dushyant Patel, Member, North Brunswick Township Environmental

Commission

209. Ruth Pennoyer

210. Claire Perrault

211. Hilary Persky

212. Edwin Piercin

213. Michael L. Pisauero, Jr., Policy Director, Stony Brook-Millstone Watershed

Association

214. Dionne Polk

215. Alan Polk

216. Catherine Price

217. David Pringle, Clean Water Action

218. Michael Puleo

219. Edward Purcell, NJ League of Municipalities

220. Monique Purcell, Division Director, New Jersey Department of Agriculture

221. Marilyn Quinn

222. Francis Rapa

223. Tina Ree

224. Alan and Michele Reissmann

225. Lisa Riggiola

226. J. Rigney

227. Sarah Roberts

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- 228. Adam Rosenstein
- 229. Robert Rosenthal
- 230. Linda Rossin
- 231. Susan Roth
- 232. Stacey P. Roth, Senior Counselor, Pinelands Commission
- 233. Randi Rothmel
- 234. Charles Rue
- 235. Elliott Ruga, Policy Director, New Jersey Highlands Coalition
- 236. Anthony Russo, Executive Vice President of Government Affairs and
Communications, Commerce and Industry Association of New Jersey
- 237. Kevin Ryan
- 238. Amy Sadeghi
- 239. Shane Sanders
- 240. Lorraine Sarhage
- 241. Marilyn Scherfen
- 242. Gail Schneider
- 243. Eric Schrading, Field Supervisor, United State Fish & Wildlife Service
- 244. Paul Schryba
- 245. Denise Seremeta
- 246. Captain Bill Sheehan, Hackensack Riverkeeper
- 247. Jelena Sias
- 248. William Simmons

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- 249. Thomas Simonet
- 250. Irv Simpkins
- 251. Grace and Frank Sinden
- 252. Karen Smith
- 253. Diane Smith
- 254. Judith Smith
- 255. Ryan Snyder
- 256. Lee Snyder
- 257. Julia Somers
- 258. Lotte Sonnenschein
- 259. Cynthia Soroka-Dunn
- 260. Dr. Jack Spector
- 261. Catherine Stanford
- 262. Barbara Stef
- 263. Gene Steiker
- 264. Dorothea Stillinger, Chair, Chatham Township Environmental Commission
- 265. Constance Stroh
- 266. Ryck Suydam, President, New Jersey Farm Bureau
- 267. Brant Switzler
- 268. Janet Tag
- 269. Paul Tarlowe
- 270. Paul Teshima

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- 271. Dr. Richard Tiedemann
- 272. Bonnie Tillery
- 273. Jeff Tittel, Director, New Jersey Sierra Club
- 274. Patricia Trevino
- 275. Regina Trochez
- 276. Mary Tulloss
- 277. Dr. Gray Tuttle
- 278. Roberta Utenwoldt
- 279. Mark van Rossen
- 280. Jody Vaughn
- 281. George Veghte
- 282. Denise Wallace
- 283. Glenn Welsh
- 284. Britta Wenzel, Executive Director, Save Barnegat Bay
- 285. Allen Weston, Legislative Director, New Jersey Association of Counties
- 286. Dawne White
- 287. Claire Whitecomb, Member, Madison Environmental Commission
- 288. Elizabeth Whitehead
- 289. Robert Wissel
- 290. Bill Wolfe
- 291. Margo Wolfson
- 292. Samson Wong

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293. Margaret Yilmaz

294. Kim Yousey

295. Katherine Yvinskas

296. Sam Zappala

297. David Zatz

298. Cindy Zipf, Executive Director, Clean Ocean Action

299. The Sierra Club submitted an identical comment letter on behalf of 471

individuals. The Department has designated this standard letter as commenter 299.

Where individuals added comments on this rulemaking in addition to those appearing on the form letter, their name is listed separately in the commenter list.

300. The League of Conservation Voters submitted an identical comment letter on behalf of 310 individuals. The Department has designated this standard letter as commenter 300. Where individuals added comments on this rulemaking in addition to those appearing on the form letter, their name is listed separately in the commenter list.

A summary of the timely submitted comments and the Department's responses follows. The number(s) in parenthesis after each comment identify the commenter(s) listed above.

General Comments

Comments in Support

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1. COMMENT: The proposed WQMP rules are well organized and much clearer than the existing WQMP rules. (6, 57, 134, 168, 185, 199)
2. COMMENT: There is support for this rule in that it serves to ease the planning process to allow for growth in suitable areas while also providing long-term protection for the State's environment. (206)
3. COMMENT: The Department has provided certainty, predictability, flexibility and consistency with this proposal. The two words that businesses always want to hear are "predictability" and "certainty." If rules create uncertainty or if those impacted cannot predict what will happen under the rules, some companies may be scared away. This must be eliminated if new private investment is to be encouraged. (84, 236).
4. COMMENT: The rational use of habitat determinations is supported – fragmented habitat is not necessarily a barrier to smart growth densities. (13)
5. COMMENT: This is a badly needed first step in the right direction. Rational limits on development are needed and they need to be fact-based, with a solid scientific basis. Please continue to evaluate your policies as you have done here and move to an evidence-based regulatory system. (121)

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6. COMMENT: The proposed new rule brings enhanced reliance on landscape project data and integration of the Natural Heritage Database into the equation. The Department should be commended for this. (222)

7. COMMENT: The Department's efforts to significantly improve the existing wastewater management planning regulatory framework are recognized. Undoubtedly, the past regulations have caused uncertainty for the public, not just for the business and development communities, but also for local government and individual landowners. Additionally, we appreciate the use of the stakeholder process and the concerted efforts that the Department has taken to improve the WQMP process for the entire State. (101)

8. COMMENT: The Department's proposed WQMP rules are generally supported. (44, 63, 97, 110)

9. COMMENT: The majority of the aspects of the proposed new WQMP Rules will have a positive impact on the County, its municipalities, sewerage authorities, the public and the environment. (196)

10. COMMENT: The Department's endeavor to streamline the WQMP program, including the efforts to simplify and clarify some details of the rules, and remove the threat of withdrawal of sewer service area if planning entities do not meet certain regulatory imposed deadlines, is supported. (6, 13, 46, 57, 134, 168, 176, 185, 199)

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11. COMMENT: The Department should be commended for streamlining a lot of things that were problematic in the 2008 rules. (236)

12. COMMENT: The revised WQMP rules are supported. The proposal provides a better framework to undertake wastewater management planning in New Jersey. The removal of some requirements will make the process more manageable and counties will complete their plans in a timely manner. This proposed rule will allow for better coordination between municipalities, the Department and counties to develop practical and real world solutions to wastewater management planning needs. (36)

13. COMMENT: The result of the bipartisan legislation, which gave counties and municipalities more time to comply, and the Department the ability to develop a less cumbersome sewer service plan, is a positive for both the economy and the environment. (206)

14. COMMENT: The proposed rules provide a much better – and more manageable – framework to undertake wastewater management planning in New Jersey. The removal of onerous and unrealistic requirements will make the process much more manageable and will empower counties to complete plans in a timely manner. The proposed rules will allow for better coordination between counties, municipalities, and the Department to develop practical and real world solutions to wastewater management planning needs. (285)

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15. COMMENT: The Department's efforts in sewer service area mapping are supported in that those efforts resulted in mapping in all or parts of 16 counties and over a dozen municipalities where the county did not take WMP responsibility. Removing areas from sewer service area, and instead considering these areas to be an individual subsurface sewage disposal system (ISSDS) area or an area not suitable for development, is a positive change for the environment. (44, 63, 153)

16. COMMENT: Protecting the Pinelands and the Highlands is an excellent idea. The residents living within the borders protected under the Highlands and Pinelands protection acts pay for the water use and the ability for non-residents to use these lands for their permitted recreational activities. Allowing sewage treatment plants would be a good idea. (110)

17. COMMENT: The revised approach that the Department is taking in regards to water quality planning, as opposed to rigid regulations that do not allow for a range of options to resolve or avoid problems, is fully supported. The Department is also commended for working collaboratively with local governments to address the proper management of wastewater without requiring the rezoning of land and adoption of local ordinances as a prerequisite for approval of Wastewater Management Plans. The uncoupling of the regulations from other land use regulations is a vast improvement over the existing rules. (220)

18. COMMENT: The rule proposal is supported. The rule is comprehensive, provides greater flexibility, and continues to provide greater coordination among jurisdictions and

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agencies. The proposed rule also supports the alignment of land use and infrastructure plans, policies and investments and is consistent with the principles of sustainability and smart growth. (84, 196)

19. COMMENT: The new rule is supported because it provides a more workable policy for balancing growth – from park development to housing and transportation – and preservation. Considering changes to the WQMP rules over the years, this proposal is more aligned with the County’s planning process and objectives. (90).

20. COMMENT: There is support for this rule in that it serves to ease the planning process to allow for growth in suitable areas while also providing long-term protection for the State’s environment. (206)

21. COMMENT: The Department’s recognition of management areas designated as appropriate for growth within the Pinelands Comprehensive Management Plan (CMP) as areas eligible for sewer service, specifically Regional Growth Areas, Pinelands Villages and Pinelands Towns is appreciated. (140, 232).

RESPONSE TO COMMENTS 1 THROUGH 21: The Department acknowledges the commenters’ support.

Development Concerns

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22. COMMENT: The Department is urged to protect and preserve open spaces, forests, and drinking water, and to protect our endangered species' habitat and environment, waters, and wetlands, and should not extend sewers into environmentally sensitive areas as they are not needed. We need more protection, not less. There is no such thing as a "balance" between clean water and private gain, clean water should win each and every time. We should use existing infrastructure, not build more sewers and roads that will pollute our waterways. It's time that the administration acts in the best interests of the people it serves. We must preserve the quality of what we have, and protect our waterways at all costs from bioaccumulation and biomagnification of heavy metals and other toxins. Please do not detract from the high standards of environmental protection we have and are achieving. (8, 26, 38, 39, 42, 49, 64, 66, 82, 86, 89, 92, 94, 95, 103, 108, 111, 123, 128, 131, 137, 141, 138, 147, 149, 154, 172, 175, 178, 183, 186, 190, 191, 193, 192, 205, 218, 227, 234, 258, 283, 288, 300)

23. COMMENT: Keep our water clean and safe to drink. This will avoid the need to seek clean water from out of State in the future. The Department is asked to do everything it can to preserve our water quality and not let the developers just run wild doing whatever they want. The public is alert and holds the Department responsible for decisions that regulate our water treatment plants as most people drink the water supplied through the pipelines. Water is vital to life – human, plant, animal, even microbes. The majority of South Jersey consists of homes that depend on well water for families and for the many animals on New Jersey farms. Clean water

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is a right, and no amount of economic gain is worth jeopardizing the cycle of water. (31, 37, 51, 53, 85, 201, 212, 265, 292)

24. COMMENT: These new rules are reckless and not in the best interests of New Jersey as a state. New Jersey has many residents who want to keep access to clean drinking water and want to feel proud of our State and its beautiful open spaces where we go to fish, swim, and reconnect with the beauty of nature that New Jersey still offers us. Clean water is the second most important resource after clean air, and one that, once polluted, cannot be made clean again without unreasonable costs and efforts. Please keep the standards high and do not pass any legislation that threatens the purity of our water. Clean water is going to be among the biggest challenges we face in the future. Please think of that future and do not implement plans for short-term solutions. Show us that you care about the quality of water that residents drink. (30, 61, 67, 91, 99, 100, 105, 112, 130, 160, 162, 181, 207, 254, 268, 270)

25. COMMENT: Now that New Jersey is the most densely populated state in the United States, it is time for the government to care about the State's citizens. (296)

26. COMMENT: Please keep our water rules as is. Please preserve the laws already in place to preserve the quality of our drinking water. We need our vital resources protected, not polluted. Making it easier to put sewers, etc. in anytime to make it faster for homes to be built, or for any other reason, is wrong. The Department even trying to alter the present law should be a criminal offense. Do not change the rule to allow developers to harm the natural beauty of New

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Jersey, not even for speedy rezoning needs. Please affirm your commitment to be an effective steward of our drinking water and do not weaken the safeguards in place. Clean water is essential to human life. It is astonishing that there would even be any consideration to relaxing clean water standards that have proven so successful over the years in reducing water pollution. Enough is enough with ruining the environment in our very crowded State. Please keep strong water quality rules for New Jersey. (22, 23, 52, 64, 66, 79, 87, 129, 146, 173, 182, 189, 202, 208, 209, 231, 237, 238, 247, 262, 263, 271, 287, 289)

27. COMMENT: It is quite remarkable that intelligent people, educated people with this kind of power over our Water Management Systems and Rules, can be so devoid of any humanity, any regard for down the road outcomes, any ideas that require work and effort and planning for the protection of our water systems. Don't make New Jersey like a third world country with no clean water, but instead parasites, and diseases from dirty water. This is not a simplification of the rules; this is an abdication and an irresponsible and reckless effort. Please don't do this; if you don't care about yourself, think of your children and their children. (64, 170, 216, 242, 290)

28. COMMENT: Let us be proactive about protecting citizens, the environment, and its many creatures that already have extremely limited space to live, instead of being reactive once the damage has already been done. Now is the time that we, as a State, can make a difference in our quality of life. We as a people need to make the right decision and protect our land and

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water by vetoing this careless and potentially dangerous plan. This is a terrible plan. It should not be revised; it should be killed. (70, 113, 249)

29. COMMENT: This proposal represents a radical departure in the last 21 years of WQM planning conducted by the Department. The Department's proposed rules get rid of essential protective rules, and are opposed for this reason. New Jersey needs to preserve its few natural spaces and clean water, not offer them up for profit and undermine further our quality of life. Our water is too important not to protect and we believe you must reject these rules. To affect Smart Growth in New Jersey, we need a strong Department of Environmental Protection. The Department must work to preserve protections in place for the Pinelands and the Highlands, if anything they should be made more stringent. This proposal allows for the destruction of the protections and must not be made law. Preserving the quality of our drinking water is a moral issue, first and foremost. Secondly, it's an issue of survival for the local economies and property values downstream. No developer has any right to get the rules rolled back. When it comes to precious drinking water, there should be an abundance of caution. It is unconscionable that the Department would even consider weakening water pollution rules that clearly are not stringent enough now. (77, 88, 89, 107, 116, 126, 150, 151, 210, 273, 290)

RESPONSE TO COMMENTS 22 THROUGH 29: The proposed rule will not result in a reduction in protections for the environment or public health. These rules are changing the last 20 years of the implementation of the WQMP program since many aspects were either not achieving the desired result or were duplicative of permitting program requirements. The

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WQMP rules are intended to require planning at the appropriate stage, generate informed decisions at the appropriate scale, avoid unnecessary duplication of regulatory objectives, and better integrate planning with existing permitting programs in order to more effectively implement the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq. The new rules are expected to have a positive effect on the environment by providing a more efficient means to develop and adopt WMPs, thereby helping to restore, enhance, and maintain the chemical, physical, and biological integrity of New Jersey's surface and ground water. Protecting New Jersey's natural resources and water supply remains a top priority for the Department, and the rule is one component of the Department's program to achieve that goal.

30. COMMENT: The State is dismantling the environmental regulations in New Jersey, and the Water Quality Management Plan rules are an example of that. Popular opinion seems to hold little sway over big money interests. The Department should stand up for our environment and for "clean water" in New Jersey and help maintain our present WQMP rules. Perhaps not immediately, but ultimately gutting water inspection and regulation would be gravely catastrophic. We urge you not to make this choice. Weakening our existing water protections is extremely short-sighted. It would be foolhardy to ease the restrictions we now have for keeping water supplies uncontaminated without first undertaking a thorough study of the possible consequences. We need stronger protections for drinking water, stream buffers, groundwater recharge areas, and we need stormwater management. (5, 35, 40, 65, 123, 132, 142, 144, 194, 253, 265, 273, 279)

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31. COMMENT: In combination with the significant rollbacks in the recent Flood Hazard Area Control Act Rule proposal at N.J.A.C. 7:13, the Department's intention to increase the septic density standards set forth in the Highlands Water Protection and Planning Act Rules at N.J.A.C. 7:38, and the Department's failure in responding to the statutory requirement of releasing the long overdue Water Supply Master Plan, and other actions, signal an alarming pattern of a diminished will to protect New Jersey's environment and its public trust natural resources in favor of the protection of private development interests. (124, 167, 235, 273)

32. COMMENT: The Department cannot sacrifice the biosphere, which enables our continued existence, to "development" for short-term profit. The proposed rules are threatening our earth and our environment by allowing pollution to be dumped onto our land which goes into our water. Awareness of our impact on the environment between our needs and demands is crucially important. The Department must stop the rush to overdevelop our precious open spaces and must enforce land preservation. Leaving what is left of the natural landscape in New Jersey to support a safe and adequate water supply is a basic requirement for a healthy community. These new rules should be rejected for the water polluting instruments they are. The Department is urged to protect the public from environmental disruption and help build a healthy society. Our pollution makes New Jersey unattractive to businesses. We must do more, not less, to protect our environment and natural resources; we must protect all our sources from pollution, runoff and other degradation. (4, 15, 16, 53, 59, 136, 143, 145, 166, 198, 200, 225, 239, 244, 272, 280, 296,)

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33. COMMENT: The proposed rule will allow for increased development and more impervious surfaces, which will result in stormwater runoff contamination of the water supply and pollution of rivers, lakes, basins, estuaries, and coastal waters. Treatment of contaminated and polluted waters is an expensive burden placed on tax payers, not developers. These new proposed rules would make our water much less clean. (3, 55, 109, 119, 221, 227, 259)

34. COMMENT: The Department should make decisions for the long-term good of the people of New Jersey instead of caving in to greedy special interests that will further contribute to overdevelopment and sprawl. The proposed rule is unnecessary and will increase water pollution and sewage accumulation, expose sensitive areas to water quality degradation, and generally undermine environmental protection and the quality of life of New Jersey citizens by considering the interests of developers over the protection of resources such as open space and clean drinking water. The Department should adopt a bio-economic approach in which there is a balance between ecology and development. The lack of concern for public health embodied in this rule is reminiscent of what occurred in Flint, Michigan. (2, 9, 11, 18, 25, 32, 51, 54, 62, 78, 80, 85, 102, 122, 124, 144, 150, 174, 183, 198, 204, 217, 221, 229, 235, 260, 261, 264, 273, 276, 297)

35. COMMENT: The proposed rule reduces regulations and encourages development, which will result in negative impacts on natural resources such as wildlife, open space, streams, aquifers, and reservoirs. There is also concern about the rule's potential influences on surface and ground water quality and quantity, aquatic and terrestrial habitats, and about the

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effectiveness of administration at all levels of government. We must protect our natural resources, especially in the Highlands, Pinelands, and other environmentally sensitive areas.

This administration has added more sewer service than is necessary, and further degradation of the environment needs to be prevented. (2, 10, 32, 54, 59, 81, 85, 98, 107, 116, 122, 136, 165, 214, 273, 297)

36. COMMENT: The Department needs to protect all of New Jersey's water resources and limit contamination that results from runoff from impervious surfaces so that it does not experience the issues that have occurred in other states. Please look at situations like the lead contamination in Flint, Michigan and problems experienced in California, as well as the countries who have failed to care for their environment (China, Brazil) or places who failed to protect their water supply. We are forewarned; let us be forearmed. (14, 28, 34, 41, 120, 133, 197, 282)

RESPONSE TO COMMENTS 30 THROUGH 36: The Water Quality Management

Planning rules are an important part of the Department's water resource protection efforts, implemented through several rules, including the Ground Water Quality Standards, N.J.A.C. 7:9C, the Surface Water Quality Standards, N.J.A.C. 7:9B, and the NJPDES rules, along with other water quality protection measures implemented through other programs, such as the riparian zone and wetlands buffer protections contained in the Department's land use rules. The program implemented through these rules is designed to restore, enhance, and maintain the chemical, physical, and biological integrity of the State's surface water and ground water, and the

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public trust therein; to protect public health; to ensure that New Jersey's streams, rivers, lakes, wetlands, and coastal waters will be fishable, swimmable, and support healthy and sustainable ecosystems; and to ensure that surface and ground water will be clean sources of water.

Under the Water Quality Management Planning rules, sewer service area is prohibited in environmentally sensitive areas with limited exceptions. In general, environmentally sensitive areas are excluded from consideration for sewer service unless they fall under an exception specified in N.J.A.C. 7:15-4.4(i). The three exceptions provided under N.J.A.C. 7:15-4.4(i) are limited to area located in a portion of a State Planning Commission approved endorsed plan designated for growth, area located within a Planning Area 1 designated pursuant to the State Planning Act, or infill development as defined in the rules. However, even in these areas sewer service will not be allowed if the Department determines that the area is critical to the survival of a local population of a threatened or endangered wildlife species. Further, even if a parcel is added to the sewer service area under this provision for planning purposes, the rules make clear at N.J.A.C. 7:15-4.4(i)3, that those areas remain subject to and must satisfy the requirements of all Department permitting programs.

For environmentally sensitive area in areas not identified for growth, where the area is classified as environmentally sensitive due to the presence of a Natural Heritage Priority Site or areas mapped as threatened or endangered species habitat, sewer service area review is conducted pursuant to N.J.A.C. 7:15-4.4(k) and (l).

For an area designated as environmentally sensitive due to the presence of a Natural Heritage Priority Site, in accordance with N.J.A.C. 7:15-4.4(l), the area will only be included

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within sewer service area if the Department determines that the proposed activity avoids or does not adversely impact natural resource elements occurring within the Natural Heritage Priority Site.

Similar to Natural Heritage Priority Sites, impacts to areas deemed environmentally sensitive based upon the occurrence of mapped threatened or endangered species habitat are only allowed where the Department is able to determine, through a Habitat Impact Assessment (HIA), submitted in accordance with N.J.A.C. 7:15-4.7, that the proposed project or activity avoids endangered and threatened wildlife species habitat or natural resource elements, or will result in insignificant or discountable effects on the maintenance of local breeding, resting or feeding of the endangered or threatened wildlife species. If neither of these two standards can be met, the HIA may be used to demonstrate that the potential impacts to endangered or threatened wildlife species habitats are minimized to the maximum extent practicable and mitigated through the use of project redesign or modification, implementation of timing restrictions, best practices, or other proposed conservation measures in a manner that provides for no net loss of habitat value to the endangered wildlife species.

The HIA process provides a mechanism for the review of a proposed project or activity for inclusion in the sewer service area because it avoids the habitat, will cause only insignificant or discountable effects to the wildlife habitat or natural resource elements, or, with respect to endangered and threatened wildlife species habitat, the project or activity includes conservation measures that will minimize to the maximum extent practicable all adverse modification of suitable habitat, and will mitigate for any adverse modification of habitat so that there is no net

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loss of habitat value for the local population of endangered or threatened wildlife species documented on-site, or their suitable habitat. N.J.A.C. 7:15-4.4(k) recognizes that there are situations in which development in environmentally sensitive areas connected to sewer treatment will have little or no impact on the endangered or threatened wildlife species habitat which led to the area being classified as environmentally sensitive. Indeed, in certain circumstances, development using septic systems can be incompatible with the protection of endangered and threatened wildlife species, and clustered development using sewer service may have less impact or may avoid adverse impacts entirely.

By prohibiting the inclusion of environmentally sensitive area within sewer service area except in limited circumstances, the rules seek to protect environmentally sensitive areas from development pressures that can come with development densities likely in areas served by centralized sewage systems. This protection is consistent with other Department programs providing protections for particular environmentally important features, such as the Freshwater Wetlands Protection Act Rules, N.J.A.C. 7:7A.

In addition to generally excluding environmentally sensitive areas from SSA for planning purposes under N.J.A.C. 7:15-4.4(d) and (e), the rules limit sewer service in specific environmentally sensitive areas, including certain Coastal Planning Areas and areas subject to Federal grant limitations (see N.J.A.C. 7:15-4.4(f) and (g), respectively).

As indicated above, the Water Quality Management Planning rules, while an important part of the State's water quality protection efforts, are but a part of those efforts with other rules addressing other aspects of that effort and the State's satisfaction of the continuing planning

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process (CPP) requirements of the Federal Water Pollution Control Act (also known as the Clean Water Act (CWA)), 33 U.S.C. 1251, et seq. Initially presented in the stakeholder process as draft, the Department has finalized the CWA/CPP crosswalk that outlines the CPP requirements and the corresponding State program that demonstrates compliance with that requirement. The Department has posted on its website (<http://www.state.nj.us/dep/wrm/>) the final CWA/CPP Crosswalk demonstrating the manner in which New Jersey is meeting those CWA obligations. Through these various regulatory programs, the Department maintains many strategies to restore, maintain, and enhance water quality, water quantity, and ecosystem health.

37. COMMENT: The Department is hiding the influences and motives behind the proposed rule. There is clearly collusion to roll back regulations and expand sewers. The administration wants to detach government from the responsibility of governing to protect the public trust and the health and well-being of the people in the present and the future. The Department is not upholding the morals, ethics, and principles of environmental protection. The stakeholder process consisted of polluters, land speculators, developers, and their attorneys. The rule uses cherry-picked data to justify its relaxation of regulation. The Department's continual delay of the proposed rule was clearly disingenuous. (21, 74, 75, 124, 203, 229, 273, 290, 295)

RESPONSE: The new rule is intended to enhance environmental protections by providing a more efficient means to assess and evaluate regional wastewater management, allowing appropriate development to occur while ensuring the protection of public health and the environment.

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The Department conducted extensive stakeholder outreach in developing this rulemaking. The Department sought input from many constituencies including government agencies and planners, the development community, the environmental community, academic groups, and sewerage and water utilities through a series of 12 stakeholder meetings held from February to July 2012. These stakeholder meetings focused on development of a program to address water quality and quantity issues across all water resource programs and media, and included discussions regarding the WQMP rules and the future of the WQMP Program. During these meetings, stakeholders raised concerns about obstacles to completion of an up-to-date WMP which resulted in, among other things, the inability to process site specific amendments and the threat of withdrawal of designated sewer service area. Several stakeholders suggested that the rules should allow adoption of individual components of WMPs. These issues and concerns were ultimately reflected in the passage of P.L. 2011, c.203.

The Department endeavored to seek the input of the full spectrum of interests impacted by these rules in order to develop a holistic approach to regional problem solving and a framework to overhaul the pre-existing WQMP rules. These stakeholder discussions helped to inform the rules. The Department combined the essential elements of the 2008 rules with a new vision that is intended to increase outcome efficiency. The new rules will achieve this goal by combining the current planning process with existing permitting programs. The continuing planning process strategies and guidance articulated within the CPP, such as strategies and guidance regarding stormwater and nonpoint source pollution, are also intended to protect and improve water quality.

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38. COMMENT: A greater level of clarity and detail should be added to the rules in order to provide greater certainty to county WMP Agencies regarding the technical, procedural and analytical requirements necessary for completing countywide WMPs within the allotted timeframe. (196).

RESPONSE: The Department is repealing the existing rules and replacing them with new rules containing procedures that are more likely to result in adopted countywide WMPs. This has been generally affirmed by the counties.

The new rules specify the roles of the entities involved and the process and analyses that must be followed for preparation or update of a WMP. Subchapter 2 describes the relationship between wastewater management planning agencies, counties, municipalities and entities responsible for wastewater treatment, as well as coordination and integration with regional plans. Subchapter 4 addresses the requirements that must be met in the preparation of a WMP and the required components, including the mapping requirements and analyses. Among other things, it also specifies areas that may not be designated for sewer service and factors that must be considered in designating other areas as eligible for sewer service, and it details how required wastewater capacity analysis, and nitrate dilution analyses are to be performed.

While the Department believes the rules clearly express what is expected and required of all entities involved in wastewater management planning, guidance will be available on various aspects of the rules on the Department's website at <http://www.state.nj.us/dep/wrm/> and the Department will work with WMP agencies in addressing any concerns or questions that may arise during the process and will provide technical assistance in accordance with N.J.A.C. 7:15-

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2.4(a)7. The Department believes that the information specified in the rules and supplemental guidance and support will provide the WMP agencies with the resources necessary to complete countywide WMPs within the allotted timeframe.

Although well intentioned, the 2008 rules proved to be too ambitious by requiring analyses to a degree of complexity incompatible with what is, fundamentally, a planning exercise. The significant changes made in these rules will result in baseline WMPs in every county. For example, the requirement to address the resolution of potential gaps in wastewater capacity as part of the WMP adoption was a significant impediment to WMPs being adopted. A focused approach and elimination of duplicative requirements in planning and permitting are also parts of the revised process. The substantive parts of the WMP, such as the requirements for calculating the wastewater treatment capacity and nitrate dilution analysis have changed very little. Generally, it was not confusion with respect to these analytical requirements that prevented WMPs from being adopted, but rather some of the fundamental components that were required to be included in the WMP.

Water Supply

39. COMMENT: The water, at least in parts of New Jersey, is already terrible and in some areas there is a good deal of lead in the water. New Jersey is pumping far more water out of our aquifers than is going back in, which is a suicidal water use policy. There is no question of whether we are going to run out of drinking water, only when it will happen. (58, 245)

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40. COMMENT: The proposed rule will threaten drinking water in New Jersey by reducing protections of the water supply. The current supply of drinking water must be valued above future development, and to accept any risk whatsoever to that supply is unconscionable. We need to protect our sole source aquifers from development, not make it easier to pollute this irreplaceable resource. Focus should be placed on redevelopment and improvement of existing water supply infrastructure. Buffer zones should be utilized, the depth of water feed lines must be properly monitored, and water resources and public health must be protected from foreign corporations. Any new development must be preceded by analyses of its potential effects on drinking water sources and whether the existing water supply can support that development. (2, 19, 20, 27, 32, 33, 40, 43, 45, 50, 60, 80, 96, 106, 118, 119, 122, 135, 137, 148, 152, 156, 166, 180, 184, 187, 214, 215, 223, 226, 240, 251, 255, 269, 278, 281, 286, 291, 293, 299)

41. COMMENT: We need to understand the limitations of the Department's water regulations. Adherence to the water regulations does not guarantee an adequate water supply. The regulations do not consider the sustainability of the aquifer. There are conflicting viewpoints where the Highlands Council says there will not be enough water and the Department says to continue pumping water as before. (124)

RESPONSE: Typically, lead in drinking water results from leaking from service lines, plumbing or fixtures that contain lead. As a result of corrosion, lead and other metals from the pipes slowly dissolve into the water. Lead is not normally found in drinking water at the source (i.e. ground or surface water). If a public water supply does have lead in its source water, or triggers

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an action level exceedance of the Federal Lead & Copper Rule, 40 C.F.R. 141 Subpart I, the Department's Safe Drinking Water Program will require appropriate measures to be taken, which may include the installation of additional treatment.

The Department is charged with the management of the State's water supply pursuant to the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq., which is implemented through the Water Allocation Permit Rules (Water Allocation rules) at N.J.A.C. 7:19. Under the Water Allocation rules, the Department evaluates the sustainability of aquifers by regulating persons that divert ground water in excess 100,000 gallons per day. Applicants are required to prepare and submit a comprehensive evaluation of the geology, hydrogeology and the expected impacts of the diversion on both the aquifer and on other users of the aquifer. Applicants for new diversions or those requesting an increase in diversion must also demonstrate that the proposed diversion will not cause an increase in saline intrusion that would render the aquifer unfit for use, will not spread ground water contamination, and will not interfere with any ground water remediation or activity. The Division of Water Supply & Geoscience coordinates with the United States Geological Survey (USGS), which routinely evaluates ground water and surface water conditions through the USGS regional network of monitoring stations.

The Highlands Council and the Department have respective legislative mandates and authorities. The Water Supply Management Act authorizes the Department to develop a permit system to provide for the issuance of permits to diverters of more than 100,000 gallons per day of the waters of the State in order to ensure the citizens of the State an adequate supply of water under a variety of conditions. The Highlands Water Protection and Planning Act (Highlands Act, N.J.S.A. 13:20-1 et seq.) was enacted as a coordinated regional planning effort to safeguard the

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Highlands natural resources. The Legislature established the Highlands as a special region of the State. As a result, there are differing regulatory thresholds and water supply management strategies within this region with the Highlands Regional Master Plan guiding activity occurring in the area. Particularly, the Highlands Act amended the Water Supply Management Act to establish that no action shall be taken that is inconsistent with the Highlands Act or Regional Master Plan. Accordingly, water and land use permits issued by the Department in the Highlands region are required to be consistent with the Highlands Act and Regional Master Plan. The Highlands Act further amended the regulatory threshold from 100,000 gallons per day to 50,000 gallons per day for allocation permitting within the Highlands Preservation Area.

Consistent with this statutory framework, the Department issues permits in consultation with the Highlands Council and only where said action is consistent with the Highlands Act and the Regional Master Plan. The Department regulations are not in conflict with the viewpoint or policies established by the Highlands Council.

42. COMMENT: The rollbacks proposed here in the WQMP rules gut hard-fought protections that really began in the Florio Administration and through many iterations since then. The end result is more sewers in the wrong places and greater septic densities in environmentally sensitive areas. The increased flexibility means less oversight. (217)

RESPONSE: This rule does not allow for greater septic density. Rather, the rule provides the septic density that applicants should aim to achieve. N.J.A.C. 7:15-4.5(c) continues the method for determining the appropriate septic density that was established in the previous rules at

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N.J.A.C. 7:15-5.25(e). The models provided at N.J.A.C. 7:15-4.5(c)1i(1) and (2) provide the number of acres needed to dilute nitrate loading from a collection of single-family residential units in order to achieve the target concentration for nitrate in ground water for the given area of proposed development. As provided in Response to Comments 30-36 above, this rule limits the delineation of sewer service in environmentally sensitive areas.

The WQMP rule is intended to avoid unnecessary duplication of Department regulations and better integrate WQMP with existing permitting programs, more effectively implement the Water Quality Planning Act, and is expected to have a positive effect on the environment.

Pinelands and Highlands

43. COMMENT: Water has been and always will be one of our most precious resources. It is the responsibility of all of us in this over-populated State to protect our vital resources. The Department should back away from your pro-business and short term view points and help maintain the protections of our water supply. The proposed rule will undo all the protections put in place to save the Highlands and Pinelands from over-development. (29, 114, 164, 214, 229, 233, 279)

44. COMMENT: The Department should protect our waterways in the Highlands and the Pinelands. There should be no new development or fracking in these areas. The Highlands and the Pinelands are not only environmentally sensitive forested lands and wetlands, but they are some of the most pristine lands found anywhere in the country and our Pinelands hold the largest

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reserves of untapped water. The Pinelands are one of the most beautiful and naturally and historically significant areas in the country. Please protect this treasure, for current residents, visitors, and future generations. One day soon people causing damage to our natural resources will be held accountable. Do not be a member of that group. (2, 48, 56, 60, 104, 127, 177, 179, 188, 229, 230, 252, 274, 277).

RESPONSE TO COMMENTS 43 AND 44: The rules are intended to avoid unnecessary duplication of regulations and better integrate water quality planning with existing permitting programs, and more effectively implement the Water Quality Planning Act. As a result, the rules are expected to have a positive effect on the environment by providing a more efficient means to develop and adopt WMPs, while eliminating previous obstacles to completion of WMPs that kept the prior rules from accomplishing their intended goals. Any development in the Pinelands and Highlands will be subject, in addition to these rules, to review by the Pinelands Commission and by the Highlands Council, as applicable. All developments, regardless of location, must comply with the county and municipal development codes as well as with the Department's technical standards during the permitting stages.

Protection of New Jersey's natural resources and public health remain top priorities for the Department, and the rule is an extension of that commitment. The issue of hydraulic fracturing (fracking) is beyond the scope of these rules.

45. COMMENT: The Highlands Act, including the establishment of natural reserves, was put in place for very good reason. Generations before us and wise leaders from recent times

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recognized the need for green space, especially in a highly urbanized region like New Jersey.

They are the lungs and kidneys for people, wildlife and vegetation alike. The Department is urged to continue the preservation of the Highlands, the Pinelands and our aquifers and not to make decisions that would adversely affect the water supply in the Highlands area. The Highlands Preservation Area and its reservoirs is where 5.5 million people get their drinking water. The Highlands are a unique and largely unspoiled area of New Jersey and it is important that this part of New Jersey stays that way. Developers should not be allowed to extend sewers into environmentally sensitive areas without Department review. Houses are easily built, but once destroyed, indigenous nature may never return. Let's make the legacy of our generation not even worse than it is already. (51, 127, 211, 279)

RESPONSE: Preservation of the Highlands, Pinelands, aquifers, and all of New Jersey's natural resources is important to the Department, and these rules, as well as many other environmental regulations, are an extension of that commitment to protect those areas. The Department recognizes the importance of the Highlands Act, which is why it has determined that it is appropriate to modify its water quality planning process to better incorporate planning actions undertaken by the Highlands Council.

46. COMMENT: The rule would weaken protections in the Highlands by eliminating or rolling back the nitrate dilution model standards, and by taking away Department oversight of sewer amendments for consistency with the Highlands plan. (273)

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47. COMMENT: The proposed rule will result in more development that is inappropriate for a State that is already experiencing foreclosures, business closures, and other negative economic issues. Once developed, these lands cannot be reclaimed. More development will also contaminate the water supply and pave the way for the installation of pipelines. We cannot have development at the expense of protecting water quality. (1, 71, 72, 117, 228, 229, 241, 250)

RESPONSE TO COMMENTS 46 AND 47: The new rules seek to accomplish wastewater management planning utilizing all information necessary to determine existing and future needs based upon local planning and objectives, identify any potential future capacity deficiencies, and establish a process for addressing any potential capacity issues before they become public health or environmental concerns. The rules continue to generally exclude environmentally sensitive areas from eligibility for inclusion in sewer service with limited exceptions. In addition, the rules do not change the requirements for determining septic densities. Further, outside of the Pinelands Area and the Highlands preservation area and conforming municipalities, within which delineation of sewer service area is governed by the Pinelands Comprehensive Management Plan and Highlands Regional Master Plan respectively, the rules require that delineation of areas eligible for sewer service take into account municipal zoning and master plan, county master plans and local land use objectives. In short, the rules do not increase sewer service area, but establish the process and requirements for planning reflecting local objectives while ensuring that environmentally sensitive areas continue to be protected.

Finally, inclusion of an area as eligible for sewer service is not an approval to move forward with a proposed project or activity. Instead, as indicated in the rules, any area included

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in sewer service area for planning purposes continues to remain subject to all applicable Department permitting programs and the environmental standards established in those permitting programs' rules to protect water quality, water supply, and all other environmental resources.

48. The DEP should not be surrendering its authority and review process. The Department has a mandate to protect the environment, thereby protecting the people. Therefore, the Department should not cede its authority to review and evaluate amendments to sewerage authorities and other State agencies. There is already too much pollution and sprawl in New Jersey, so environmental laws need to be strengthened, not weakened, to protect the environment and our water sources from degradation. (85, 155, 161, 195, 267, 275, 299, 300)

49. COMMENT: When you look at the Pinelands, you can now build sewers in growth areas, towns, and villages, and put in package plants that can handle over 200 homes per package plant. (273)

RESPONSE TO COMMENTS 48 AND 49: The Pinelands Protection Act (PPA), N.J.S.A. 13:18A-1 et seq., established the Pinelands Commission. In accordance with the PPA, at N.J.S.A. 13:18A-8 and 9, the Pinelands Commission developed the Comprehensive Management Plan (CMP), N.J.A.C. 7:50, which includes both planning and regulatory tools for managing development and land use in the Pinelands Area. The CMP is intended "to promote orderly development of the Pinelands so as to preserve and protect the significant and unique natural,

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ecological, agricultural, archaeological, historical, scenic, cultural and recreational resources of the Pinelands.” N.J.A.C. 7:50-1.3.

The CMP creates nine different land use areas, or “pinelands management areas,” based on an assessment of environmental resources and pressures. N.J.A.C. 7:50-5.11 to 5.19. Each pinelands management area has distinct permitted uses and densities based on the type of land use appropriate for the area and whether the area is appropriate for growth or identified as environmentally sensitive. N.J.A.C. 7:50-5.21 to 5.37. In this way, the CMP regulates the amount of development and the types of development that can be constructed consistent with the protection of the natural resource of the Pinelands Area.

Under the PPA and CMP, in order to direct development away from the ecologically sensitive core of the Pinelands and to encourage development within the management areas appropriate for growth, the development of centralized wastewater treatment and collection facilities is only permitted by the Pinelands CMP in those areas identified as appropriate for growth. These are Regional Growth Areas, Pinelands Towns and Villages, and substantially developed portions of Military and Federal Installation Areas. N.J.A.C. 7:50-5.28(b), 5.27(b), and 5.29(b)2. Management areas may be redesignated through the CMP amendment procedures or ordinance certification procedures, which are designed to maximize public participation. N.J.A.C. 7:50-3 and 7.

The Water Quality Planning Act (WQPA), at N.J.S.A. 58:11A-2(b) and 7, directs the Department to coordinate and integrate water quality management plans with related Federal, State, regional, and local comprehensive land use, functional, and other relevant planning

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activities, programs, and policies. The Department coordinates actions with the Pinelands Commission and such coordination is focused on ensuring consistent outcomes with the CMP.

50. COMMENT: A buffer zone, “a greenway,” should be kept around all bodies of water and existing recharge zones for our aquifers. Redevelopment should take place in areas where it will serve as a benefit. (158)

RESPONSE: The protections for riparian zone buffers are not eliminated with these rules. The Department continues to protect riparian zones and recharge areas in the Flood Hazard Area Control Act Rules at N.J.A.C. 7:13.

51. COMMENT: The proposal is an overreaction to difficulties that the Department faced in implementation of the 2008 rules. It does make more sense for detailed analyses to be conducted through the permit applications. However, the rule proposal apparently assumes that a collection of permit decisions will result in reasonable results at the watershed or aquifer scale. In the absence of planning at those scales, history indicates that permit-by-permit decisions do not necessarily achieve acceptable regional results. (125)

RESPONSE: The rules do not eliminate wastewater planning, rather they remove duplicative reviews that occur in permitting programs, and create a scenario in which counties can adopt the baseline WMPs from which they are then able to assess the state of their wastewater situation. Following the adoption of WMPs, counties can then conduct additional focused planning around

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the strategies wherein they have identified problem areas, such as potential capacity deficits.

Additionally, each site-specific amendment that is equal to or greater than 100 acres or 20,000 gallons per day is required to modify the capacity analysis in order for the Department to evaluate its impact on the overall capacity status in that sewer service area. These modifications will allow for planning to occur in the appropriate stages.

52. COMMENT: WMPs should implement policy to ensure that development occurs in ways which are compatible with the protection of environmentally sensitive areas (ESAs), are able to handle sewage, are generally consistent with regional and municipal plans, and comport with best practices for growth management. This rule does not meet those goals. (119)

RESPONSE: The review process for both WMPs and site-specific amendments provides for the identification of ESAs, flow data, and an opportunity for local government to comment on whether an amendment aligns with the local planning objectives. The WMPs are developed to identify where areas are slated for high density growth, lower density growth and no growth. A specific portion of the WMP that addresses this very issue is the Wastewater Service Area map, pursuant to N.J.A.C. 7:15-4.4(c)3 that depicts the boundaries of sewer service area and non-sewer service area. These two areas identify the high and low-density development areas, respectively. WMPs take into account ESAs, wastewater capacity issues, and local planning pursuant to N.J.A.C. 7:15-4.4 and 4.5.

Concerns about delegation of authority

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53. COMMENT: The proposed rule would default planning to the towns and the sewage authorities, relying on the stream buffers as protection. This would be contradicted by another rule where the Department eliminates the stream buffers. Originally, the rule kept sewers out of Category One stream buffers, now you can build sewers in those areas. (256, 273)

RESPONSE: The rules assign wastewater management planning responsibility to county boards of chosen freeholders with alternate assignment allowed to municipalities for the area within the municipality's jurisdiction. However, whether planning responsibility has been accepted by the county or is being performed by a municipality, the Department retains authority to approve WMPs or WMP components submitted by either. Similarly, amendments and revisions to approved WMPs are only approved by the Department and will only be approved if they are consistent with the WQMP Rules. Rather than defaulting to counties, municipalities or any other entity, the Department is coordinating planning with appropriate entities as contemplated by the Act. The Department continues to protect near stream riparian zones in accordance with the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13. Additionally, the 300-foot riparian zone adjacent to a Category One water pursuant to the Flood Hazard Area Control Act Rules are one of the environmentally sensitive areas considered in determining whether an area should be eligible for sewer service in accordance with N.J.A.C. 7:15-4.4. The new WQMP Rules focus on planning and rely on existing regulatory programs to provide additional protections to environmentally sensitive areas, such as stream buffers, associated with specific projects.

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54. COMMENT: The rules are being changed in the middle of the 'game.' Given the litigious nature of most developers, the inclusion of ambiguous language and altered definitions will make it very difficult for municipalities to defend their WMPs in court. This rule also allows for the usurping of authority of the local planning bodies that have already established and are implementing WMPs. This needs to be clarified before this rule is finalized. (294)

RESPONSE: The commenter did not identify the provisions claimed to be ambiguous. However, the Department will be coordinating with the DPAs and others pursuant to N.J.A.C. 7:15-2.4. At N.J.A.C. 7:15-4.4(h)1 through 3, the Department recognizes the role of local government in the planning process. This section provides that local considerations, such as adopted zoning ordinances, municipal or county master plans, and local land use objectives, including preservation plans, shall be considered in sewer service delineation. For example, even though an area may qualify for sewer service under these rules, a municipality's master plan may identify the area as appropriate for development on septic systems. Or a county may have a farmland preservation program that envisions certain tracts as remaining in agricultural production for the foreseeable future. In such situations, inclusion of such areas in a sewer service area may not be in line with the long term intended land use. Based on experience, the Department has found that the municipal master plan is the most relevant planning document for identifying local considerations in water quality management planning.

The rules make clear at N.J.A.C. 7:15-4.2(b) that WMPs prepared and adopted in accordance with the prior rules will continue in effect. Accordingly, previously prepared WMPs

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that have been approved by the Department under the prior rules may continue to be relied upon until updated in accordance with the new rules.

Public Hearing

55. COMMENT: All the hearings are being conducted during the day and none of them are in the evening, making it very difficult for regular members of the public who have day jobs to be able to comment. (257)

RESPONSE: The Department conducted one of the three hearings for the WQMP rule in the evening; the November 17, 2015 hearing was held in Gloucester County from 5:00-8:00 pm.

The Department provides opportunities to comment that are convenient with hearings scheduled in locations and at times intended to accommodate the largest possible number of commenters. The Department considers equally comments submitted in person at public hearings, those submitted electronically through the dedicated webpage, and written comments submitted in hard copy.

Consistency with Existing Rules

56. COMMENT: One of the objectives of the proposal is to reduce redundancies consistent with Executive Order 2. However, if you read Executive Order 2, redundancies were supposed to be eliminated in the first 180-day period pursuant to the moratorium and red tape review. So a

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minor technical error like that is the only bridge built to the Governor's Executive Order 2, but the proposal does not include the language and policy objective of Executive Order 2, which is to provide regulatory relief over the long-term through regulatory processes. (290)

RESPONSE: While not the primary impetus for this particular rulemaking, these rules implement the long-term directive of Executive Order 2 to draft rules that promote transparency and predictability regarding regulatory activity and by providing a reasonable balance between the underlying regulatory objectives and the burden imposed. Practitioners in this area of regulation generally recognize the complex and comprehensive nature of the continuing planning process, including wastewater planning, water quality assessment, development of water quality standards, implementation of nonpoint pollution strategies and development of TMDLs. These rules represent the Department's effort, consistent with Executive Order 2, to streamline the regulatory process in this area, in part, by removing duplicative and overlapping requirements addressed by other Department programs.

57. COMMENT: As proposed, the rule undermines the State's obligation to restore its waters by removing the current requirements and giving authority to those municipalities whose decisions and policies created the problems in the first place. This is a major step back from the improvements of the State's clean water policies, regulations and management from the 2008 rules, and will significantly undermine the State's progress toward meeting the requirements of the Clean Water Act. (73, 298)

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RESPONSE: N.J.A.C. 7:15-2.7(a) provides that the county is the principal wastewater planning agency. Wastewater planning has always been a local endeavor with the Department directing, overseeing, and coordinating those efforts. While laudable for their intent, the 2008 rules ultimately became unworkable because of the numerous analyses and burdensome requirements. As a result, the Department has determined to streamline and focus on the core elements of wastewater planning. In addition, the Department has identified and removed analyses that are and have been implemented by other Department programs. While these new rules continue to require various analyses, the scope of the effort is directed at the planning scale that reflects local zoning and master plans, and identifying areas that are and are not appropriate for centralized wastewater service. The Department believes that the balanced approach of these rules is consistent with its mission under the WQPA and the CWA.

58. COMMENT: The rule proposal has a rather schizophrenic approach to the State Development and Redevelopment Plan's Planning Areas, the Stormwater Rules at N.J.A.C. 7:8, and the Highlands RMP. The Department has suggested that State Development and Redevelopment Plan's Planning Areas be dropped but has not adopted any alternative. The Department has proposed eliminating the Special Water Resource Protection Areas in the Stormwater Rules at N.J.A.C. 7:8, which is not supported. Finally, the coordination language in the Highlands RMP (regarding non-conforming municipalities), is weaker than for the SDRP despite the intent of the Highlands Act for strong coordination. (125)

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RESPONSE: The rules continue to recognize the Planning Areas of the SDRP. The State Development and Redevelopment Plan, at N.J.S.A. 52:18A-196 et seq., provides a balance between growth and conservation by designating planning areas that share common conditions with regard to development and environmental features. The State Planning Act does not limit areas of the State preferred for development under the State Plan to center-based development or “centers.” N.J.A.C. 7:15-4.4(i) expands areas eligible for new sewer service within environmentally sensitive areas to Planning Area 1, and continues to allow inclusion of environmentally sensitive areas in sewer service area where necessary to address “infill development” or to remove undulations in the sewer service area. However, the inclusion of Natural Heritage Priority Sites or areas that are critical to the survival of a local population of endangered or threatened wildlife species in the sewer service area will be prohibited. At N.J.A.C. 7:15-4.4(i)1ii, the Department is allowing, for planning purposes only, an ESA to be included within sewer service areas located in a Planning Area 1 as defined in the State Plan Policy Map, provided that such area is not critical to the survival of a local population of endangered or threatened wildlife species.

The consolidation of protection of near-stream areas under riparian zone provisions of the Flood Hazard Area Control Act Rules, which included repeal of the special water resource area under the Stormwater Management rules and the related incorporation of certain standards into 300-foot riparian zone, was not part of this rulemaking (see 47 N.J.R. 1041(a), 1053; and 48 N.J.R. 1067(a)). However, with reference to the protection of near stream areas adjacent to waters classified as Category One under the Surface Water Quality Standards, as explained more fully in Response to Comment 158 below, the 300-foot riparian zones applicable to Category

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One waters under the Flood Hazard Area Control Act Rules fully cover all surface waters that would have possessed a special water resource protection area under the Stormwater Management rules. The 2008 WQMP rules required a demonstration that riparian zones be protected from avoidable disturbance. Consistent with the Department's intent through this rulemaking to streamline and focus on the core element of the WQPA, which is wastewater planning, and to identify and remove analyses that are and have been implemented by other Department programs, compliance with the riparian zone standards will be enforced through the Department's permitting programs.

Finally, as provided in the proposal summary, the Department intends to continue its strong coordination with the Highlands Council for projects in the Highlands Region. Where the Department receives an application for a project in a non-conforming municipality, the Department will consult the Highlands Council.

59. COMMENT: The proposed rule violates the Clean Water Act and is inconsistent with the purposes of the New Jersey WQPA. Further, it undermines the Pinelands Protection Act (PPA) and the Highlands Water Protection and Planning Act. (93, 107, 124, 157, 169, 246, 273)

60. COMMENT: We are concerned that the that implementation of the proposed rules may result in the Department issuing decisions concerning areas eligible for sewer service that will be inconsistent with the requirements of the Pinelands CMP, in violation of the Pinelands Protection Act at N.J.S.A. 13:18A-10.c and the CMP at N.J.A.C. 7:50-4.81(a). (232)

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RESPONSE TO COMMENTS 59 AND 60: The rule complies with the Clean Water Act and the Water Quality Planning Act. USEPA-Region 2 commented on the rule, concluding that they expect that these rules will result in prompt completion of the long-overdue WMPs. Further, rather than undermining the PPA and Highlands Act, the rule embodies a modification to the Department's water quality planning process that better incorporates planning actions undertaken by both the Pinelands Commission and the Highlands Council. N.J.A.C. 7:15-2.9(a)1 acknowledges that the Department supports implementation of the Pinelands Comprehensive Management Plan (CMP), and that it will coordinate and integrate water quality planning with the Pinelands Commission. Likewise, N.J.A.C. 7:15-2.9(a)2 recognizes the Department's intent to coordinate its actions with the Highlands Council. Additionally, the Department has provided a "crosswalk" that outlines the provisions of the CWA/CPP requirements and the correlating State program that demonstrates compliance with that provision. The Department posted the crosswalk on its website (<http://www.state.nj.us/dep/wrm/>). Through these various regulatory programs, the Department maintains many strategies to restore, maintain, and enhance water quality, water quantity, and ecosystem health.

Barnegat Bay

61. COMMENT: The development allowed under this proposal will create a nutrient runoff problem that will impact Barnegat Bay. Additionally, development will contribute to the depletion of freshwater inputs to the Bay through water consumption and one-time discharge into the ocean. These problems have not been addressed in the proposal. (290)

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RESPONSE: It is anticipated that the changes will result in better planning as additional areas will be subject to wastewater management planning that has reached final Department approval. Further, as was the case under the prior rules, any new development in areas that drain to the Barnegat Bay and any other State water will continue to be subject to all existing regulations that govern development in New Jersey. Stormwater ordinances specify the stormwater performance requirements of the Stormwater Management rules, N.J.A.C 7:8 and must be met through the use of non-structural measures, where possible. If non-structural measures alone are insufficient to meet the rule requirements, then the proposed project must be supplemented with structural best management practices (BMPs) as necessary to maintain the pre-construction groundwater recharge volume or infiltrate the increased run-off due to construction. With respect to water depletion, there are specific measures that must be evaluated for any development project, including obtaining additional water supply through reuse, obtaining water from a source with available capacity, adopting water conservation ordinances to reduce demand to match available supply or reducing the amount of water demand by reducing the amount or altering the type of planned future development.

Nutrient runoff in Barnegat Bay is currently being addressed through a comprehensive approach as part of the Governor's Comprehensive Barnegat Bay Action Plan. In 2011, Governor Chris Christie signed legislation that established the most restrictive standards in the nation for nitrogen content in fertilizer and application rates for use. The first phase of the fertilizer law required the use of best management practices to reduce the impacts of fertilizers on waterways and development of public outreach. The second phase initiated the creation of a

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certification program for professional fertilizer applicators and lawn care providers. The final phase of the law established a new content standard for fertilizer that reduces excess nutrient runoff into the Bay and other State waters by decreasing the total amount of nitrogen in fertilizer and increasing the amount of slow release nitrogen as well as requiring a zero phosphorus content. Since the beginning of 2013, all turf fertilizer products have been required to contain at least 20 percent slow-release nitrogen, and zero phosphorus in most typical lawn care situations, with limited exceptions, including when establishing or repairing turf or when a soil test indicates the need for phosphorous. Additional measures include the retrofitting of stormwater basins to promote recharge and reduce nutrients, and the acquisition of open space.

The Department takes protection of the State's waters, including Barnegat Bay, seriously. Through the planning accomplished under the WQMP Rules, permitting requirements and other programs, including those discussed above, as well as the Total Maximum Daily Load (TMDL) process, where necessary, the Department will continue to strive to restore, enhance, and maintain the chemical, physical, and biological integrity of the State's surface water and ground water, and the public trust therein; to protect public health; to ensure that New Jersey's streams, rivers, lakes, wetlands, and coastal waters will be fishable, swimmable, and support healthy and sustainable ecosystems; and to ensure that surface and ground water will be clean sources of water.

62. COMMENT: The proposal fails to consider the Governor's 10-point management plan for Barnegat Bay, specifically the point that calls for a Special Area Management Plan under the coastal zone regulations. (290)

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RESPONSE: The commenter is referring to Action Item 6 Special Area Regional Planning. The Department is currently working through water monitoring data and results from research conducted over the last four years in the Barnegat Bay. The Department programs tasked with Barnegat Bay management, including Water Resources Management, Science & Research, Natural & Historic Resources, and Land Use Management, are developing appropriate watershed based management and restoration plans in specific areas of the Barnegat Bay Watershed. Such plans will address management practices of municipalities within the Watershed.

63. COMMENT: If sewers are built and development takes place in the Barnegat Bay watershed, there could be an ecological collapse. The impact of such development needs to be quantified and there needs to be science-based restrictions adopted through a Total Maximum Daily Load (TMDL) program under the Clean Water Act. (290)

RESPONSE: Action Item 7 of Governor's Action Plan required that the State "Adopt More Rigorous Standards." Pursuant to that action item, a target comprehensive water quality monitoring exercise was conducted from June 2011 to June 2013 within the Bay and along its tributaries to assess the water quality condition against the existing water quality standards. The data were published in the Department's 2014 New Jersey Integrated Water Quality Assessment Report (2014 Integrated Report). Data was also used to construct the complicated hydrodynamic and water quality model. The calibration of the hydrodynamic model was completed by the beginning of 2016 and the calibration of the water quality model is expected to be completed by

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the end of the year. With the model's simulation of the future conditions within the Bay, the findings from the research projects will support the development of site-specific criterion required by Action Item 7. Achievement of such site-specific criterion, via the development of a total maximum daily load (TMDL) or a Watershed Restoration Plan, is the primary goal of the Department's efforts. The TMDL or Watershed Restoration Plan will address the control levels of various sources.

64. COMMENT: In estuarine environments such as Barnegat Bay, increases in nitrogen loading stimulate additional productivity which leads to increased eutrophication. The Department's numeric criteria for nitrogen is intended to protect human health and not to control or lessen the eutrophication of fresh or estuarine ecosystems. The existing water quality standards for nitrate set a maximum allowable concentration of 10 mg/L, but nitrate concentrations as low as 0.2 mg/L are associated with eutrophic ecosystems. (284)

RESPONSE: 10 mg/L is the level of nitrate as measured in nitrogen included in National Primary Drinking Water Regulations, 40 C.F.R. 141. There is no association between this criterion and additional productivity.

The Governor's Comprehensive Plan of Action for Barnegat Bay, Item 7 "Adopt More Rigorous Standards," recognizes that water quality standards are the starting point to appropriately determining the current condition of the Bay and to guide any restoration efforts. The Department adopted narrative nutrient criteria for coastal waters on December 21, 2010, available at N.J.A.C. 7:9B-1.14(d)4i. However, the Department does not have numeric nitrogen

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criteria for the ambient water quality, both fresh and saline water. Subsequent to adoption of the narrative nutrient criteria, a comprehensive target ambient monitoring effort was initiated in June 2011 to determine baseline conditions in Barnegat Bay and to assess these conditions against State Surface Water Quality Standards. Data collected through the target monitoring project has been used to develop and calibrate the coupled hydrodynamic and water quality model. The full calibration of the model is expected to be completed by the end of 2016. Additionally, based on the findings of research projects funded in accordance with the Governor's Action Plan for Barnegat Bay - Item 9 "Produce More Comprehensive Research," the Department is actively developing thresholds and indicators for various biological communities in the Bay, as well as establishing cause/response relationships that reflect changes in conditions so that the means to numerically interpret and apply the narrative nutrient criteria in estuarine waters can be determined. The modeling tool, along with the findings from the ecological research projects under Plan Item 9, will provide the basis to develop site-specific nutrient-related criteria that are associated with an acceptable level of estuarine productivity and the health of the ecological community within the Bay

Although the Department does not have numeric nitrogen criteria for Barnegat Bay, the 2014 Integrated Water Quality and Assessment Report assessed the water quality in Barnegat Bay against the existing numeric water quality criteria for other parameters that are related to aquatic life use. It was found that dissolved oxygen and turbidity criteria are violated in certain portions of the Bay. The Department's work to understand the causes of observed conditions is important so that the most effective restoration actions can be implemented. Nevertheless, the Department is not waiting until nutrient thresholds, biological indices and cause/response

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relationships are fully established before it begins working on improving conditions in Barnegat Bay. Common sense actions that will advance the overall objective of restoring the Barnegat Bay, such as those discussed in Response to Comment 63 above, have already been undertaken. These include establishing a statewide fertilizer law, retrofitting stormwater basins to promote recharge and reduce nutrients, and acquiring open space.

65. COMMENT: The Municipal Separate Storm Sewer System rules do not mandate the removal of nitrogen and phosphorus from stormwater runoff or require a specific reduction be attained in nitrogen and phosphorus loading. As such, the proposed rule does not provide any level of protection related to future increases in phosphorus and nitrogen loading to Barnegat Bay that would result from development within the watershed allowed for by expanded sewer service areas. At best, the proposed rule merely sets the minimums that need to be satisfied, and not what is best for the environment or the protection of the environment. (284)

RESPONSE: At the municipal level, the Municipal Separate Storm Sewer System (MS4) permit, which is issued under the NJPDES rules, N.J.A.C. 7:14A, is the regulatory mechanism which addresses stormwater quality and quantity issues related to public works operations, new development, redevelopment, and existing developed areas by requiring municipalities to implement stormwater programs. Under the MS4 permit, a municipality must develop a Stormwater Pollution Prevention Plan (SPPP), in which it identifies each Statewide Basic Requirement (SBR), Best Management Practice (BMP), and any Additional Measures (AM) to be implemented to reduce pollutants to the environment and improve water quality. Specific

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Barnegat Bay Action Items, such as Action Item 3 “Reduce Nutrient Content from Fertilizer,” include the fertilizer law signed by Governor Chris Christie, discussed more fully in response to comment 64, establishes the most restrictive standards in the nation for nitrogen content in fertilizer. These standards along with the Stormwater Regulations will reduce nutrient pollution in all of New Jersey’s water bodies including Barnegat Bay.

The Department has set forth its overall strategy for control of regulated stormwater and nonpoint sources in its NPS Management Program Plan, posted on the Department’s website at <http://www.nj.gov/dep/watershedrestoration/nps.html>. The Department will work closely with counties and municipalities to implement the broad range of available nonpoint source pollution reduction and prevention strategies. These include development of watershed restoration plans, prioritization of available funding to implement nonpoint source reduction and prevention measures, stewardship building, and environmental education intended to enhance local initiatives to reduce and prevent nonpoint source pollution, which would include adoption of ordinances related to riparian zone and steep slope protection. The Department will post nonpoint source related model ordinances on the Department's webpage for the CPP at <http://www.nj.gov/dep/wrm/>. If a TMDL is determined to be necessary, contributions of particular parameters from stormwater sources will be identified and addressed.

66. COMMENT: The Department has not conducted an adequate analysis of the impacts that the proposed rule will have on the Barnegat Bay, but has instead failed to account for the nonpoint source-related impacts to Barnegat Bay and its tributaries that will result from the proposed expansion of the SSAs. The added impervious cover that will result from the increased

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development spurred by the rule changes will convey additional nutrient loading to Barnegat Bay via stormwater runoff and groundwater inflow. As per the State's Surface Water Quality Standards (SWQS) at N.J.A.C. 7:9B, an action that diminishes the water quality of Barnegat Bay contravenes the measures put in place by the State for protection of the quality, aesthetics and designated uses of Category 1 waters. Until the Department has conducted a thoroughly detailed quantitative analysis of the proposed rule's environmental impacts to Barnegat Bay and can demonstrate that the potential resulting expansion of SSAs will not impact Barnegat Bay, the Department cannot progress further with the approval of the proposed rules. Doing so will violate both State and Federal regulations, as well as the Clean Water Act and New Jersey Water Pollution Control Act, that protect Barnegat Bay from further water quality degradation. (284)

RESPONSE: Please see the Response to Comments 101 through 105 regarding the antidegradation policy, including best management practices for point and nonpoint stormwater. Barnegat Bay has a Category 1 antidegradation designation. Pursuant to the SWQS at N.J.A.C. 7:9B, new or expanded discharges from point sources must meet the "no measurable change" standard at N.J.A.C. 7:9B-1.5(d) in addition to maintaining existing uses. These rules do not contravene those requirements. With reference to nonpoint and certain point source discharges, the Flood Hazard Area Control Act Rules at N.J.A.C. 7:13, require a 300-foot riparian zone to Category 1 waters and the upstream tributaries within the same subwatershed as a best management practice for protection of water quality. While the WQMP Rules will no longer require local riparian zone ordinances, the Department's protection of this near stream area remains unaffected by this rulemaking.

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N.J.A.C. 7:15-3.2(b) through (d), for projects and activities requiring a permit from the Department, acknowledges that an evaluation of additional requirements and TMDL wasteload allocations must be addressed in order for a proposal to be deemed consistent. The rule clearly lays forth the tools in place to address both point and nonpoint source impairments to restore and maintain water quality.

Elimination of Mandatory Withdrawal of Sewer Service for Failure to Adopt a WMP

67. COMMENT: The Department is commended for the elimination of the draconian requirement to withdraw sewer service area for failure to adopt a WMP, which is a significant change to the existing WQMP regulations. While it is recognized that plans need to be updated, that provision was only punitive in nature, based upon unrealistic timeframes and misplaced expectations, and ultimately placed burdens on already strapped local governments, to the detriment of the public. The Department's recognition that the referenced regulations were not only unnecessary, but resulted in a significant negative effect statewide, particularly when the State is still trying to regain its economic foothold, is appreciated. (44, 46, 63, 101, 139, 176)

RESPONSE: The Department acknowledges the Commenters' support.

68. COMMENT: The Department preparing WMP components when the WMP agency fails to adopt a plan and a municipality does not request planning responsibility is supported. (220)

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RESPONSE: The Department acknowledges the Commenter's support.

69. COMMENT: A major overarching issue with the rule proposal is that all negative consequences of a failure to submit WMPs, including the withdrawal of sewer service area, have been removed from the rules. History has demonstrated that without a "hammer," updates to the plans will not and have not been accomplished. The only remaining consequence is that NJDEP "may" move on its own authority to develop and adopt a WMP, which is an authority it always had but has never used. The rules lack any mechanism to compel the Department itself to act in the face of noncompliance by the designated planning agencies, and the Department offers no proof that they have ever taken such action in order to demonstrate the policy's credibility. The lack of consequences will lead to a lack of compliance, in all likelihood repeating the well-established history of noncompliance that preceded the more rigorous compliance policies in the 2008 rules, especially as most of the critical provisions that would warrant such action (e.g., nitrate dilution analyses, septic system maintenance) would require local implementation that the rule proposal intends to avoid. The withdrawal of sewer service areas should remain a part of the rule. (54, 73, 125, 213, 235, 298)

70. COMMENT: The assertion that legislative enactments require amendments to the WQMP Rules with respect to some of the SSA withdrawals is political cover to avoid a legislative veto. The legislative enactments were policy-neutral, and the DEP is using those two laws to latch onto a complete revision of an entire body of a rule that has been in place for 30 years. (290)

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RESPONSE TO COMMENTS 69 AND 70: The 2008 rules provided that, if a WMP was not in compliance with the schedule established in the rules, the Department would withdraw sewer service area designations, except in areas where sewer lines and existing structures were installed and connected. The 2008 rules resulted in an extremely difficult regulatory program to implement for all entities affected, public and private. Upon initial implementation, it quickly became clear that the multiple analyses necessary for updating the WMPs were more complex and time consuming than the Department had anticipated. As a result, the majority of entities that had assumed planning responsibility requested, and were granted, approval of an alternate schedule for submission of a WMP in accordance with the rules.

In response to the 2008 rules, the Legislature enacted P.L. 2011, c.203, which found that there may be unacceptable, adverse economic, environmental, and planning impacts from the non-discretionary and mandatory withdrawal of wastewater service areas. Therefore, the legislation directed that wastewater service areas “not be withdrawn except in conjunction with the promulgation of wastewater management plans prepared with appropriate public participation.” The 2011 legislation was amended and supplemented by P.L. 2013, c.188, which extended the expiration of the 2011 legislation and called for an update to the 2008 rules. These rules are consistent with the legislation’s intent to encourage completion of wastewater management plans.

Since 2008, new sewer service area mapping has been adopted covering all or parts of 17 counties and over a dozen municipalities in counties which did not adopt updated maps. Additionally, the Department continues to work with the remaining counties and municipalities

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to address their water quality planning responsibilities and needs. With the adoption of the FWSA maps referenced above, sewer service area has been delineated for a significant portion of the State.

The Department may prepare and adopt the WMP or WMP components. Although history has resulted in completion of only a limited number of countywide WMPs, the Department recognizes that compliance with the previous requirements was difficult, and not due to an unwillingness on the part of WMP agencies. The Department has received positive feedback from the counties on these rules in terms of moving forward with the completion of their WMPs. The Department is committed to WMP planning for the entire State and intends to initiate WMP development as necessary to accomplish that goal. The Department retains the authority to conduct water quality planning as necessary and will exercise that authority in order to implement the requirements of these rules for the entire State.

71. COMMENT: The Department does not have the resources to undertake responsibility in the wake of failure to submit a WMP. (54, 73, 125, 213, 235, 298)

RESPONSE: The initiative to complete baseline WMPs for the entire State on a county basis is a priority for the Department, and, as such, the Department has planned for the additional resources to meet the demands imposed by these new rules. Specifically, the Department's WQMP program has added staff with expertise with GIS, and has organized staff across functional lines. A specific unit has been created that is solely responsible for working with counties on the development and review of WMPs. A second unit has been created to review

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site-specific amendments and revisions. This structure will allow for a more focused approach. Additionally, the development of these rules was a significant collaborative effort between the different divisions of the Department which are affected by these rules. Therefore, the Department will be well positioned to implement the obligations prompted by these new rules.

Simplified Analysis

Wastewater Treatment Capacity Analysis

72. COMMENT: The simplified analysis related to current and future capacity needs for SSAs is appreciated. These rules more clearly delineate the difference between planning to prevent capacity problems and recognizing real problems exist when they need to be resolved. This change provides a more realistic scenario of treatment plant and associate infrastructure operations, recognizes the varying conditions that treatments facilities must operate under, and accounts for inherent properties of aging infrastructure. (13, 44, 63, 90)

RESPONSE: The Department acknowledges the commenters' support.

73. COMMENT: Not requiring WMP agencies to conduct a capacity analysis before the WMP is approved is supported. The Department finally understands that buildout is not a realistic concept. (13)

RESPONSE: The Department acknowledges the commenter's support. However, the rule continues to require wastewater capacity analyses. Unlike the 2008 rule, the new rule does not

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require that potential capacity deficiencies be completely resolved prior to adoption of the WMP.

Instead, in accordance with N.J.A.C. 7:15-4.3(a)3, the WMP is required to identify proposed strategies to address potential capacity deficiencies and establish the baseline from which the applicant and the Department will evaluate the available options and strategies to address any identified deficiencies.

74. COMMENT: The “simplified analyses” proposed for capacity determinations, nitrate dilution analysis and the nonpoint source pollution analysis are opposed. It does not seem appropriate that approved plans would consist of components that could not possibly be realized because the Department could not issue permits because there is insufficient capacity to address the proposed development, or the permit would violate pre-treatment standards, or further degrade surface or groundwater. This is also where the need for coordinating municipal zoning and treatment needs is evident. (54, 213)

RESPONSE: The Department’s revised approach to water quality planning is based on the principle that “planning” involves the ability to consider a range of options to solve or avoid problems; planning should not be directive or rigid. Determinations regarding the land use impacts of future development and the means to address wastewater treatment needs are more appropriate at the permitting stage, when actual projects are planned and detailed site-specific information is available. It is not necessary to require all analyses during the planning process. At the planning stage, the more appropriate use of Department resources involves a focus on delineating sewer service areas in a manner that protects environmentally sensitive areas, and

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working collaboratively with local governments to identify unmet capacity needs and evaluate nitrate loads. The WMP analyses will identify potential capacity deficiencies and establish a basis from which to evaluate options and strategies to address the deficiencies. Individual proposals will be required to meet all applicable permitting standards at the time of permit application. While it may be true in some cases that capacity or other issues may ultimately preclude the Department from issuing a permit in the future for something the plan indicates as potentially permissible, the new rule reflects the Department's determination that excessive analyses at the planning stage for eventualities that may never occur is neither necessary nor appropriate when the permitting process protects water quality by ensuring that only appropriate development will actually occur.

75. COMMENT: The rule proposal is opposed on the basis that buildout analysis is not required. (273)

RESPONSE: The commenter's understanding is incorrect. The rule continues to require build-out as part of the wastewater capacity analyses required in N.J.A.C. 7:15-4.5, with limited exception. Particularly, where an area is not urbanized, build-out in accordance with zoning is required as the best reflection of the potential to develop and generate sewage flows. Where the area is urbanized, with limited or no undeveloped land, other factors become important in estimating the potential of the area to generate sewage in the future, like redevelopment and repurposing. Taking this into account, for urbanized areas build-out based upon zoning is not

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required. Instead, the needs captured by build-out in non-urbanized areas are quantified by utilizing population projections within a 20-year planning horizon.

The rules, at N.J.A.C. 7:15-4.5(b)1ii(2), do allow a WMP agency to request that areas that are undevelopable, or those that have limited development potential, be excluded from the lands for which a build-out analysis must be performed. This limited exception recognizes that conducting a build-out analysis for lands such as confirmed wetlands or lands that cannot be developed because they are subject to a permanent preservation restriction is not necessary because little or no future wastewater flow will be generated. In addition, no build-out is required for lands under the control of the Federal government, such as military installations, because it is difficult to reliably predict future land uses. Only those lands found by the Department to be subject to a valid, significant constraint to development will be exempt from build-out analysis under this provision.

76. COMMENT: Regarding capacity analysis, the statement contained in the proposal that the “simplified regulatory approach will place a greater burden on developers of property in designated sewer service areas to ensure that there is an adequate wastewater treatment alternative available for development on a particular property” is of concern. Please clarify the above statement, particularly for individual property owners. (101)

RESPONSE: Investigation into the availability of adequate wastewater and water utilities, as well as the existence of other site constraints, such as environmentally sensitive areas, should be

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performed as part of a developer's due diligence in considering development of a particular parcel. The referenced statement is intended to make clear that, even if a property is located in a sewer service area, sewer service may not be available to that property if adequate treatment capacity is not available. To assist entities, the Department will update and post the inventory of wastewater treatment facilities, their existing and permitted flows, and the wastewater management needs associated with each facility as identified pursuant to N.J.A.C. 7:15-4.5, on the Department's website at <http://www.nj.gov/dep/wrm/>.

77. COMMENT: There is a lack of clarity regarding capacity studies, as the proposal does not clearly define how the planning agencies will actually work with wastewater treatment plants. Further, moving the antidegradation analysis to the NJPDES program is supported, but the proposed language does not clearly define the transition process. In fact, the proposed rule language does not explicitly state that the study will no longer be required during the Water Quality Management Planning process. Please address this lack of clarity. (97)

RESPONSE: N.J.A.C. 7:15-4.5(b)1 provides that an applicant shall identify the existing and future projected flows that will be generated, so that the existing and future flow can be compared against the wastewater treatment capacity for the project. Where exiting flow exceeds 80 percent of the permitted flow at the time of WMP development, N.J.A.C. 7:15-4.5(b)5 provides that the WMP agency must coordinate with the Department and the treatment facility to determine whether projected growth will result in a capacity deficiency and, if so, to analyze strategies to address the potential deficiency. This capacity analysis is intended to identify

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potential shortfalls between the anticipated demand on the treatment plant, and the permitted flow of the plant.

The proposal also included at N.J.A.C. 7:15-4.5(b)6 a requirement that, if average flow to a facility over 12 consecutive months reaches or exceeds 100 percent of the permitted flow for the treatment facility, a capacity analysis is required in accordance with the NJPDES rules at N.J.A.C. 7:14A-22.16. As indicated in the proposal summary at 47 N.J.R. 2536, the changes proposed in the wastewater treatment capacity analysis at N.J.A.C. 7:15-4.5 and in the CAP program at N.J.A.C. 7:14A-22.16 are intended to be complementary approaches that work together to prevent degradation of water quality. The required planning and consultation when 80 percent of capacity is reached under the WQMP Rules ensures that initial conceptual analysis of potential capacity issues and strategies to address those potential issues begins early with the more detailed analysis required under the NJPDES rules kicking in as the permitted capacity limit is approached. The two triggers ensure that necessary wastewater treatment planning for an area begins early enough in the process to avoid capacity issues and involves the WMP agency, in addition to the permittee. The cross-reference to the NJPDES rule requirements is intended to make clear the relationship between the two rules.

The 100 percent trigger referenced at N.J.A.C. 7:15-4.6(b)6 was proposed to reflect proposed amendments to the CAP requirements of the NJPDES rules published in the same issue of the New Jersey Register as the proposed new WQMP Rules which would have increased the current requirement for CAP analysis from 80 percent to 100 percent of permitted flow. However, in response to comments received during the comment period on the proposed

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amendments to the NJPDES CAP rule, the Department has published, elsewhere in this issue of the New Jersey Register, a Notice of Substantial Change upon Adoption proposing to amend the originally proposed 100 percent trigger for CAP analysis. As a result, until action is taken to adopt the proposed changes to the NJPDES rules CAP provisions, CAP analysis under the NJPDES rules continues to be required upon a facility reaching 80 percent of permitted flow. Accordingly, as NJPDES CAP analysis continues to be required at this level, but is anticipated to be changed to a different trigger when the NJPDES amendments are adopted and reference to the actual trigger in the WQMP Rules is not necessary, the Department is simplifying the cross-reference on adoption to refer simply to N.J.A.C. 7:14A-22.16.

The hierarchy of strategies for antidegradation remain in these rules at N.J.A.C. 7:15-4.5(b)8. The antidegradation analysis and the Department's determination must be completed prior to or in conjunction with the NJPDES permitting process.

78. COMMENT: To say that you're going to require a build-out analysis, you're going to require application of a septic and nitrate dilution model, and then to say you don't have to apply the results of that through your zoning scheme is a complete abdication of the Department's responsibility. This issue will impact whether towns build out at half-acre lots or acre lots as opposed to six or 10-acre density that would be more appropriate to protect groundwater. (290)

RESPONSE: The rule continues to require wastewater capacity analyses of both sewer service areas and non-sewer service areas. However, unlike the previous rules, the new rules do not require that capacity deficiencies be resolved prior to WMP adoption. The WMP establishes the

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baseline from which to evaluate options and strategies to address any identified deficiencies.

Instead of requiring, as the only option available to a municipality, that it adjust its zoning ordinances in order to assure that the development density outside of the sewer service area will achieve the two mg/L nitrate ground water criteria, the new rules at N.J.A.C. 7:15-4.5(c)1v provide that the local government shall work with the Department to evaluate options and appropriate strategies to address any nitrate dilution capacity issue that has been identified. These options include zoning adjustments, land preservation, or a requirement that ISSDS achieve a higher level of treatment. The reluctance of municipalities to rezone, as required by the 2008 rule, resulted in the limited local participation that led to a lack of county WMP adoption. By providing flexibility based on local and regional characteristics, needs, and desires, updated baseline county WMPs should be more achievable. Information gathered during WMP development will dictate subsequent planning decisions. The Department anticipates that through the iterative process, the continued collection of information will result in ongoing refinements to the planning process for outstanding issues and the WMP updated on an ongoing basis to reflect new information and conclusions resulting from the process. Through this method, the Department will ensure that water quality is protected and that development is consistent with the most current available information and planning.

79. COMMENT: Any relaxation of careful planning and current protections with regard to possible changes to a WQM plan has serious implications for the water quality in the Great Swamp National Wildlife Refuge. The overall tone of the proposed new rules suggests encouraging greater density of development in environmentally sensitive areas. (264)

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RESPONSE: These rules do not encourage greater density of development in environmentally sensitive areas. Higher density development generally occurs in areas with available infrastructure, particularly sewer service. As in the 2008 rule, delineation of sewer service area continues to be based primarily on the absence of environmentally sensitive areas (ESAs). Development requiring sewer service is generally not compatible with the protection or conservation of the environmentally sensitive area. Further, development in or near ESAs is already limited through various agency regulatory programs, including the freshwater wetlands protections at N.J.A.C. 7:7A, and riparian zone protections through the Flood Hazard Area Control Act Rules at N.J.A.C. 7:13. Regulatory programs such as these render placement of infrastructure in those areas inappropriate from a practical standpoint. Project and activity proposals remain subject to Department regulatory permitting programs on a site-specific basis and must satisfy all permit criteria.

These rules prohibit the extension of sewer service area in environmentally sensitive areas within Natural Heritage Priority Sites, or in areas that are critical to the survival of a local population of endangered or threatened species. The Department will not approve areas for inclusion in the sewer service area that do not meet the environmental requirements of these rules. Further, even if a parcel containing environmental sensitive areas is added to the sewer service area, it remains subject to the requirements of the Department permitting programs. The new rule encourages growth and infrastructure in appropriate areas while protecting important natural resources.

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With respect to the Great Swamp National Wildlife refuge, the undeveloped, adjacent areas are environmentally constrained and subject to additional requirements under the WQMP rules for proposed additions to the sewer service area. These constraints include wetlands areas along the southern and western borders of the refuge, threatened and endangered species habitat along the northern, western, and southern borders, and Category 1 streams that extend north and south. Due to the presence of these environmentally sensitive features adjacent to the refuge, these rules require an applicant for a sewer service area amendment to submit a Letter of Interpretation (LOI) for parcels with wetlands on them; a Habitat Suitability Determination (HSD) for threatened and endangered species habitat, and 300-foot buffers must be observed for the Category One waterways and their tributaries. Additionally, undeveloped areas adjacent to the refuge are subject to local zoning ordinances and municipal master plans. These mechanisms preclude high-density development that would have the potential of adversely affecting water quality in the refuge and would be evaluated by the Department as part of an application to delineate sewer service area.

80. COMMENT: The Department's proposed change defining existing flow as the maximum rolling 12-month average flow over the last five years is strongly supported. The proposed basis for characterizing existing plant flow will result in better planning and will be more protective of the environment. This will result in the integration of safeguards that can lead to greater resiliency of treatment facilities during periods of high rainfall. The proposed allowance for a different calculation methodology for existing flow, where appropriate, based on

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site-specific conditions, is helpful. The characterization of existing wastewater flow is a critical first step in preparing a buildout flow, and it is highly specific to hydrologic and conveyance system conditions. If there is good reason not to use the maximum 12-month average flow for a particular system, it should not be required. (6, 13, 57, 90, 134, 168, 185, 196, 199)

RESPONSE: The Department acknowledges the commenters' support.

81. COMMENT: In N.J.A.C. 7:15-4.5(b)1i, the rule proposal states "other method approved by the Department." What are the methods, who approves them, and will these items be included in the CPP document's appendices? If so, they need identification. (159, 171)

RESPONSE: N.J.A.C. 7:15-4.5(b)1i provides that alternative methods of calculating existing flow must be approved by the Department. If the WMP agency believes the 12-month rolling average requirement does not accurately predict flow, considering factors unique to the area, these rules provide flexibility so that the WMP agency may propose a reasonable alternative and provide supporting rationale. The rule provides the factors that the Department will take into account in determining if an alternate method should be allowed. Particularly, an alternative method will only be approved if the Department is convinced that the alternative better predicts flow taking into account factors unique to the area, such as significant variability of flows due to seasonal population shifts, the effects of weather, or variable volumes of combined sewage conveyed to the wastewater treatment facility. This allowance is consistent with the Department's focus on ensuring that planning occurs based upon information that best reflects

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actual conditions in that area. However, while approval of such an alternative method is necessarily driven by conditions applicable in that particular area, the Department will provide guidance regarding the types of alternative methods that have been approved and the conditions present that led the Department to conclude that the method provided a more accurate prediction of flow.

82. COMMENT: By eliminating the requirement to use the peak month for existing flow when there is significant seasonal variability, the proposed rule does not require any analysis, effectively ignoring seasonal fluctuations and wet weather months that may cause exceedances in permitted flow and that, if recognized in the evaluation of existing flow, would highlight capacity problems that should deter development. Further, the use of a rolling 12-month average is not appropriate, because the nature of the discharge provides a much more direct limitation on the volume that the facility can discharge. (73, 125, 157, 171, 169, 246, 273, 298)

RESPONSE: As indicated in the proposal summary, the Department has determined that the peak 12-month rolling average over the most recent five years is more representative of the range of conditions that may be experienced at a given wastewater treatment facility and, therefore, a better measure of capacity demand for planning purposes. To accommodate unique circumstances, such as where there is significant variability of flows due to seasonal populations or the effects of wet weather in combined sewer systems, N.J.A.C. 7:15-4.5(b)1i provides for consideration of alternative methodologies to calculate existing flow.

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Additionally, the treatment works approval (TWA) rules at N.J.A.C. 7:14A-23.13(o) provide that the hydraulic design of piping, channels, flows and pumps shall be based on not less than 250 percent of projected flow, and treatment units shall be designed so as to provide adequate treatment to meet all NJPDES permit effluent conditions. These requirements of the NJPDES rules, in conjunction with the WQMP rules, ensure that even temporary exceedances of permitted flows will not result in exceedance of treatment facility capacity.

83. COMMENT: An additional issue should be addressed in WMPs that to date has received no attention, and that is capacity limitations within specific main interceptor lines. (125)

RESPONSE: To address capacity limitations within interceptor lines would not be appropriate under these rules because treatment facility construction is addressed in other Department permitting programs. Particularly, the identification of interceptor lines and capacity deficiencies are handled during the permitting process through the Department's treatment works approval (TWA) program.

84. COMMENT: These rules provide flexibility in addressing future wastewater needs that may vary by county, mirroring the 2011 and 2013 Legislative Acts. Full resolution of capacity deficiencies prior to WMP adoption is not realistic. Under the proposed rule the county, municipality and NJDEP will be able to work together over the 10-year planning period to evaluate and implement strategies and options to eliminate any identified deficiencies, rather than automatically requiring municipalities to downzone. This is appropriate since counties as

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WMP agencies, do not have legal capacity to require municipalities to change zoning. The Department's proposal to defer and evaluate future development's impacts upon land use and wastewater treatment needs to the permitting stage, rather than the planning stage as currently required is supported. It is appropriate that areawide WMPs include a description of the potential solutions to capacity constraints that should be investigated, and put into motion the steps that must be taken to address them at the appropriate times. This revision acknowledges the reality that over time, changing land use markets and demand factors will affect the pace and implementation of future development. (13, 90, 101, 139, 159, 176, 196)

85. COMMENT: Proposed N.J.A.C. 7:15-4.5(b)4 benefits the agricultural community as the collateral value of land would not be reduced by downzoning. (13)

RESPONSE TO COMMENTS 84 AND 85: The Department acknowledges the commenters' support.

86. COMMENT: The Department should provide flexibility in the 75 gallons per day standard. Documented historical water use and population may provide a better and more accurate average rate. Water use reduction programs and new water conservation fixtures can also lower standard usage rates over time. (46)

RESPONSE: The NJPDES rules, at N.J.A.C. 7:14A-23.3, provide the projected flow criteria for wastewater conveyance to treatment facilities. The criteria establish the additional flow per extra

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bedroom, assuming one person per bedroom, at 75 gallons per day. Average per capita water use has generally been declining over the past several decades due to the integration of more efficient plumbing fixtures such as low-flow toilets, showers, and other measures. Still, the 75 gallons per day standard is to be used as more of a planning tool than as a specific threshold. Additionally, the loading capacity of the treatment plant is considered within the 75 gallon per day threshold. The above notwithstanding, the TWA program may approve alternate allowable flows on a case-by-case basis, and these alternate allowable flows may be considered in a WQM plan, as appropriate.

87. COMMENT: The threshold for urban areas in N.J.A.C. 7:15-4.5(b)1ii(1) was changed in a manner that doesn't make sense. If a municipality is 85 percent urban and 10 percent preserved, it has five percent available lands for sewer service area delineation decisions, but would not meet the new threshold of 90 percent urban. That change doesn't seem logical. (73, 298)

88. COMMENT: Regarding "Urbanized municipalities," permanently preserved lands should be excluded from the land area used for determination of whether a municipality meets the 90 percent threshold. (125)

89. COMMENT: The definition of "urbanized municipalities," should be modified to read as follows: "'Urbanized municipalities' means those where a minimum of 90 percent of the municipality's land area appears as 'Urban Lands,' as designated in the Department's most

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recent Land Use/Land Cover geographical information systems database as amended and updated, available as a digital download from the Department at www.state.nj.us/dep/gis, based on Level 1 of the Anderson Classification System (Anderson et al, 1976, modified by the NJDEP, 1999).” Further, the definition of “Urban Lands” should be included in the Definitions section, N.J.A.C. 7:15-1.5. (163)

RESPONSE TO COMMENTS 87 THROUGH 89: In the 2008 rule and in this rule, municipalities meeting the definition of “urbanized” estimate their future wastewater flow based on population growth projections. The new definition of “urbanized municipalities” incorporates updates to the Land Use/Land Cover GIS database, and it removes the word “developable” from the definition of this term in the 2008 rules. The prior rules broadly defined urbanized municipalities as municipalities where 90 percent of the municipality’s developable land area appears as Urban Lands. The inclusion of “developable” in this definition allowed municipalities with high percentages of undevelopable lands uses, such as wetlands and public open space, to fall within the definition of an “urbanized municipality,” even though these areas often were not urban. Where an area is not urbanized, buildout in accordance with zoning is the best reflection of the potential to develop and generate sewage flows. Where the area is urbanized, other factors become important, like redevelopment and repurposing. As a result, in urbanized areas the focus on undeveloped land does not provide as good an estimate of development potential and the potential of the area to generate sewage in the future.

By changing the definition in these rules, the Department intended to recognize municipalities that are, in fact, urbanized, and to capture all the municipalities for which WMP

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agencies can calculate future flow based on population growth projections. Subsequent to the rule proposal, the Department conducted an evaluation of municipalities that meet the definition of urbanized in the rule proposal based on updated Land Use/Land Cover data from 2012. The analysis did not identify several municipalities that are traditionally considered urban, such as Camden City, Atlantic City, New Brunswick and Linden City. For this reason, the Department is amending the definition of “urbanized municipalities” to include those municipalities identified as qualified municipalities pursuant to the New Jersey Redevelopment Act, N.J.S.A. 55:19-20 et seq.; qualified municipalities pursuant to the New Jersey Urban Enterprise Zones Act, N.J.S.A. 52:27H-60 et seq.; and “Garden State Growth Zones” as defined by the “Grow New Jersey Assistance Act”, N.J.S.A. 34:1B-242 et seq.; and “Transit Villages” pursuant to the NJDOT/NJ Transit Village Initiative. The amended definition reflects the Department’s intent to include municipalities that are widely accepted as urban, so that future wastewater demands from development are properly estimated. Where an area is not urbanized, buildout in accordance with zoning remains the best reflection of the potential to develop and generate sewage flows.

90. COMMENT: Future flows from non-urbanized municipalities should not be required to be calculated based upon the provisions at N.J.A.C. 7:14A-23.3, N.J.A.C. 7:14A-23.2(c) or N.J.A.C. 7:9A, as applicable. Further, a WMP agency should not be allowed to request exclusion of areas that are undevelopable, or with limited development potential, from the lands for which a build-out analysis must be performed pursuant to N.J.A.C. 7:15-4.5(b)1ii(2). The Department ignores the potential for rezoning proposals that could result in additional development of areas currently zoned as undevelopable or with limited development potential.

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This project-specific method may be appropriate for site-specific amendments but too detailed for treatment plant capacity analysis at the regional or areawide level. An approach more similar to the method and associated averages used for performing the capacity analyses under the 2008 WQMP rules is needed to enable county WMP agencies to complete countywide WMPs within the one-year timeframe specified in the proposed rule. (157, 169, 196, 246)

RESPONSE: Buildout estimation for the future generation of wastewater is a critical step in determining whether an area has adequate wastewater treatment capacity to meet its future needs. Since zoning reflects the type of development that is acceptable to a municipality, buildout calculations based on current zoning are the best reflection of the potential to generate wastewater flows. Future flow is an estimation and not based on a specific project, thus, the Department finds it appropriate to make certain assumptions to estimate future flow pursuant to N.J.A.C. 7:14A-23.3 or N.J.A.C. 7:9A and to subsequently identify those assumptions in the WMP.

To avoid overestimating the potential future wastewater flow or to provide for scenarios where the development outcome/potential is beyond the control of the municipality, the Department allows the exclusion of Federal lands or lands with limited development potential. Although the specific language in the provision for estimating future build out flows has been modified from the 2008 rule, the substance of the requirements has not changed. For discussion purposes, the Mercer County WMP adopted in 2013, discussed below, provides an example of an acceptable approach to satisfy the build out requirements in N.J.A.C. 7:15-4.5(b)1ii2.

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Within the designated sewer service area, Mercer County delineated the ESAs and removed this land area from the future build-out analysis (for municipalities not considered “urbanized”). The existing zoning was then applied to the remaining developable land area within the SSA to project a build-out condition to be used in estimating the future wastewater generation for each SSA. The build-out data was then converted to a projected future wastewater flow by applying the planning flow criteria from N.J.A.C. 7:14A-23.3 based on the type of development projected. For example, single-family residential development was assumed to consist of houses having three or more bedrooms per house, and each projected new house was multiplied by 300 gallons per day to predict the future wastewater generated. For non-residential land uses, the anticipated floor area was multiplied by 0.1 gallon per day to predict future wastewater generation.

Mercer County used a land use planning software package that uses existing zoning information to estimate future development. The software uses zoning data, such as minimum lot size and set back requirements, to evaluate the potential number of future residential units or square feet of commercial space on individual parcels or within the municipality.

With reference to the commenters’ concern that zoning changes could impact build out and result in the potential for treatment plants to have insufficient capacity despite the WMP agencies having adopted its build out analysis, the estimated buildout for future wastewater flow represents the projected flow associated with the development of all remaining undeveloped parcels. The Department recognizes that zoning changes over time and that such changes could impact estimates of future flow, resulting in a higher or lower estimate of flow. Additionally, not

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all parcels will be developed, nor will all parcels be developed at the same time. In the event of significant zoning changes, or significant development occurs in those zones, resulting in a potential need for additional capacity, the WQMP rule at N.J.A.C. 7:15-4.5(b)5 or the CAP rule at N.J.A.C. 7:14A-22.16 will govern.

91. COMMENT: The proposed definition of “undeveloped and underdeveloped areas” refers to zoning issues in the context of “creating additional wastewater flow” that may in turn affect sewer service area amendments. The term “undeveloped and underdeveloped areas” should only apply to a use, not bulk, variance. Accordingly, the phrase “without the need to obtain a variance...zoning” should be deleted and replaced by “without the need to obtain a use variance”. (101)

RESPONSE: The definition for “undeveloped and underdeveloped” is carried forward from the 2008 rule. The Department has not had any experiences with implementation of the definition that indicates any modifications are warranted.

92. COMMENT: Broad constraints on sewage treatment plant expansion would be evaluated if demands exceed capacity, but technical reviews will occur in the NJPDES/TWA permit process. This change raises questions about designating Future SSA where no facility exists or is permitted. Apparently, no feasibility analysis would be required, even to determine whether any issues with creation or expansion of the facility exist that likely cannot be resolved due to

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fundamental constraints (also known as a “fatal flaw” analysis). These constraints could include statutory or regulatory limitations on new pollutant loadings, incompatibility with overriding regional plans such as in the Pinelands or Highlands Regions, or clear technical infeasibility. Such an analysis must be required within the rule. (73, 298)

RESPONSE: The Department’s revised approach to water quality planning is based on the principle that “planning” provides the ability to consider a range of options to solve or avoid problems and that, therefore, planning should not be directive or rigid. While, as discussed below, the rules contain significant planning requirements designed to lead to an achievable result, at the planning stage, it is more appropriate to focus on delineation of sewer service areas that are protective of identified environmentally sensitive areas, and to work collaboratively with local governments to identify unmet capacity needs, wastewater treatment capacity and nitrate capacity loads, and strategies to address those challenges. Should it become apparent that identified strategies ultimately prove to be insufficient, alternative strategies will be developed or plans changed to reflect what is possible from a permitting standpoint. Ultimately, while it is anticipated that plans will be updated to accurately reflect changed circumstances, the permitting process will continue to ensure that public health and the environment are protected through Department regulatory programs.

With reference to tools in the rule designed to guide the planning process, the rule continues to require a wastewater treatment facility capacity analysis at N.J.A.C. 7:15-4.5(b)3, which provides that existing flow and projected future flows from the sewer service area must be compared to the capacity at the wastewater treatment facility. This analysis identifies any unmet

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wastewater capacity needs. If a potential capacity deficiency is identified, N.J.A.C. 7:15-4.5(b)4 provides that the WMP agency must identify strategies to address the deficiency. Fundamental constraints should be identified during this step. The WMP agency will not be required to demonstrate that any identified deficiency between existing capacity and future wastewater needs has been fully resolved before the WMP can be adopted.

This provision recognizes two key points: (1) that any estimation of future needs is preliminary and may not be realized because of changes in local planning needs or desires, and (2) that the environmental constraints and opportunities affecting infrastructure choices will vary over time, influenced by factors such as changes in land use, ambient water quality, and water quality standards, as well as advances in technology available to treat, reuse, or recycle wastewater. Analysis of the viability of new or expanded infrastructure is costly and could be wasted as the level of analysis conducted at the planning stage based on a hypothetical need will not be sufficient to satisfy the technical review associated with obtaining the necessary permits. Accordingly, much of the analysis may need to be repeated when an actual permit to build or expand a facility is sought. This is the type of redundant activity the Department is seeking to eliminate through these rules.

93. COMMENT: The Department is correct to note that the Legislature permitted, but did not require the Department to approve “the inclusion of land within a sewer service area notwithstanding that existing treatment works may not currently have assured the capacity to treat wastewater from such land without infrastructure improvements or permit modifications,” and P.L. 2013 C. 188 does not require the Department to adopt such a rule going forward. If the

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Legislature wanted such a provision to be permanent it could have done so, but it did not. Proper planning and adherence to the requirements of the Federal Clean Water Act would dictate that the Department not adopt such a provision in these rules. (213)

RESPONSE: The Department has several safeguards in place to provide a level of protection against a plant reaching capacity based on the inclusion of land within a sewer service area. As referenced in Response to Comment 77 above, the CAP rule provides for action by the wastewater treatment facility when the flow of a wastewater treatment facility reaches a certain percentage of the permitted flow. This is intended to prevent the facility from exceeding its permitted capacity. Further, a WMP Agency is required to initiate coordination action with the Department and a wastewater treatment facility owner pursuant to N.J.A.C. 7:15-4.5(b)5 when the existing flow is 80 percent or more of the permitted flow. This will allow for ample planning in the event an expansion of wastewater treatment capacity is needed based on growth projections. Additionally, all applicants for site-specific proposals to add 100 acres or more to the sewer service area or that would generate 20,000 gpd of wastewater are required to include, as part of the application, a proposed modification to the wastewater treatment capacity analysis prepared in accordance with N.A.A.C. 7:15-4.5(b) to include the proposed project or activity. This will allow the Department to evaluate the treatment facility's available capacity and the planned future flow from the proposed project or activity.

94. COMMENT: The proposed rule only requires a "determination" of "effective strategies" to address projected growth. There are no requirements for what the strategies should entail or

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accomplish. Furthermore, there are no consequences if the strategies are inadequate or if the capacity deficiency is not addressed by the strategies. The proposed rules should include consequences for inadequate planning that fails to address capacity deficiencies. The revised WQMP rules should incorporate requirements into proposed N.J.A.C. 7:15-4.5 that WMPs include an evaluation of wastewater service capacity and water supply availability relative to build-out demands, identifying significant issues and constraints, and providing a planning-level approach that addresses those issues and constraints. The failure to have WMPs address capacity deficiencies violates the WQPA, which requires a plan to address capacity needs and to modify the needs annually. Further, the proposal is contrary to the Federal Clean Water Act, which provides that state programs cannot be less protective than Federal requirements. 33 U.S.C. 1370. Therefore, we urged the Department not to adopt proposed N.J.A.C. 7:15-4.5(b)4. (73, 157, 169, 213, 246, 273, 298)

95. COMMENT: The rule requires no analysis to ensure there is adequate capacity for a sewer plants or its discharge for site-specific amendments. (273)

96. COMMENT: The provision in the current rule that requires a capacity deficit to be remedied by planning at the time of WMP approval should not be eliminated. Further, the estimation of future needs is not “preliminary,” as indicated by the Department. The provision of adequate treatment capacity is a basic requirement of the statutes. Developing and implementing such capacity is costly and requires an extended time frame. This argues for making such decisions and plans early in the process, not later under the pressure of a pending

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permit. While no planning process can account for unforeseen events, planning wastewater capacity based on population projects and zoning is a well-established discipline and remains the most effective approach. Precise numbers are not needed in this analysis, as actual future water demands are likely to be different than projected, but a planning-level analysis should be included. Because additional treatment capacity is expensive, planning agencies must have the opportunity to “iterate” with master plans and zoning regulation to reduce wastewater generation by downzoning rather than building capacity to meet a demand that is accepted as a given. Deferring what are valid long-term planning discussions until the permitting stage undermines the entire rationale for planning using infrastructure carrying capacity. (54, 73, 213, 298)

RESPONSE TO COMMENTS 94 THROUGH 96: The new rules recognize that (1) any estimation of future needs is preliminary and may not be realized because of changes in local planning needs or desires, and that (2) the environmental constraints and opportunities affecting infrastructure choices will vary over time, reflecting changes in land use, ambient water quality, water quality standards, and other environmental factors, as well as advances in technology. To require buildout solutions for technical merit too far in advance of the actual need could result in over-planning in which the planned future flows never materialize. Further, the analysis to demonstrate viability of new or expanded infrastructure is costly and could be in vain because the level of analysis conducted at the planning stage based on a hypothetical need will not be sufficient to satisfy the technical review associated with obtaining a treatment works approval (TWA) at the permitting stage.

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A new provision in the rule at N.J.A.C. 7:15-3.5(j)2 requires site-specific amendments that propose to add 100 acres or more to the sewer service area, or where the additional sewer service area would generate 20,000 gpd or more of wastewater, the application shall include a proposed modification to the wastewater treatment capacity analysis in accordance with N.J.A.C. 7:15-4.5(b) to include the proposed project or activity. This rule continues to require a wastewater treatment facility capacity analysis at N.J.A.C. 7:15-4.5(b)3, which provides that existing flow and projected future flows from the sewer service area shall be compared to the capacity at the wastewater treatment facility. This analysis identifies any unmet wastewater capacity needs. If a potential capacity deficiency is identified, N.J.A.C. 7:15-4.5(b)4 provides that the WMP agency shall identify strategies to address identified capacity needs with strategies to be considered in accordance with a specified hierarchy. The acceptability of specific infrastructure solutions will be determined through the technical review conducted during the permitting process. This is appropriate because the requirements for approval of a NJPDES permit entail a determination that the Surface Water Quality Standards (SWQS), N.J.A.C. 7:9B, and Ground Water Quality Standards (GWQS), N.J.A.C. 7:9C, will be satisfied. The rules will allow such a determination to be made when there is an actual need to build new or expanded infrastructure and under the conditions regarding water quality science and technology prevailing when that need arises. However, the rules, at N.J.A.C. 7:15-4.5(b)7, ensure that sufficient lead time is allowed for any solutions calling for new or expanded infrastructure to address potential capacity deficiencies by requiring that, if new or expanded infrastructure is anticipated to be needed within five years, the WMP agency must begin coordinating with the Department and the wastewater treatment facility to evaluate the technical feasibility of new or expanded

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infrastructure. Part of that coordination includes the requirement that the WMP agency prepare a schedule including steps to be taken at specific points that will realistically result in installation of the planned improvements being completed to in a timely manner to address the identified need. The agency must facilitate the development of wastewater management strategies well in advance of permitting, financing, design, and construction of the treatment works.

The Department anticipates that this will be a more efficient means to identify the nature, capacity, discharge location, and effluent quality that is appropriate for wastewater management. Moreover, this shift in approach will allow the wastewater management planning agencies to focus their resources and efforts on developing the WMP. Please see the Response to Comment 41 regarding the Department's water supply regulatory programs.

97. COMMENT: The Department is proposing to eliminate N.J.A.C. 7:15-5.25(d)3v, which requires the reduction of the sewer service area in the WMP when all demonstrations in the hierarchy cannot be made. As the Department explains, this change is consistent with their proposal to allow expansion of the sewer service area even if capacity at the wastewater treatment plant is not assured. This proposed change is extremely shortsighted and will likely lead to inefficient piecemeal development that may cause exceedances of wastewater treatment plant permitted flows. The rules should provide that the WMP address this issue of clear capacity constraints. One approach that has been suggested before is a bifurcated future SSA; one portion would have priority for connections within a given planning period (and presuming all other delineation criteria are met), and the other portion would allow connections conditioned upon clear evidence either that capacity will remain for the priority area or that the capacity issue

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for both areas has been resolved. Otherwise, the Department should not relinquish the potential to require downzoning where municipal actions have imperiled or can be seen to imperil the Public Trust resource of water. (54, 73, 125, 157, 169, 213, 246, 290, 298)

RESPONSE: The rule continues to require a wastewater treatment facility capacity analysis at N.J.A.C. 7:15-4.5(b)3, which provides that existing flow and projected future flows from the sewer service area shall be compared to the capacity at the wastewater treatment facility. This analysis identifies any unmet wastewater capacity needs. If a potential capacity deficiency is identified, N.J.A.C. 7:15-4.5(b)4 provides that the WMP agency shall identify strategies to address the deficiency. If the treatment facility's existing flow constitutes 80 percent or more of its permitted flow at the time of WMP development, the WMP agency must coordinate with the Department and the facility to evaluate and analyze effective strategies to address the potential capacity deficiency. Further, as cross-referenced in the rules, further analysis must occur under the NJPDES rules' CAP requirements once the flow triggers established in those rules are met. Finally, under this chapter, if infrastructure improvements are expected to be needed within five years, the WMP agency must coordinate with the Department and the facility to evaluate technical feasibility of the improvements, and to establish a schedule to accomplish the improvements. Before a permit or treatment works approval can be granted, any capacity deficiencies must be resolved.

These requirements, in conjunction with the requirement that environmentally sensitive areas be removed from the area eligible for sewer service, ensure that environmentally important areas are protected and provide a baseline for the Department to work collaboratively with local

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governments to identify unmet capacity needs, wastewater treatment capacity and nitrate capacity loads, and develop strategies to address those capacity needs. As the permitting process will continue to ensure that public health and the environment are protected, with no permit being issued solely because a proposed development is located in a designated sewer service area, it is unnecessary for the Department to retain the ability to withdraw sewer service area. Thus, the Department believes the rule appropriately balances the planning and permitting roles.

98. COMMENT: Pursuant to N.J.A.C. 7:15-4.5(b)7, coordination and facilitation on behalf of the WMP agency in planning and implementation of new or expanded infrastructure creates additional financial implications for the WMP agency. What type of coordination is required by the WMP entity when infrastructure improvements are necessary? Are the requirements the same as found in N.J.A.C. 7:15-4.5(b)5? Will this be identified in the CPP or some other supporting documentation as yet to be developed? The assumption is that the WMP will need to be amended to reflect, at a minimum, new analyses and planning alternatives. (90, 171)

RESPONSE: When actual flow exceeds 80 percent of its permitted capacity and there is a likely need for future infrastructure expansion, the Department may facilitate discussions between the owner of the facility, the municipality and the county, and any other interested parties as necessary to evaluate the technical feasibility of new or expanded infrastructure, and facilitate the development of wastewater management strategies well in advance of permitting, financing, design and construction. Further, the Department intends to include guidance in the CPP addressing N.J.A.C. 7:15-4.5(b)7 and potential strategies to address infrastructure needs.

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99. COMMENT: The use of a five-year threshold in N.J.A.C. 7:15-4.5(b)7 is too short for any significant infrastructure needs, as it can take significantly longer to plan, engineer, permit and construct the needed infrastructure to meet needs. Small ground water facilities might feasibly be modified in five years, but for a discharge to surface water (DSW) facility, sufficient time, perhaps a ten-year threshold, is more appropriate to address infrastructure deficiencies. (73, 90, 125, 213, 298)

RESPONSE: As provided at N.J.A.C. 7:15-4.5(b)7, if new or expanded infrastructure is anticipated to be needed within five years, the WMP agency must begin coordinating with the Department and the wastewater treatment facility to evaluate the technical feasibility of new or expanded infrastructure. The agency must also facilitate the development of wastewater management strategies well in advance of permitting, financing, design, and construction where the treatment works is proposed to discharge to surface water. The five-year period specified in the rules in a minimum timeframe; where planned infrastructure solution is anticipated to require additional time to reach permitting and completion, the Department encourages earlier consultation. Where an identified deficiency is significant enough to require major infrastructure investments or improvements, it is anticipated that this will become apparent when actual flow reaches 80 percent of permitted flow, triggering initial consultation with the Department far in advance of actual need.

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100. COMMENT: The rule states that the DEP will resolve capacity issues in the permit process because environmental constraints vary over time. The assimilative capacity of a water body does not vary over time. If it does, it shrinks because additional pollutant loadings have infiltrated it. (290)

RESPONSE: As provided previously, these rules remove redundancies between the planning and permitting stages of development. Capacity constraints are best addressed during the permitting stage when detailed project specifications and an analysis of environmental constraints relative to the proposal have evolved such that meaningful review can be conducted. For example, following implementation of stormwater BMPs and TMDLs for phosphorus, it is expected that stream and lakes health will improve with regard to excessive plant productivity and algae blooms. In this instance the assimilative capacity of the waterway with respect to nutrients will likely be increased, and thus may be taken into consideration at the time of permitting.

101. COMMENT: N.J.A.C. 7:15-4.5(b)8 should be refined to make it clear that the adoption of areawide WMPs by the Department is not conditional upon the completion of the antidegradation analysis by the permit applicant. Including the antidegradation requirements in the planning rules means that the antidegradation requirements are only applicable to proposed expansions that require a WMP modification. It would be environmentally beneficial to move this language to the NJPDES rules, which would apply to any new or expanded discharge, regardless of whether it is already accounted for in the WMP. Still, we appreciate that the

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proposed rule would allow wastewater permittees to complete a voluntary antidegradation study early if they wish to for their own planning purposes. (6, 57, 134, 168, 185, 196, 199)

102. COMMENT: The opening paragraph in N.J.A.C. 7:15-4.5(b)8 should be modified to read “For each proposed new or expanded domestic or industrial treatment works with discharge to surface water, the WMP shall note that the permit applicant shall perform an antidegradation analysis in accordance with the antidegradation policies in the Surface Water Quality Standards at N.J.A.C. 7:9B-1.5(d). The applicant will be required to evaluate in detail a wastewater treatment and disposal alternative consistent with the following hierarchy. The WMP shall evaluate the issue in a qualitative manner, describing the nature of potential pollutant load restrictions such as current water quality-based effluent limits within the existing NJPDES permit, Category One designation of the receiving water body, or an adopted total maximum daily load.” This language provides clarity regarding roles of the WMP and the permit process. (125)

103. COMMENT: The rule violates antidegradation requirement in New Jersey’s Surface Water standards amendments and Federal Clean Water Act because it allows plans without proper environmental review. (273)

104. COMMENT: The elimination of reuse from the antidegradation hierarchy at proposed N.J.A.C. 7:15-4.5(b)8 makes sense. However, the proposed antidegradation hierarchy for Hold-the-Load (proposed at N.J.A.C. 7:15-4.5(b)8i) should not include effluent limits that are based on

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secondary treatment-based standards, such as bacterial quality and TSS. Instead, the effluent limits that would be imposed on a new treatment plant having the expanded flow should be required. There is no environmental benefit, and considerable technical difficulty, in imposing more stringent limits than would be imposed on a new discharge. (6, 57, 134, 168, 185, 199)

105. COMMENT: How the Department intends to comply with the antidegradation policies of the Federal Clean Water Act for nitrates in groundwater, including the antibacksliding provisions, for non-sewer service areas in New Jersey, is not specified in this proposal, yet it is one of the key integrated elements of water quality management planning. The municipal zoning requirements of the current rule meet these standards. That the Department intends to replace this requirement with other strategies might be appropriate, but they might not be. The lack of clarity regarding the Department's intention in this section of the rule precludes the ability to have a meaningful and complete review and an understanding of the rule as a whole, as well as the ability to submit meaningful and informed comments. The Department should withhold adoption until commenters are provided with the opportunity to review and comment on the complete rule proposal. (235)

RESPONSE TO COMMENTS 101 THROUGH 105: The antidegradation policy for surface water is based on Section 303 of the CWA and 40 C.F.R. 131.12 regarding the establishment of water quality standards. The Department has established antidegradation policies in the SWQS at N.J.A.C. 7:9B-1.5 to satisfy the Federal requirement. The antidegradation requirements apply to new or expanded point source discharges. The Department also implements the Federal

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policy by imposing cost effective and reasonable best management practices for nonpoint source discharges and point source discharges of stormwater. The antidegradation analysis must be completed and approved by the Department prior to or in conjunction with the NJPDES permit. The permittee is responsible for preparing the antidegradation analysis. The WMP agency is not responsible for preparing the antidegradation analysis unless the WMP agency is the permittee. The Federal policy does not differentiate between technology-based limits and water quality based limits. The Department recognizes that the better location for the hierarchy might be the SWQS or NJPDES rules to avoid potential confusion; the Department will consider re-codifying these provisions in a future rulemaking. While the CWA does not address antidegradation policies applicable to groundwater discharges, the Department has also promulgated a groundwater antidegradation policy at N.J.A.C. 7:9C-1.8 that must be satisfied as part of the permitting process.

106. COMMENT: In a disturbing departure from the existing rules, when it cannot be demonstrated that the hierarchy of approaches are satisfied, the Department will no longer require the size of the sewer service area to be reduced accordingly. (213, 235)

RESPONSE: The rule continues to require wastewater capacity analyses of both sewer service areas and non-sewer service areas. However, unlike the existing rules, the new rules do not require that capacity deficiencies be resolved prior to WMP adoption. The WMP establishes the baseline from which to evaluate options and strategies to address any identified deficiencies. Instead of requiring, as the only option available to a municipality, that a municipality adjust its

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zoning ordinances in order to assure that the development density outside of the sewer service area will achieve the two mg/L nitrate ground water criteria, the new rules at N.J.A.C. 7:15-4.5(c)1v provide that the local government shall work with the Department to evaluate options and appropriate strategies to address any nitrate dilution capacity issue that has been identified. These options include zoning adjustments, land preservation, or a requirement that ISSDS achieve a higher level of treatment. The reluctance of municipalities to rezone, as required by the 2008 rule, resulted in the limited local participation that led to a lack of county WMP adoption. By providing flexibility based on local and regional characteristics, needs, and desires, updated baseline county WMPs should be more achievable. Information gathered during WMP development will dictate future planning after the WMP has been adopted.

107. COMMENT: The existing rules contain a hierarchy of approaches that may be considered as alternatives for new or expanded domestic or industrial treatment works. In the proposed rules, NJDEP is modifying the hierarchy of approaches by eliminating the requirement at existing N.J.A.C. 7:15-5.25(d)3i that an applicant for new or expanded infrastructure must consider and implement, where feasible, methods that reclaim wastewater for beneficial reuse (RWBR). Reusing wastewater provides significant environmental benefits, resulting from increased supplies of water and reduced impacts of wastewater discharges on water quality. Given these benefits, NJDEP should retain the requirement that an applicant must consider and implement feasible methods that reclaim wastewater for beneficial reuse. (157, 169, 246)

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RESPONSE: As provided in the proposal summary, RWBR protects and conserves freshwater and treated potable water by using lesser quality water for non-potable uses, such as irrigation.

However, because RWBR cannot be relied upon to permanently address a capacity deficiency, it is not a means to address the need to treat additional wastewater flow. The hierarchy is intended to include only those measures that are options to address additional wastewater management needs. However, while not considered to be a reliable permanent means to address wastewater capacity deficiencies, the Department continues to support RWBR, and has included guidance concerning RWBR in the CPP.

108. COMMENT: The proposal at N.J.A.C. 7:15-4.5(b)8i to modify existing N.J.A.C. 7:15-5.25(d)3ii does not provide for an adequate margin of safety. The waters of New Jersey are already under significant stress and the increased risks of discharge violations are unacceptable.
(213)

RESPONSE: Please see Response to Comment 443 below regarding required margin of safety in load allocations. A margin of safety is included as part of TMDL development and is, therefore, reflected in the assigned wasteload allocations that serve as the basis for effluent limitations. As provided in the proposal summary, in order to achieve the objective of avoiding any increase in pollutant loading entering the receiving water, the rule requires that expansions maintain the current pollutant load through improved treatment while continuing to comply with any applicable wasteload allocations. For new facilities or expansions of existing facilities where it is demonstrated that it is not possible to avoid an increase in loading, N.J.A.C. 7:15-

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4.5(b)8ii requires that the new or expanded facility achieve no measurable change in water quality in the receiving water.

109. COMMENT: Changing the triggers and threshold for CAP requirements and making them weaker will make overflows worse. There is already a very large problem with CSOs in New Jersey that the State is just starting to address. These rules will not make those problems any easier to solve. (157, 169, 246)

RESPONSE: These rules more clearly define the planning and operation flow thresholds so that potential overflows may be identified and resolved prior to exceeding plant capacity. Combined sewer systems are subject to requirements based on federal regulations and is implemented through the NJPDES permitting rules to control combined sewer overflows through the so-called Nine Minimum Controls and Long Term Control Plans. Efforts to reduce the number of combined sewer overflow events and their impacts will also include the provision of planning loans to improve urban water quality. For additional information on the CAP rule, please see the CAP rule proposed Notice of Substantial Change in included in this publication of the Register.

110. COMMENT: Under these regulations, when the existing flow reaches or exceeds 80 percent of permitted flow, local government must work with the DEP to create effective strategies to address the capacity issues. This makes sense. When existing flow reaches or exceeds 100 percent of permitted flow, the CAP rules are triggered to address the problem. By removing the requirement that any capacity issues be resolved before a WMP can be approved,

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these regulations rightly put the focus back on long-term planning and they leave the resolution of capacity issues to the CAP rules. (219)

RESPONSE: The Department acknowledges the commenter's support. Please see the CAP rule Notice of Substantial Change included in this publication of the Register.

111. COMMENT: The Department claims that the deletion of the capacity assurance and capacity gap requirements is recognition that conditions change over time, planned future wastewater flows may never materialize and that "requiring build-out solutions too far in advance of the actual need could result in over-planning." Over-planning may be inconvenient, whereas under-planning can be very costly, and if it is the intention, inexcusable. WQMPs are necessarily broad and comprehensive, because our water resources are so vital to the State's economic stability. Failing to adequately plan will have consequences, which should be borne by the errant WMP agency, otherwise we all suffer the preventable consequences of poor planning. (235)

RESPONSE: The Department has observed that over-planning is not only expensive but, if performed at a point where realistic estimates of necessary information is not available, may not serve any practical purpose. Requiring detailed planning for solutions to needs that may arise at buildout too far in advance may result in great expense of resources to solve a problem that may not ever materialize. It is important to perform a baseline evaluation on wastewater treatment and nitrate dilution capacities in order to identify a potential problem, and then to work on the

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long-term solutions. The WMP analyses will provide the data upon which the WMP agencies, wastewater treatment facility entities, and municipalities can work collectively to identify and implement strategies. The data will provide a snapshot in time that can be used on the local level to guide master plan development, zoning ordinance development, open space preservation efforts, funding availability opportunities, and regional planning initiatives.

While the WQMP rules focus on long term planning based on current and future flow, the CAP rules focus on evaluating current flow, the capacity of an existing treatment plant or conveyance system, and near-term *implementation measures*, in order to avoid hydraulic overloads that could result in a violation of the treatment plant's NJPDES permit limits or unpermitted discharges.

The Notice of Substantial Change on Adoption published elsewhere in this issue of the New Jersey Register proposes that a capacity analysis will be required when the average flow over 12 consecutive months (as reported in the discharge monitoring reports, DMRs, submitted by the treatment plant) reaches or exceeds 95 percent of the treatment plant's permitted flow.

Under the rule, the permittee must submit its report regarding the CAP analysis within 180 days after the last day of the final month of that 12 consecutive month period. The elements of the capacity analysis report under the adopted rule are more rigorous than under the existing rule in that the report must include the evaluation and selection of alternative(s) to address the potential flow overload, the development of an implementation schedule for the selected alternative(s), the assessment of necessary financing to implement the selected alternative(s), and certification of the plan and implementation schedule. The permittee must also, as under the previous rule, immediately begin the quarterly reporting of actual and permitted flow and

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anticipated flow from permitted but not yet operational TWAs. The quarterly reporting enables the Department to monitor capacity at the treatment plant. This will ensure proper preventive planning and better prepare the Department to take effective corrective measures, when necessary.

112. COMMENT: Proposed strategies where facilities approach the 80 percent capacity threshold must be identified. However, the rules do not include consequences if the strategies are not well crafted, nor if the capacity issue is never addressed in a future WMP. The proposal indicates that the strategies need not address water supply availability, even though many areas of New Jersey face existing constraints on water capacity. NJDEP can easily map the areas where aquifers are limited where water supply should be considered along with constraints on pollutant loads. The rules should have clear consequences for the lack of adequate planning. Additionally, requirements for the coordination between WMP agencies and the Department should be specified. (73, 171, 298)

RESPONSE: Please see Response to Comment 117 below. For facilities that reach or exceed the 80 percent capacity threshold, the owner of the wastewater treatment facility must begin coordination with the Department to determine whether the flow will result in a capacity deficiency. Any identified capacity deficits will be evaluated and resolved before the plant can obtain a TWA connection. Strategies to help facilities resolve capacity gaps will be provided in the CPP.

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113. COMMENT: The term “existing flow” is not defined at N.J.A.C. 7:15-4.5(b)5. It is assumed that the 12-consecutive-month flow stated for use in N.J.A.C. 7:15-4.5(b)6 is intended to define the “existing flow.” However, this should be clarified, or “existing flow” should be included in the definitions section of the proposed rules. (6, 57, 134, 168, 185, 199)

RESPONSE: For the purposes of this rule, N.J.A.C. 7:15-4.5(b)1i identifies existing flow as the highest consecutive 12-month rolling average over the most recent five-year period preceding development of the WMP, as reported in the Discharge Monitoring Reports required pursuant to N.J.A.C. 7:14A-6.8 for the facility, or other method approved by the Department if the Department determines that the alternate method better predicts flow taking into account factors unique to the area, such as significant variability of flows due to seasonal population shifts, the effects of weather, or variable volumes of combined sewage conveyed to the wastewater treatment facility. The Department believes the term is adequately addressed and does not believe the term needs to be defined in the definition section of the rule.

114. COMMENT: The trigger threshold of 80 percent capacity based on a 12-month average for all facilities is inappropriate. Facilities range from small to large and may be subject to different requirements under their individual NJPDES permits. Also, two facilities that reach the 80 percent threshold may have very different trends for growth. (73, 157, 169, 246, 298)

RESPONSE: The Department acknowledges that areas served by individual facilities may have very different growth trends and that the sewage treatment facilities themselves vary in size and

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in other ways, with the NJPDES permit issued to a facility ensuring that those differences are taken into account and requirements established that result in the facility operating in an appropriate manner. Recognizing that no two plants or areas are identical, utilization of the 80 percent threshold is meant to trigger analysis of the needs applicable in a specific area and ensure that wastewater capacity planning is conducted early enough to allow sufficient time, should it be determined that a capacity deficiency exists, to determine effective strategies to address that need, and for permitting, financing, design, and construction of any facilities determined to be necessary to occur in a manner that does not jeopardize public health or the environment. Through the coordination required by the rules, the Department will help the entity identify what, if anything, is needed to address needs in that area.

The rules recognize that growth trends will vary. Accordingly, only where infrastructure improvements are expected to be needed within five years is the wastewater management planning agency required to begin coordinating with the Department and the entity responsible for the applicable wastewater treatment facility to evaluate the technical feasibility and establish a schedule within which various steps will be taken to accomplish installation of the improvements. If analysis of growth trends indicates that such steps are not needed within that timeframe, such coordination and scheduling need not occur until it becomes apparent growth has reached a level that infrastructure improvements will be needed within that timeframe.

As indicated in N.J.A.C. 7:15-2.4(a)8 and 9, the Department intends to monitor and post online existing flows at facilities, compare existing flow to permitted flow on an annual basis, and provide assistance to the WMP agency as it develops strategies to address anticipated needs.

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Through this monitoring and the planning and coordination required by the rules, the Department believes that the 80 percent capacity trigger will serve to initiate planning at an appropriate time, regardless of the size of the facility or the growth trends present in a particular area, and will provide facilities time to plan for improvements to their infrastructure without jeopardizing public health and the environment.

115. COMMENT: The first sentence of N.J.A.C. 7:15-4.5(b)5 should be amended to add after the words “WMP development” the following: “or where the projected flow is expected to reach the 80 percent threshold within two years or reach 100 percent within 10 years,” as 20 percent of capacity could last a long time or a very short period. (125)

RESPONSE: As indicated in Response to Comment 114 above, the Department acknowledges that areas served by individual facilities may have very different growth trends and the rules reflect this reality.

While it is true that growth trends vary, the 80 percent trigger reflected in N.J.A.C. 7:15-4.5(b)5 was chosen as a level that would ensure that wastewater capacity planning is conducted early enough to allow sufficient time, should it be determined that a capacity deficiency exists, for consultation to occur between the WMP agency, the plant owner and the Department resulting in determination of effective strategies to address that need, and for permitting, financing, design, and construction of any facilities determined to be necessary to occur in a manner that does not jeopardize public health or the environment, even in areas with a rapid growth rate. Through the required consultation and establishment of an agreed upon schedule

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for significant milestones when it is determined that infrastructure improvements will be needed within five years in accordance with N.J.A.C. 7:15-4.5(b)7, the rules ensure that all necessary planning occurs far enough in advance to ensure protection of public health and the environment. Accordingly, the establishment of earlier triggers that would require initiation of planning earlier than required by the rules, as suggested by the commenter, is unnecessary.

116. COMMENT: The planning process for treatment plants with NJPDES permits that specify monthly permitted flow limits should be triggered when the peak month flow, rather than a 12-month average, reaches the specified threshold. (157, 169, 246)

RESPONSE: As provided at N.J.A.C. 7:15-4.5(b)1i, the existing flow that is compared to permitted flow is the highest consecutive 12-month rolling average over the most recent five-year period. This approach is premised on a longer-term look at the circumstances of the treatment plant and the effects of development in the sewer service area. On the other hand, the CAP rule focuses on evaluating the capacity of the existing treatment plant and conveyance system, and the near-term implementation of measures to ensure that there are no NJPDES permit violations or unpermitted discharges. The CAP program tracks monthly DMR flow data, while the 12-month analysis provides an appropriate depiction of annual flow trends for planning. The CAP threshold and the required analysis are detailed in the CAP rule proposed Notice of Substantial Change upon Adoption, published elsewhere in this Register.

These measures ensure that necessary wastewater treatment planning for an area begins early enough in the process and involves the WMP agency, in addition to the permittee.

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117. COMMENT: Waiting until the average flow over 12 consecutive months exceeds 100 percent of permitted flow may not allow for sufficient time for the permittee to plan and execute an expansion before treatment capacity is exceeded. The WQMP and CAP regulations should be integrated, and both regulations should require a capacity analysis when the average flow over 12 consecutive months exceeds 90% of the permitted flow. This would provide ample time to plan for any required expansions, but would reduce the number of facilities that enter the capacity assurance program without any real prospect for exceeding treatment capacity. However, those responsible for compliance with the regulations should be afforded the flexibility, based upon their site-specific conditions, to look back further if the prior 12-month period is not representative and if the obligation to maintain permit compliance, or compliance with contractual obligations, warrants. (6, 57, 134, 168, 185, 196, 199)

RESPONSE: The WQMP threshold remains 80 percent. Although the Department proposed to change the CAP threshold from 80 percent to 100 percent, the Department has determined that it is appropriate to amend the CAP threshold and has proposed that change in a Notice of Substantial Change upon Adoption published elsewhere in this issue of the New Jersey Register.

The WQMP provisions require that a WMP agency must conduct a wastewater capacity analysis and determine future wastewater needs as part of developing its wastewater management plan (WMP). In the wastewater planning context, the wastewater treatment capacity analysis is intended to identify potential shortfalls between the anticipated demand for flow from existing and future development in the sewer service area of a treatment plant and the

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permitted flow of that plant. It is premised on a longer-term look at the circumstances of the treatment plant and the effects of development in the sewer service area. On the other hand, the CAP rule in the NJPDES TWA rules focuses on evaluating the capacity of an existing treatment plant and conveyance system and the near-term implementation of measures to avoid hydraulic overloads that could result in a violation of the treatment plant's NJPDES permit limits or unpermitted discharges. Since these two programs have different objectives that are meant to work in coordination with each other, the Department determined that different thresholds were appropriate.

The CAP rule at N.J.A.C. 7:14A-22.16(a) is being proposed to be revised to change the originally proposed 100 percent threshold to 95 percent of permitted flow. As indicated in Response to Comment 77 above, N.J.A.C. 7:15-4.5(b)6 has been revised to eliminate reference to the previously proposed 100 percent trigger for NJPDES CAP analysis with the result that the WQMP Rules now simply reflect that CAP analysis must be initiated when required under the NJPDES rules. Regardless of the change, while the two rules serve different purposes, they are integrated. The WQMP rule requires the planning agency to initiate efforts to assess current capacity and future needs when the highest average 12-month flow over a five-year period exceeds 80 percent of the permitted flow, rather than the average for the latest 12-month period or the average for the entire five-year period, in order to base planning on the most conservative view of need. This ensures that planning will take place far enough in advance of any potential capacity issues at a wastewater treatment facility to provide enough time for permitting and construction of additional infrastructure to address identified deficiencies. The actions required by the rules when the 80 percent of capacity level is reached serve as notice to the WMP agency

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and the wastewater treatment facility to begin the analysis necessary to determine whether additional infrastructure may be needed and when. The requirement at N.J.A.C. 7:15-4.5(b)7 that more intense planning, including establishing a schedule for important milestones in approval and construction of infrastructure if it is anticipated to be needed within five years, further pushes the planning process to the next steps. In conjunction with the planning requirements contained in the WQMP Rules, the NJPDES CAP rule requires a detailed assessment of alternatives and selection of measures to be taken on a committed schedule as the facility gets closer to capacity to avoid permitted flow exceedances and the potential to violate NJPDES permit limits.

Both the WQMP rules and the NJPDES rules require analysis to occur when there is still time for activities necessary to bring new infrastructure on line to be completed without risk to public health and the environment. As noted in Response to Comment 82 above, the TWA rules at N.J.A.C. 7:14A-23.13(o) require that treatment facilities be designed with capacity based on not less than 250 percent of projected flow, and treatment units shall be designed so as to provide adequate treatment to meet all NJPDES permit effluent conditions. Thus, a wastewater treatment facility would be able to sustain the occasional exceedance of permitted capacity while complying with permit limits.

The rules do provide appropriate flexibility with reference to calculation of flow. As noted in Response to Comment 81 above, N.J.A.C. 7:15-4.5(b)1i provides that alternative methods of calculating existing flow may be considered, but must be approved by the Department. If the WMP agency believes the 12-month rolling average requirement does not

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accurately predict flow, considering factors unique to the area, these rules grant flexibility so that the WMP agency may propose a reasonable alternative and provide supporting rationale.

118. COMMENT: The rule should require the treatment plant permittee to notify the designated planning agency (DPA) of and provide the DPA with an electronic version of all capacity analysis reports. (90)

RESPONSE: The management of the CAP program, which calls for the submission of capacity analysis reports, is maintained by the CAP rules within N.J.A.C. 7:14A. The Department does not require, or currently have, a centralized location where all reports are stored electronically. N.J.A.C. 7:14A-22.16(e)1 provides that, upon approval by the Department, the permittee or owner of the conveyance system shall give public notice of the capacity assurance program in a manner designed to inform local residents, developers, the local planning board, and other affected persons. N.J.A.C. 7:14A-22.16(e)2 provides that the report should be made available to the public on the website and at the office of the permittee or of the owner of the conveyance system.

119. COMMENT: The proposed capacity assurance trigger based on the average flow over a 12-month period represents a major improvement over the 3-month flow trigger in the existing rules. (6, 57, 134, 168, 185, 199)

RESPONSE: The Department acknowledges the commenters' support.

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120. COMMENT: Use of a three-month average to trigger capacity analysis would catch peak flow exceedances as they trigger capacity analysis faster than a 12-month average, as a 12-month average smooths those peaks out. The result is that 129 of 189 facilities studied by the DEP triggered the CAP rule requirements in the present rules, but only 34 out of 189 facilities will trigger the CAP requirements in the proposed rules. All this pivotal change rests on conclusions and assumptions in the Department's unpublished flow study. There should be sufficient time to review this study. (248)

RESPONSE: The Department's flow study of treatment plants that served as the basis of the CAP proposal has been published in this issue of the New Jersey Register as part of the CAP rule Notice of Substantial Change on Adoption with a 60-day comment period provided for comment on the change proposed in the notice of substantial change.

121. COMMENT: More than 90 percent of our water in New Jersey already fails to meet Federal clean-water standards. In spite of this, the proposed WQMP rule will allow treatment plants to reach 100 percent of their flow capacity – instead of 80 percent in the current rules - before they must submit a plan to reduce the flow or ban new sewer connections. Raising the capacity of treatment plants to 100 percent will allow sewers and development to extend further into our drinking water sources. That will happen without an antidegradation review of the impacts to the watershed from more wastewater discharge and more nonpoint runoff. There will

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be no analysis of depletive losses to stream base flow. Water conservation will be put off until treatment plants reach full capacity instead of 80%. (118, 273)

RESPONSE: Please see the Response to Comment 61 above.

Nitrate Dilution Analysis

122. COMMENT: “Equivalent dwelling unit,” a number to be used in calculating septic density with the nitrate dilution model, is now to be 500 gallons per day. The Highlands RMP and all other rules set the capacity for residential development at 300 GPD and nonresidential at 400 GPD. What is the scientific basis for this major change that will impact the numbers of new septs allowed? (17, 73, 125, 266, 298)

RESPONSE: The Highlands Council does not use 400 gallons per day per household; rather, the Council uses 500 gallons per day in determining compliance with Department rules. The Highlands Council’s Buildout Technical Report, (which is available at <http://www.nj.gov/njhighlands/master/>), states on page 20 that the residential portion of a septic yield was assigned as residential septic-yield value and the non-residential was evaluated as an equivalent dwelling unit (EDU). The evaluation of the septic system yield as related to the EDU value (300 GPD per household for Highlands RMP conformance and 500 GPD for N.J.A.C. 7:15) and the potential to convert those gallons per day to non-residential or commercial use in lieu of a residential use will be performed during local Plan Conformance. Thus there is no change, major or otherwise, that will impact the numbers of new septs allowed.

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123. COMMENT: The revised WQMP rules should make a direct connection between nitrate dilution analysis and TMDLs at a minimum, requiring the development of plans to control nonpoint source and septic system nitrate contributions where a TMDL has been adopted for nitrate. For areas without TMDLs, NJDEP should consider having the nitrate dilution modeling trigger further planning requirements. (73, 298)

RESPONSE: There are no nitrate TMDLs in New Jersey. Additionally, all TMDLs in New Jersey have been applied to surface water; there are no groundwater TMDLs. A TMDL is developed when a constituent in surface water exceeds standards. If nitrate values in surface water approach the standard of 10 mg/l, the Department will determine if further planning and action through a TMDL is an appropriate approach and if nitrate in groundwater discharge to the surface water is an appreciable factor. The adoption of a TMDL will serve as an amendment to an areawide WQM plan.

124. COMMENT: The WQMP rule proposes a new statewide nitrate dilution model that uses a 2.0 mg/L nitrate standard to determine how closely septic systems can be constructed, without any actual analysis of pollution levels and methods to achieve nitrate standards. This one-size-fits-all standard will not steer growth away from environmentally sensitive land. It is ten times the groundwater standard of 0.21 mg/L for forested areas in the Preservation Area standards of the Highlands rules. In the Highlands Preservation Area, which is the most environmentally sensitive area of the region, these rules will increase development by changing the nitrate

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dilution standard to allow more septic systems. The rule changes the standards in the nitrate dilution model from .21g/L to 2g/L, which will increase density by 400 percent in the Forest Preservation Area. These changes will extend sewers into environmentally sensitive areas and promote sprawl and water pollution, threatening the groundwater on which 50 percent of the state relies for drinking. (12, 32, 107, 118, 122, 203, 213, 214, 217, 273, 299)

RESPONSE: These rules present no change in the statewide standard for nitrate dilution, nor a change in the nitrate dilution model for the Highlands. The Department is retaining, at N.J.A.C. 7:15-4.5(c), the method for determining the appropriate septic density that was established in the prior rules at N.J.A.C. 7:15-5.25(e). Additionally, in conforming municipalities in the Highlands preservation area, N.J.A.C. 7:15-4.5(c)3 directs that the nitrate dilution analysis be conducted in accordance with the standards and procedures established in the Highlands Water Protection and Planning Act Rules and the Highlands RMP.

125. COMMENT: Regarding N.J.A.C. 7:15- 4.5(c)1i(2), applying the formula to a larger area, HUC 11, as the basis for septic density instead of a HUC 14 area, is supported. (17, 266)

RESPONSE: The Department acknowledges the commenters' support.

126. COMMENT: The process in N.J.A.C. 7:15-4.5(c)1iii should include consideration of existing, undersized (i.e., less than the current zoning) lots, as in some areas these parcels will constitute a significant portion of the legally permissible septic system potential. (125)

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RESPONSE: The overall available acreage of undeveloped and underdeveloped acres is considered in the nitrate dilution analysis. The analysis to determine septic densities requires that all undeveloped and underdeveloped acres be included in the calculations to determine the additional EDUs allowed in order to maintain the 2 mg/L nitrate standard in groundwater. However, in many instances, the total number of theoretically possible lots in a given area may exceed the actual number of dwellings that will be realized in that area, which would be influenced by the design goals for the development and local environmental constraints, as well as limitations based on parcel configuration, road layout, and municipal restrictions such as setbacks. WMP agencies have struggled to resolve instances when the number of existing subdivided, but not yet developed, lots exceeded the number of allowable additional EDU, estimated using the nitrate dilution model.

With the passage of time, some portion of the undeveloped parcels will likely be removed from the pool of developable land that could contribute pollutant loads from wastewater disposal through an ISSDS if, for example, the land has been acquired for open space, or green infrastructure approaches are implemented for stormwater management. In these rules, the nitrate-loading capacities of undeveloped non-sewer service areas will be identified, and the Department will work with counties and municipalities to explore options to address the nitrate deficiencies and protect groundwater.

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127. COMMENT: Regarding the proposed new statewide nitrate dilution standard of 2 mg/L, regional differences will be obscured by scale, because nitrate dilution will be modeled using large HUC11 stream basins instead of smaller HUC14s. Because they aggregate so many individual watersheds, there are often distinct differences in the geology of the upper and lower portions of major HUC11 basins. Geology determines the natural chemistry of groundwater and surface water - and its vulnerability to pollution. That will be invisible to the DEP if they apply one standard to such a large area. The analysis and standards need to be based on HUC 14 watersheds. (90, 118)

RESPONSE: The Department did not propose a new statewide nitrate dilution standard of 2 mg/L. Rather, as explained in Response to Comment 124 above, the Department continues to allow for the use of one of two models adopted in 2008 rules.

The HUC 14 drainage area, or subwatershed, is a subpart of a HUC 11 drainage area, or watershed, thus there are a number of HUC 14 subwatersheds within each HUC 11 watershed, which results in there being 151 HUC 11 drainage areas in the State, but over 900 HUC 14 drainage areas. The HUC 11 basis was selected for the analyses because it allows for consideration of impacts of wastewater management and water supply use on a holistic, watershed basis, while keeping the scale of the analyses manageable. In addition, the HUC 11 drainage area provides a means to balance the need to consider impacts on a watershed basis without unnecessarily limiting flexibility of local government to make land use decisions that support local planning objectives. In order to effectively incorporate watershed-based analyses and considerations, disaggregation of the watershed findings to the municipal/county level will

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have to occur on either a HUC 11 or HUC 14 scale, and while the HUC 14 scenario would require coordination among fewer municipalities, it would also greatly limit the options available to implement the watershed findings related to pollutant loading. This is more likely, rather than less likely, to encourage sprawl because the smaller the area within which the standards must be met, the fewer options would be available to implement center-based and cluster development that would avoid sprawl and maximize environs protection. Further, while this approach may lead to uneven inputs of pollutant loadings to the ground water, this outcome is compatible with the antidegradation standard for ground water discharges that are not regulated under NJPDES. This antidegradation standard was established using nitrate as a surrogate with the standard set at two mg/L because that concentration represents the ambient concentration of nitrate in ground water when considering the State as a whole. However, while existing nitrate levels are both higher and lower than two mg/L at individual locations, ensuring the ambient concentration is maintained within the HUC 11 drainage area is consistent with the basis for determining the ambient concentration.

The Department recognizes that relevant information has been developed in response to the Stormwater Management rules and within the Highlands and the Pinelands, which represent special resource areas within the State for which comprehensive protection plans have been – or, are being – developed. Information developed at a smaller, finer scale can be used in the HUC 11 analyses, thereby leveraging these efforts to serve multiple purposes.

128. COMMENT: The proposed rules indicate that there are alternative methods to nitrate dilution planning to comply with the groundwater standard. There are no provisions in the

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WQMP rules with benchmarks to move municipalities in the right direction to protect our groundwater, although 50 percent of the State relies on groundwater for drinking water. (54, 299)

129. COMMENT: These rules decouple, to a large extent, the planning aspects of the State and the planning aspects of the municipality. The proposal, at N.J.A.C. 7:15-4.5(c)1v removes the requirement that a municipality conform its zoning in a manner that the permitted development does not violate water quality standards. This is imprudent and violates State and Federal Law. In place of mandatory conformance, this proposal includes a vague obligation for a municipality and the Department to confer on alternative solutions. What does this really mean in operational terms? What happens if a municipality declines to address the gap? The rule summary includes a discussion of options, none of which are included in the rule text. Rather, the CPP is pointed to, but the CPP has not been adopted as a rule and therefore has no legal force. This is insufficient as there is no requirement that a solution be proposed, adopted and enforced. (125, 213)

RESPONSE TO COMMENT 128 AND 129: Instead of requiring, as the only option available to a municipality, that it adjust its zoning ordinances in order to ensure that the development density outside of the sewer service area will achieve the 2 mg/L nitrate ground water criteria, the new rules at N.J.A.C. 7:15-4.5(c)1v provide that the local government shall work with the Department to evaluate options and determine the appropriate strategies to address any identified issues regarding nitrate dilution capacity. These options include zoning adjustments, land preservation, or requiring ISSDS to achieve a higher level of treatment. It is in the best interest

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of the both the Department and the local government to ensure that some type of action is taken if zoning of undeveloped and under-developed areas have insufficient nitrate dilution capacity. For this reason, the Department is committed to proactively work with the local government and any other stakeholders to facilitate discussions, assist in the development of solutions and identify financial resources to address the nitrate loading issue identified in the nitrate dilution analysis.

130. COMMENT: A third of the wells on properties served by septic in New Jersey show high levels of nitrate pollution. Now we are eliminating that analysis, because most of the developments that happen in rural areas are under 50 units on septic. N.J.A.C. 7:15-4.5(c) should specify that development projects involving from 6 to 49 lots must meet the 2 mg/L groundwater threshold in order to protect groundwater and surface water quality, and associated appropriate guidance should be included in the new rules. Otherwise, how will the Department ensure that future septic development of less than 50 lots will not degrade groundwater and surface water quality? (6, 57, 134, 168, 185, 196, 199, 273)

RESPONSE: These rules do not eliminate any analyses of smaller development on individual subsurface sewage disposal systems. Instead, these rules maintain the requirement that WMP agencies perform a nitrate dilution analysis in non-sewer service areas on a HUC 11 basis. Since adoption of the 2008 rules, the nitrate dilution model, A Recharge-Based Nitrate-Dilution Model for New Jersey V6.2, was subject to a peer review by the Department's Science Advisory Board (SAB). See "Response to Charge Questions on the Nitrate Dilution Model, Summary Report of

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the NJDEP Science Advisory Board,” March 14, 2011, at

<http://www.state.nj.us/dep/sab/nutrient-report.htm>. The Department tasked the SAB with evaluation of the assumptions and applicability of this model, which is the underlying model incorporated in the Nitrate Dilution models referenced at N.J.A.C. 7:15-4.5(c)1i(1) and (2). The SAB determined that use of the model for regional planning purposes was appropriate, but that it was not reliable on a small scale. Since the SAB reviewed and approved the assumptions underlying the basic model, the Department has determined that it is appropriate to continue to use the Nitrate Dilution Models referenced in the new rule because the analyses contained in the WQMP Rules are utilized for regional planning purposes. The analysis, although conducted on a HUC 11 basis, provides for a nitrate dilution calculation for all septic development, not only development of 6-49 units.

131. COMMENT: The Department’s analysis of the additional septic loading occurring in areas encompassed by expanded sewer service areas, but not part of an existing municipal wastewater treatment system, concludes that there will be added nitrate loading. Nonpoint source pollutant stormwater loading along with groundwater conveyed nitrogen loading has been documented by various entities including the NJDEP, United States Geological Service (USGS) and Rutgers University to be the leading cause for the Barnegat Bay’s eutrophication, ecological degradation, and impaired recreational use. (284)

RESPONSE: As provided in Basis & Background of the Septic Density Standard of the Highlands Water Protection and Planning Act Rule at N.J.A.C. 7:38-3.4

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(<http://www.nj.gov/dep/highlands/docs/septicdensity.pdf>), nitrate requires the greatest acreage to dilute effectively. The nitrate dilution models referenced in these rules are specifically tailored to the impacts on nitrate groundwater quality due to utilization of ISSDs; they are not designed to model the impacts of nonpoint source pollution. However, strategies for addressing nonpoint source pollution are outlined in the Department's Nonpoint Source Management Program Plan, within the CPP. The plan highlights the key actions that New Jersey will use to address water quality issues caused by nonpoint source pollution to achieve water quality objectives, including the State Fertilizer Law at N.J.S.A. 58:10A-61 et seq., CSO permits and green infrastructure measures.

The Department has a significant effort underway to control nutrient impacts to Barnegat Bay. Please see the response to comment 61 above.

132. COMMENT: The changes to N.J.A.C. 7:15- 4.5(c)1.v. reflected the commenters' long held opinion that the nitrate dilution modeling is more appropriate for larger areas than individual properties. (17, 266)

RESPONSE: The Department acknowledges the commenters' support.

133. COMMENT: The elimination of the requirement to downzone when there is insufficient nitrate dilution capacity is supported. It is a welcome change for DEP to work with a community that lacks future nitrate dilution capacity to meet the projected loading from future development to resolve the issue rather than devaluing the land. Under these regulations, towns can still use

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downzoning to meet nitrate dilution needs, but they can also use other tools like land preservation strategies or require groundwater treatment. (17, 44, 63, 266)

RESPONSE: The Department acknowledges the commenters' support.

134. COMMENT: The elimination of the downzoning approach to control the predicted nitrate concentration is strongly opposed. Nitrates in groundwater are not the same as a point source parameter. Nitrate is a “leading edge” indicator of potential groundwater contamination. Eliminating the requirement to downsize is not simplifying an analysis; rather, it is weakening a mandate that local government and their master plan zoning powers recognize environmental constraints and regulatory standards. The removal of the zoning implications of the nitrate dilution provision presents a major potential conflict between municipal land use policy and NJDEP regulations regarding bulk densities necessary to protect water quality, as is inherently acknowledged by the section. The removal of the rezoning requirement renders the compliance requirement meaningless, and therefore fails to establish a mechanism by which DEP meets its obligation to protect water quality. In addition to human health consequences that are recognized at 10 mg/l concentrations, nitrates have deleterious effects on surface waters which are supplied from the groundwater system at far lower concentrations, particularly during “base flow” conditions or during drought. (54, 73, 290, 298)

135. COMMENT: Failing to require that municipalities revise local zoning to reflect actual land use capabilities, for the purpose of protecting speculative land values, as the Department

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proposes, creates a false bubble in the market that approaches fraud. The Department should reconsider encouraging such misrepresentation at the scale of statewide policy. (235)

RESPONSE TO COMMENTS 134 AND 135: As indicated in Response to Comment 78 above, previous reliance on downzoning to address insufficient nitrate dilution capacity created a number of problems, including resistance to rezoning due to its complexity and the controversy created, and situations such as the number of existing lots exceeding the number of dwellings allowed for the area.

Rezoning to achieve the ground water quality objective as a prerequisite for WMP approval does not account for the reasonable assumption that the theoretical development potential of every parcel will not be realized. With the passage of time, some portion of the undeveloped parcels will likely be removed from the pool of developable land that could contribute pollutant loads from wastewater disposal through an ISSDS if, for example, the land has been acquired for open space, or green infrastructure approaches are implemented for stormwater management. Through its implementation of the prior rules, the Department has found that municipal resistance to enacting zoning changes resulted in significant delays in the development and adoption of WMPs. In these rules, the Department still requires comprehensive build-out analysis based on current zoning to identify potential issues in meeting the nitrate target. However, for the reasons stated above, municipalities are no longer required to change zoning for areas or parcels that may not be developed for years, decades, or even at all, in order to submit and complete a WMP or to update a WMP. Instead, the nitrate-loading capacities of undeveloped non-sewer service areas will be identified, and the Department will

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work with counties and municipalities to explore options to address the nitrate deficiencies and protect groundwater.

136. COMMENT: The proposed rule proposes to delete the zoning requirement to meet the 2 mg/L standard and instead directs the municipality to work with the Department to evaluate options to address the gap, referencing a link to a CPP document that “identifies potential strategies to address this capacity deficiency.” The section of the CPP document that the proposed rule references, “Appendix F: Strategies for Meeting Nitrate Dilution Analysis Target” is currently blank, with the advisory, “Under Development.” (235)

RESPONSE: As discussed in the proposal summary at 47 N.J.R. 2536 and in the Response to Comments 128 and 129 above, while the Department will consider any strategy that may be proposed by the local government during the consultation required at N.J.A.C. 7:15-4.5(c)1v to address any issue with nitrate dilution capacity that has been identified, it is anticipated that the primary strategies to address such deficiencies will include zoning adjustments, land preservation, or requiring ISSDS to achieve a higher level of treatment. The section of the CPP referenced in the rules will include examples of strategies that have been utilized to address particular capacity issues with information that can be utilized by the local entity in determining what option may best address the circumstances it faces. The information contained in the referenced appendix to the CPP is guidance; the local entity may choose to propose a strategy regardless of whether an example utilizing that strategy is contained in the CPP.

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137. COMMENT: Among the justifications for the changes in the rule proposal is that the local master plan is the best source for a municipal land use vision. This is far out of the tradition of the DEP regarding what DEP is statutorily obligated to consider. Additionally, there is no mandatory requirement under New Jersey municipal land use law for consistency between the municipal master plan and municipal zoning. (290)

RESPONSE: The 2008 rules, at N.J.A.C. 7:15-5.24(a), specifically stated that “Nothing in this section (the delineation of sewer service area) shall preclude the wastewater management planning agency from excluding additional areas from sewer service based on local planning objectives, the lack of wastewater treatment capacity or other environmental concerns, including, but not limited to, source water protection.” The Department still believes that the local master plan, when kept up-to-date, is a good reference for the future vision of the municipality, and for this reason, the master plan, as well as the zoning ordinances referenced in N.J.A.C. 7:15-4.4(h)1, will continue to factors that must be considered in the delineation of areas eligible for sewer service, as required at N.J.A.C. 7:15-4.4(h).

138. COMMENT: There is little capacity within the Department to provide assistance with alternative compliance approaches should those be identified, and the Department has not demonstrated that there is any other mechanism other than regulating the input of nitrates that is effective in protecting water quality. Therefore, the Department will, under this proposal,

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continue to allow municipalities to zone areas identified for septic systems for input densities which may pollute the water in violation of the recognized standard. (73, 298)

RESPONSE: The rule requires a determination of the potential wastewater flow generation based on the existing zoning, as well as an analysis to identify potential nitrate dilution capacity deficits early in the WMP development. Using this information, the Department will be able to work with counties, municipalities and utilities to identify long-term strategies and implementation steps. The Department is not the only entity with technical knowledge. Through the collaborative effort promoted by these new rules, the Department hopes to engage others in the determination of the best solution to a capacity deficiency for a particular area.

Nitrate is a conservative contaminant that is not reduced or resolved by physical or biological processes such as soil adsorption or aerobic decay. Thus, nitrate is considered a good basis for establishing human density for land planning purposes. Pathogens are, in contrast, a good indicator of areas where poorly designed, poorly managed or poorly located septic systems occur that are considered malfunctioning, or at least poorly functioning by the Department's regulations. Also, pathogens may be a particular problem where improperly constructed potable wells are common. These situations can be remedied when municipalities institute septic management districts that require routine inspections followed by mandatory upgrade of malfunctioning systems. The Department continues to evaluate this important issue and has instituted a long-term study of shallow aquifers (Ambient Ground Water Quality Network Data; <http://www.njgeology.org/geodata/dgs05-2.htm>) that examines the occurrence of many human-

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source pollutants as they relate to land use. The Department will consider these results and other relevant expert opinion to inform future rulemaking.

139. COMMENT: N.J.A.C. 7:15-4.5(c)1vi should be amended to “subject to a mandatory maintenance program, by ordinance,” rather than “such as an ordinance” because an ordinance is the appropriate vehicle to enforce a mandatory ISSDS maintenance program. (44, 63)

140. COMMENT: N.J.A.C. 7:15-4.5(c)1vi continues the concept of mandatory septic system maintenance programs, but there is no enforceable provision or consequences for failure to implement these programs locally. Deferring to municipalities on local septic management practices does not make sense in order to achieve consistency with nitrate dilution targets because of its potential effects on the speculative value of land relative to development which, in turn, affects the ability of agricultural producers to leverage their land value to secure loans for production. The State has the constitutionally enumerated power to regulate land use in order to provide for the health and safety of the public, not to protect landowners and farmers. The health and safety of the public should trump protection of the presumption of the speculative value of privately owned land. The mere fact that the process of enacting septic maintenance ordinances may be time consuming, difficult or politically unpopular is not an excuse for avoiding such an obligation. As Federal and State law require the adoption of methods to address water quality standards, the Department should not adopt this provision. (7, 73, 107, 125, 213, 224, 257, 273, 290, 298)

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RESPONSE TO COMMENTS 139 AND 140: N.J.AC. 7:15-4.5(c)1vi requires that areas with a wastewater service designation for discharge to ground water of 2,000 gallons per day or less are subject to septic management program, such as an ordinance, that ensures that all ISSDSs are inspected at a frequency to adequately determine whether they are functioning properly. Septic management is an important aspect of wastewater management planning. And although there are aspects of ensuring that the septic management plan is implemented that rest with the municipality, it is not an impediment to counties developing a program that they believe will achieve effective septic management throughout the county. Septic management plans can have a variety of options, some that are mandatory, such as septic management education, while others become mandatory (such as invoking the local health department to take action, or adopting an ordinance) upon a specific trigger, such as failing septic systems in a community. The Department has chosen to create new guidelines for what constitutes an acceptable septic management plan with input from the counties, due to the fact that counties have advised the Department that the requirements of the 2008 rules were unrealistic for completing a septic management program. Although an ordinance is one approach to developing a septic management program, it is not the only approach. The Department has received substantial feedback from counties about the inability to implement a “one size fits all” septic management program that requires the adoption of an ordinance. This is a major reason that the septic management program requirements in the 2008 rule were keeping many WMPs from being adopted.

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141. COMMENT: The proposal summary twice states that the speculative value of agriculture land affects the ability of producers to leverage land value to secure production loans, and then in the agricultural impacts section amends that statement to note that “some” producers do so. This issue is a canard, long-since dismissed by agricultural finance experts as untrue because loan agencies and banks rely on the production potential. (73, 235, 298)

RESPONSE: The Department acknowledges that the academic and finance communities continue to debate the impact of the speculative value of land. The statements regarding the speculative value of land reflect the Department’s intent to create more flexibility in the planning process by removing the absolute requirement to downzone where there is insufficient nitrate dilution capacity. The Department considered an approach published in the Agricultural Finance Review. In *The Impact of Downzoning on Land Values: A Theoretical Approach*, 69 Ag. Fin. Rev. 206-227 (2009), Rutgers University Professor Paul Gottlieb used principles of finance to provide a plausible explanation for the different price effects of downzoning found in New Jersey and Maryland. The study concluded that the land price effects of downzoning are extremely context-specific and that, when development is impending and comprises a significant portion of the land price, downzoning will lead to a significant loss of value. Thus, at times, the value of land may impact the ability of a farmer to leverage funding for operational loans. The position offered by the Department in the proposal summary was only intended to provide an example that rezoning carries consequences and that, as a solution to resolve water quality issues, it would be inappropriate to restrict potential alternatives to only downzoning.

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142. COMMENT: The nitrate standard itself is not adequately protective because it is based upon a 10 mg/L drinking water standard which is underprotective for sensitive populations, including infants and young children. And it doesn't protect ecological receptors. So the fact that DEP is weakening the enforcement of an already flawed approach is a significant problem that nobody has really addressed. (290)

RESPONSE: High concentrations of nitrate in drinking water can cause methemoglobinemia (blue baby syndrome) in infants. Human health impacts of elevated nitrate are documented at levels greater than 10 mg/l. EPA has stated "Infants below the age of six months who drink water containing nitrate in excess of the Maximum Contaminant Load (MCL) could become seriously ill and, if untreated, may die." There are no nitrate criteria applicable to aquatic health. Nitrate is not a concern in surface waters for other than human health issues. In addition, the 2014 New Jersey Integrated Water Quality Assessment Report does not identify groundwater as an influence on surface water nutrient impairment assessments.

143. COMMENT: Since Pinelands Management Areas have been assigned to all areas within the Pinelands National Reserve, 16 U.S.C. § 471i(c), including areas outside the Pinelands Area, the Pinelands Septic Dilution Model should also be applied to all areas depicted on the Pinelands lands capability map (Pinelands National Reserve). (21)

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RESPONSE: Management Area designations span the entire Pinelands National Reserve since the Pinelands Commission is responsible for planning in the entire Pinelands National Reserve. However, the Pinelands Commission's jurisdiction extends only to the Pinelands Area within the Pinelands National Reserve. Therefore, the septic density model developed by the Pinelands Commission will only be used to regulate parcels within the Pinelands Area. The Pinelands Commission's Comprehensive Master Plan will determine appropriate septic density of areas of the Pinelands National Reserve which is inside the Commission's jurisdiction. The Department will determine the appropriate septic density for portions of the Pinelands National Reserve outside of the Pinelands Area. The Department may estimate HUC11-specific groundwater recharge based only on those portions of the HUC11 which are outside of the Pinelands Area for application in its jurisdictional area.

144. COMMENT: The rule uses three people per household as the basis for nitrate dilution modeling. This value is well below the values developed by Listokin, et al., 2006, and used in the Highlands RMP, of roughly 3.8 people per household. The use of three, instead of 3.8, provides a 26 percent increase in allowable septic system density. The proposal summary provides no justification for using three, and this value seems indefensible given the detailed work in the Listokin, et al., study. On the other hand, the use of 10 pounds nitrate per person per year is a common value and acceptable for residential purposes. (73, 125, 298)

RESPONSE: The Department has carried forward from the prior rule the models used for the nitrate dilution analysis, which ultimately outline appropriate septic densities to meet the 2 mg/L

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nitrate in the groundwater standard. These rules maintain the requirement that WMP agencies perform a nitrate dilution analysis on a HUC 11 basis. Since adoption of the 2008 rules, the nitrate dilution model, A Recharge-Based Nitrate-Dilution Model for New Jersey V6.2, was subjected to a peer review by the Department's Science Advisory Board (SAB). See "Response to Charge Questions on the Nitrate Dilution Model, Summary Report of the NJDEP Science Advisory Board," March 14, 2011, at <http://www.state.nj.us/dep/sab/nutrient-report.htm>. As indicated in the Response to Comment 130 above, the SAB determined that use of the model for regional planning purposes was appropriate.

The Listokin study gives a range of household sizes based on number of bedrooms and the type of housing. Values range from 1.80 to 3.77 people per home. As a statewide average, three people per home is reasonable. A detailed study of population and housing in the New Jersey Highlands Area showed most homes on septic systems had a greater number of bedrooms than average, justifying a higher value (four people/home) there. As a default statewide number outside the Highlands Region, three people per home is a reasonable value. The SAB also concluded that the use of three people per household was reasonable. A different per person household value may be appropriate in certain cases based on region-specific studies.

145. COMMENT: The indication at N.J.A.C. 7:15-4.5(c)3 that the RMP wastewater planning standards (and build-out analysis) only apply to Highlands conforming municipalities, but not to non-conforming Highlands municipalities, contravenes the legislative intent of the Highlands Act to protect water supply and water quality for the entire Highlands region. Many Highlands municipalities have not yet conformed to the RMP, so the majority of the Highlands area would

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not receive the benefits of the Highlands Regional Master Plan planning. Coordination between DEP regulations and requirements with the Highlands rules and the RMP is welcomed; it is essential to remove duplication of applications, studies etc., saving paperwork and staff effort for both agencies as well as the applicant. This should take place immediately after the rules are adopted for a timely effect. (17, 93, 235, 266)

RESPONSE: N.J.A.C. 7:15-4.5(c)3 provides that in the Highlands preservation area and in Highlands conforming municipalities, the nitrate dilution analysis is to be based on the requirements of the Highlands rules, or the RMP, respectively, as it is more appropriate that these more specific standards apply. However, it would not be appropriate to mandate that non-conforming municipalities comply with the RMP if they have not opted to conform to the RMP. Thus, N.J.A.C. 7:15-4.4(c)3 provides that, for municipalities in the Highlands planning area that have not conformed to the Highlands RMP, the Department's delineation requirements for the remainder of the State apply. However, the Department will continue to coordinate closely with the Highlands on all projects that are located within the Highlands region.

146. COMMENT: The proposed rule does not uphold the State's obligation to protect our public trust resources, including both wildlife and a clean and abundant water supply. The Highlands Act mandated that the Highlands Council determine the carrying capacity of the Highlands region. The regional plan is supposed to do that. However, as part of the preparation of the Regional Master Plan, the Council performed a buildout analysis for the entire region and then refined it at the municipality level. Development permitting in the Highlands region should

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be kept at the RMP buildout level by the NJDEP. The proposed water quality management rules severely undercut protections for natural resources that the Highlands RMP has identified, mapped and seeks to protect with its goals, policies, and objectives. (93)

RESPONSE: The WQMP rules are an important part of the Department's water resource management program, which does protect wildlife as well as providing a clean and abundant water supply. Conformance with the RMP is not obviated by these rules. Instead, the rules specifically require that proposed wastewater facilities are consistent with the Highlands rules in the Highlands preservation area and require that the nitrate dilution capacity analysis specified in the Highlands RMP be utilized in Highlands conforming municipalities. However, under the Highlands Water Protection and Planning Act and the implementing rules for the planning area, municipalities have discretion regarding whether to seek conformance with the RMP. While the WQMP Rules do not require non-conforming municipalities in the Highlands to comply with the requirements of the Highlands rules, the Department will continue to coordinate closely with the Highlands on all projects that are located within the Highlands region, both in conforming and non-conforming municipalities.

Nonpoint Source Pollution Requirements

147. COMMENT: Consistency with environmental standards for water supply, stormwater, riparian zone protection and steep slope protection, when met early on in the development of a WMP, provides a great deal of predictability to all interests, including the regulated community. Piecemeal compliance under permitting programs, rather than through the comprehensive

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planning potential of WMP development, is the antithesis of planning, it makes the permitting process more tedious for both the Department and the permittee, and provides far less predictability. (235)

148. COMMENT: The removal of steep slopes ordinance is contrary to the authorizing statutes and regulations. The Department's assurance that it will "encourage and work with municipalities to incorporate appropriate protections," is insufficient given the legal obligation to include these into the WQM plans. Steep slope protection is not a requirement outside of the Coastal Zone Management Rules, the Highlands Preservation Area and the voluntarily conformed Highlands Planning Area. It is a non-controversial and important environmental and land use standard that should remain as a requirement. (213, 235)

149. COMMENT: The cost of restoring water quality in all of the State's impaired waters cannot be accurately predicted, but is in excess of \$30 billion. The 2008 clean water needs survey estimates the amount at \$36.5 billion. Yet, the Department is throwing away all the planning for clean and plentiful water, and instead saying that having a process in place to clean up the mess is sufficient. (119)

150. COMMENT: If the DEP intends to undertake watershed management planning and/or other WQM planning efforts, it would be appropriate to include water supply demand analysis. (171)

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151. COMMENT: Eliminating the requirements for local ordinances in this rule removes an important planning aspect and backstop to ensure stormwater pollution is adequately and fully considered in a holistic and cumulative manner. The Department's draft rule to strengthen and improve MS4 permits has not been made available, and removing NPS consideration within the WQMP process is unacceptable. (119)

RESPONSE TO COMMENTS 147 THROUGH 151: The 2008 rules, while well-intentioned, required too much analysis, to a degree that became unworkable in practice. The Department has determined that the re-focused wastewater planning requirements with these rules are consistent with the WQPA and sections 208 and 303 of the Clean Water Act, upon which the WQPA is based. In addition, the Department is also re-focusing the planning effort at the appropriate scale rather than requiring analysis that is more reflective of a site-specific review. The Department believes the rules strike the appropriate balance between regional planning with sufficient analysis and detail, while recognizing that site-specific analysis can and will be done at the permitting stage.

Protection of steep slopes is required in the Highlands Preservation area through the applicable rules at N.J.A.C. 7:38-3.8, and under the Coastal Zone Management Rules at N.J.A.C. 7:7-9.32. It is also an objective in the Highlands planning area as set forth in the Highlands RMP. Additionally, protections required through the local Soil Conservation Districts, and the State Soil Conservation Committee rules at N.J.A.C. 2:90, address environmental issues created by steep slopes. Additionally, many municipalities have opted to incorporate steep slope

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protection in land development ordinances based on their particular circumstances or past problems.

The Department intends to continue to implement the strategies in the NPS Program Plan and assist municipalities and counties, as well as local groups, such as watershed associations and other nongovernmental organizations, to take action to address NPS pollution. Such strategies are expected to include adoption of the previously developed model ordinances, as well as performance of stewardship activities, such as installation of green infrastructure like rain gardens.

152. COMMENT: The elimination of the water supply analysis is opposed. Before new development happens, the proposed site must be analyzed to ensure that sewer lines and septic systems won't contaminate our drinking water sources. Water supplies must also be evaluated to ensure there is enough to support the proposed development. (166, 273)

153. COMMENT: The elimination of the requirement that counties perform a watershed-based water supply/water budget analysis as a part of WMPs is supported because these are complex, costly analyses that require a high level of specialized technical expertise to perform correctly. This work should be performed by appropriately qualified experts at the statewide level as part of the State Water Supply Plan, and should take into account estimates of future water demand associated with potential new development that can be provided through the wastewater management planning process. This would aid in long term planning and provide

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more certainty in the development process. The State is encouraged to release the completed water supply master plan. (159, 171, 196)

154. COMMENT: The requirement that a demonstration that water supply needs associated with the environmental build-out can be met is a matter of good planning and should be retained as a required component of WMP development. To be valid, and to ensure that adequate recharge to groundwater and aquifers takes place to maintain the needed clean base flow to the streams from which we take drinking water, it is essential that all regulations regarding water supply be based on a current Water Supply Master Plan (WSMP). Making rule changes that decrease the quantity and quality of water before we know how much water we have and how much we need for the future is a foolish action. The Department should not propose such consequential rule changes without an updated WSMP to evaluate our water supplies and future needs. (21, 54, 115, 118, 235)

155. COMMENT: Requirements at existing N.J.A.C. 7:15-5.25(f) that the WMP not generate sewer-based water demands exceeding available water supplies based on the Statewide Water Supply Plan and other water supply plans should not be removed. This provision raises significant issues regarding potential conflicts between capital investments for sewerage and available water supplies. The Department's intent to rely on water supply permitting programs would not address the fundamental need for integrated water resources management. (73, 298)

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156. COMMENT: For 30 years, the State has been trying to get towns to make their land use planning decisions conform to either the availability of the water supply or the assimilative capacity of the groundwater and the surface water of the State. With the proposed removal of required analyses from the WQMP rules there will no longer be DEP evaluation of environmental impacts like water supply, sprawl, and stormwater discharge. Without Department oversight of environmental impacts of our water supply and development, not only will the State violate the Water Quality Planning Act and Water Quality Pollution Act, but we guarantee that there will be violations. (107, 290, 297)

RESPONSE TO COMMENTS 152 THROUGH 156: The Department continues to recognize the importance of water supply planning. However, the Department has determined that it is appropriate to decouple the strategies for water supply from the WMP process. Many of the protections in the 2008 rules, such as the water supply analysis, are duplicative of regulatory requirements in other Department programs. The Department's water supply program currently ensures planning and permitting of water supply infrastructure and new or expanded sources of water. This analysis relies on technical data that takes into account the appropriate Statewide and regional capacity issues with respect to water supply. Therefore, it is not necessary to require an additional analysis in the development of a WMP.

While no longer required to be part of the WMP, water supply concerns are addressed through other mechanisms including the Safe Drinking Water Act rules at N.J.A.C. 7:10 and the Water Supply Management Act rules at N.J.A.C. 7:19-6. Data from Water Supply Planning Initiatives has been updated and is available on the Department's website at the following links:

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Data

- Water Transfer Model Withdrawal, Use, and Return-Data Summaries

<http://www.nj.gov/dep/njgs/geodata/dgs10-3.htm>

Data Summaries, Statewide

- Water Withdrawals in New Jersey 1990 to 1999

<http://www.nj.gov/dep/njgs/enviroed/infocirc/withdrawals.pdf>

- Water Withdrawals in New Jersey 2000 to 2009

<http://www.njgeology.org/enviroed/infocirc/withdrawals2009.pdf>

Data Summaries by Watershed

- Workbook Summarizing New Jersey Withdrawals and Discharges on a HUC11 Basis

<http://www.nj.gov/dep/njgs/geodata/dgs13-1.htm>

- Reservoir Storage and Related Diversions in the Passaic and Hackensack River Basins, 1898 to 2011

<http://www.njgeology.org/geodata/dgs09-1.htm>

- Water withdrawals, transfers, and discharges by WMA, 1990-1999

<http://www.nj.gov/dep/njgs/geodata/dgs04-9.htm>

- Water Withdrawal, Use, Transfer and Discharge Summary 1990 to 1999 by HUC11

<http://www.nj.gov/dep/njgs/enviroed/HUC11.htm>

Data Summaries, Highlands

- Potable Water Supplied in 1999 by New Jersey's Highlands

<http://www.nj.gov/dep/njgs/enviroed/freedwn/highpotwater.pdf>

- Potable Water Supplied in 2011 by New Jersey's Highlands

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<http://www.njgeology.org/pricelst/ofreport/ofr15-1.pdf>

Data Analysis

- Using the Stream Low Flow Margin Method to Assess Water Availability in New Jersey's Water-Table-Aquifer Systems

<http://www.nj.gov/dep/njgs/pricelst/tmemo/tm13-3.pdf>

- Water Availability in New Jersey on a Watershed Management Area Basis

<http://www.njgeology.org/geodata/dgs14-1.htm>

157. COMMENT: The removal of duplicative requirements is supported, but only where requirements are, in fact, duplicative. (6, 57, 134, 168, 185, 199)

RESPONSE: The Department acknowledges the commenters' support.

158. COMMENT: Features that characterize headwaters (Category 1) will lose protection under the proposed changes to the SWM and FHACA rules, and by reference, it will apply to this rule as well. (21)

RESPONSE: Neither the adopted amendments to the Flood Hazard Area Control Act (FHACA) Rules, N.J.A.C. 7:13 nor the new WQMP Rules reduce protection of headwaters. As discussed in Response to Comments 166 through 169 in the adoption of amendments to the FHACA Rules (see 48 N.J.R. 1091), headwaters are naturally-occurring sources of a surface water, such as a spring or where surface waters coalesce into a discernible linear feature. The amendments

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referenced by the commenter removed the special water resource protection area (SWRPA) provisions that had been part of the Stormwater Management rules, N.J.A.C. 7:8, applicable to areas adjacent to waters designated as Category One waters under the SWQS and amended the riparian zone provisions of the FHACA Rules, which protect a similar area, designated as the riparian zone under those rules. As explained in the same response to comment on the FHACA Rules, many surface waters regulated under the FHACA Rules do not appear on the maps that had determined where the SWRPA was applicable and, accordingly, a riparian zone would apply where there was no SWRPA in many cases. In the rare instance that a feature appearing on the maps that determined applicability of the SWRPA was not considered regulated waters under the FHACA Rules, the feature did not possess a SWRPA under the Stormwater Management rules. Accordingly, the 300-foot riparian zones applicable to Category One waters under the FHACA Rules fully cover all surface waters that would have possessed a SWRPA under the Stormwater Management rules.

As further indicated in the response, the proposed and adopted amendments to the FHACA Rules did not change the FHACA Rules in any manner that would affect the application of a riparian zone to headwaters. However, the Department did decide to not adopt clarifying amendments to N.J.A.C. 7:13-2.2(a)3 in light of confusion that led some commenters on the FHACA Rules proposal to conclude that headwater protections were being reduced; headwater protections under the adopted FHACA Rules are the same as under the prior rules and have not been modified or reduced.

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The elimination of certain requirements from the WQMP rules have not resulted in less protection of the environment. New Jersey's water quality protection programs continue to include protection of riparian zones (including the 300-foot riparian zone associated with Category One streams and their tributaries, but also other waters not designated as Category One that would not have been subject to SWRPA requirements) and other near stream areas through the riparian zone protections provided by the FHACA Rules. These protections provide an effective strategy to guard against further degradation of the State's waters since they provide an excellent means to control pollutants carried by stormwater runoff to streams. Implementation of these measures is achieved through the Department's permitting programs.

159. COMMENT: If the NJDEP rule proposal of June 1, 2015 is adopted, riparian buffers will be eliminated from the Stormwater Management Rules at N.J.A.C. 7:8 and analogous (but not equivalent) buffers will be regulated under the Flood Hazard Area Control Act Rules at N.J.A.C. 7:13. The Department did not clarify in 2014 whether the FHACA rule provisions would substitute for the Stormwater Management Rule provisions in WMP development. The revised WQMP rules must continue to ensure that Category One waters and their 300-foot buffers are protected from sewered development and its attendant stormwater and nonpoint source pollution stresses. Future Sewer Service Areas must continue to be excluded from the areas within this buffer. (73, 107, 213, 273, 298)

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RESPONSE: With reference to the Department's proposal to amend the Flood Hazard Area Control Act Rules and related provisions in the Stormwater Management rules, see 47 N.J.R. 1041(a), June 1, 2015, and 48 N.J.R. 1067(a), June 20, 2016.

In the previous WQMP rule, N.J.A.C. 7:15-5.25(g) required that WMPs include an assessment of nonpoint source pollution impacts of planned future development that demonstrated that the environmental standards for stormwater, riparian zones and steep slopes were satisfied. In the case of riparian zones, compliance with the standard specified in the previous rule was to be demonstrated through submission of municipal ordinances providing specified protections. As discussed in Response to Comments 147 through 151, these requirements proved to be problematic making adoption of complete WMPs extremely difficult to achieve. Accordingly, this assessment is no longer required under the new WQMP rules.

While the nonpoint source pollution impact assessment previously required at N.J.A.C. 7:15-5.25(g) is no longer one of the components of a WMP, the rules continue to restrict delineation of sewer service area in environmentally sensitive areas, including Category One waters and their corresponding 300-foot riparian zone pursuant to N.J.A.C.7:15-4.4(d) and (e). Further, these areas continue to be protected through the Department's permitting programs.

160. COMMENT: Why are riparian zones included within the proposed definition of "Environmentally sensitive areas"? Such areas are adequately protected through the regulatory process implemented pursuant to authority of the Flood Hazard Area Control Act (FHACA). Riparian zones may be accessed for development in accordance with the Flood Hazard rules and should not be excluded from designation as part of the sewer service area. Such exclusion

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effectively purports to regulate riparian zones under the Water Quality Planning Act where no such authority exists and contrary to the exclusive authority of the Flood Hazard Area Control Act. (101)

RESPONSE: Development requiring sewer service is generally not compatible with the protection of ESAs, such as riparian zones. Protection of the 300-foot riparian zone corresponding to Category One waters is particularly important. The limitation on the extension of sewer service into ESAs, including riparian zones to Category One waters, is consistent with the Department's mandate to protect the ecological integrity and natural resources of the New Jersey, including water, endangered and threatened wildlife species, wetlands, and unique and rare assemblages of plants. Accordingly, for planning purposes, and in the interest of efficient allocation of resources, the WQMP rules exclude sewer service area delineation in environmentally sensitive areas, including riparian zones to Category One waters, with limited exceptions. Before any construction could begin, the applicant would have to obtain the necessary permits subject to the relevant Department regulatory program, including any permit required under the Flood Hazard Area Control Act Rules at N.J.A.C. 7:13.

161. COMMENT: The removal of the requirements found at existing N.J.A.C. 7:15-5.25(g)(1) decoupling a municipality's obligation to address stormwater/nonpoint source pollution requirements from the WQMP rules is contrary to the authorizing statutes. 40 C.F.R. 130.6(c) of the Clean Water Act regulations requires that a component of the WQM plans consist of several items which specifically includes "nonpoint source management and control."

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Specifically, the regulations require that the plan “describe the regulatory and non-regulatory programs, activities and Best Management Practices (BMPs) which the agency has selected as the means to control nonpoint source pollution where necessary to protect or achieve approved water uses.” Therefore, it is beyond the Department’s authority to remove these requirements from the rules and the plans prepared and submitted to the Department. (213)

RESPONSE: The Department continues to comply with the nonpoint source pollution requirements of the CWA through the CPP and multiple Department regulatory programs, including the Flood Hazard Control Rules at N.J.A.C. 7:13, the Stormwater Management Rules at N.J.A.C 7:8, and by the New Jersey Department of Agriculture through the Soil Erosion and Sediment Control Act at N.J.S.A. 4:24-39.

Consistency Determinations

162. COMMENT: The Department’s efforts to streamline the planning process under the proposed WQMP rules are supported, particularly the elimination of duplication of regulatory requirements in both planning and permitting phases. These proposed changes would not relax environmental standards, but merely avoid requiring performance of certain analyses during the planning process that must also occur during the permitting process. The duplication of analyses under the existing planning regulations serves no environmental purpose and represents a waste of public resources. (6, 24, 44, 46, 57, 63, 134, 139, 168, 176, 185, 196, 199)

RESPONSE: The Department acknowledges the commenters’ support.

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163. COMMENT: Planning at the permitting stage when time constraints are often present does not allow for thorough review. Plans for an area should be created which are ordinarily not modified at the permitting stage, resulting in very few variances. All alternatives to a variance should be required to be explored. (264)

RESPONSE: Please see the Response to Comments 147 through 151 above. The Department believes the rules strike the appropriate balance between regional planning with sufficient analysis and detail while recognizing that site-specific analysis can and would be done at the permitting stage.

164. COMMENT: Consistency determinations should not be shifted from the planning to the permitting stage. The demonstration of consistency with all program areas involving water quality must be required early in the process. Fully constructed wastewater plans should be available to applicants before they make financial and engineering commitments, thereby claiming “investment backed expectations” in the permitting process. Shifting too much of the planning analysis to the permitting stage will result in permit-by-permit decision making, which conflicts with the goals of comprehensive planning to guide land use decisions on a regional scale, and violates the Clean Water Act and Water Quality Planning Act. Without a plan, necessary modifications cannot be performed, and it will take longer to adopt amendments. Additionally, many water resource stressors are not covered by the NJPDES process or other current regulations but can be addressed by a comprehensive planning process that stimulates

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municipalities to provide appropriate protections for water resources and protects the Department from having to issue permits with unaddressed consequences. (21, 54, 73, 118, 157, 169, 213, 217, 236, 246, 248, 257, 273, 290, 298)

RESPONSE: The Water Quality Planning Act at N.J.S.A. 58:11A-10 and these rules at N.J.A.C. 7:15-3.2(a) provide that the Department shall not issue a permit or approval for any project which conflicts with an adopted WQM Plan. Conducting the consistency determination at the permitting stage is consistent with this requirement.

In accordance with N.J.A.C. 7:15-3.2(b) through (d), WQM plan consistency will be evaluated when a project or activity seeks a permit from the Department. At the time of permit application, the Department will determine whether the project or activity requiring centralized sewer service is located in a sewer service area. If so, there is a rebuttable presumption that the project or activity is consistent with the areawide plan. If a WQM plan has additional requirements, or if a wasteload allocation in an adopted TMDL has been established, those factors must also be addressed before the proposal can be deemed consistent. Requiring a demonstration that a project meets technical standards related to water quality protection from specific projects or activities is appropriate at the permitting stage, when actual proposals and current conditions are part of the decision making. If the project or activity is not in the sewer service area, a modification to the areawide plan, through either an amendment or revision, will be required to effectuate inclusion in a sewer service area before the permit could be processed further, or the applicant would need to modify the project so that it does not utilize centralized wastewater treatment services and thus does not need to be within an adopted sewer service area.

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Applicants and the Department will easily be able to determine if a site is within a sewer service area using the digital mapping coverage that the Department maintains on its website at <http://www.state.nj.us/dep/gis>. These maps can be accessed by relevant permit programs within the Department, as well as by any member of the public. Where a new DTW is not identified in an areawide WQM plan, or where an expansion to an existing DTW needs to be addressed in a WMP, a WQM plan amendment would be required.

The planning process will focus on specific environmental infrastructure determinations, identifying approved sewer service area, the existing infrastructure capacity, the sewage generating potential of the approved sewer service area, and the potential capacity deficiencies for wastewater treatment infrastructure that may need to be addressed over time.

165. COMMENT: A new section should be added under N.J.A.C 7:15-3.2 that states the following: “WMP agencies, affected regional planning entities, counties and municipalities should be notified of applications for consistency assessments. Applicants are required to obtain a written certification from affected regional planning entities and county and municipality government entities that the proposed project or activity is consistent with the applicable regional plan, areawide WMP, County and Municipal Master Plans, zoning, and other pertinent plans and policies. These certifications should be included as a component of a completed application. Applications that do not include these written certifications will be deemed incomplete by the Department.” (196)

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RESPONSE: The rules allow for simultaneous submission of an application for a modification of an areawide plan and any associated permit applications. Where such simultaneous submission occurs, the notice and input provisions of the WQMP rules would apply to the application to modify the areawide plan.

As indicated at N.J.A.C. 7:15-3.2(b), a project or activity that generates wastewater that is proposed to be conveyed to a NJPDES regulated wastewater facility is presumed consistent with the areawide plan if it is located within the sewer service area. Such a project would not require an amendment to the areawide plan, as affected entities would have already had the opportunity to provide input on the previous delineation of sewer service area. Where the project or activity is not within sewer service area, an applicant would be notified by the permit program of the determination that the proposed project or activity is not consistent with the areawide plan and, as indicated in N.J.A.C. 7:15-3.2(d), the applicant would either need to redesign the project to be consistent, or apply for an amendment or revision to the areawide plan. Where an amendment is required, N.J.A.C. 7:15-3.5(g)5 and 6 provide that an applicant shall request written statements of consent from affected entities, including regional, county and local government entities.

The obligation to perform the consistency determination is assigned to the Commissioner, and the Commissioner alone, under the WQPA at N.J.S.A. 58:11A-10. Accordingly, it would be inappropriate for the Department to, in essence, provide ultimate disapproval authority to all the entities listed by the commenter with the Department precluded from acting on any application should one of the entities refuse to provide the required certification.

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166. COMMENT: The Department should consider allowing smaller facilities with planning flows of less than 20,000 gallons per day to be deemed consistent with the applicable WMP and areawide WQMP without application for a site-specific amendment or revision. (101)

RESPONSE: Any project with flows greater than 2,000 gallons per day would require a NJPDES permit. Therefore, a consistency determination is required by N.J.S.A. 58:11A-10.

167. COMMENT: The shift in consistency determinations is opposed. Previously, if you weren't consistent with an areawide plan, you could not get a permit. With the proposed rule, now you can get a permit even if you are not consistent with the WQM plan, or if the plan isn't up-to-date with no enforcement or an environmental analysis. The rule should require that proposed site-specific amendments be consistent with assigned sewer service areas as defined in county wastewater management plans and municipal defined sewer service areas. (47, 107, 273)

RESPONSE: Consistent with the Water Quality Planning Act at N.J.S.A. 58:11A-10, the rules at N.J.A.C. 7:15-3.2(a) continue to require that all projects and activities affecting water quality be developed and conducted in a manner consistent with the WQMP rules and applicable adopted areawide WQM plan and also continue to specify that the Department will not issue a permit or approval that conflicts with an adopted areawide WQM plan or the rules.

In accordance with N.J.A.C. 7:15-3.2(b) through (d), WQM plan consistency will be evaluated when a project or activity seeks a permit from the Department. At the time of permit application, the Department will determine if the project or activity requiring centralized sewer

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service is located in a sewer service area. If so, there is a rebuttable presumption that the project or activity is consistent with the areawide plan. If an areawide WQM plan has additional requirements, or a wasteload allocation in an adopted TMDL has been established, these must also be addressed in order for the proposed project or activity to be consistent. Instead of requiring a demonstration that a project or activity meets technical standards related to water quality protection in the planning stage, this demonstration of technical merit will occur during the permitting stage, when actual proposals and current conditions can be part of the decision making.

168. COMMENT: N.J.A.C. 7:15-3.2(b) is unacceptable since “area eligible for sewer service” is not a feature that is mapped and adopted as part of areawide WMPs, and can lead to actions by the Department that are inconsistent with areawide WMPs. Furthermore, areas eligible for sewer service are subject to change upon periodic update of the Department’s GIS environmental datasets, including, but not limited to, Threatened and Endangered Species Habitat, which occurs outside of the WMP process. This creates a loop-hole that could potentially allow applicants and the Department to circumvent adopted areawide WMPs and undermine county and local master plans and zoning ordinances. This language should be revised in a way that would eliminate the possibility of a project/activity in any area other than a sewer service area being considered consistent and therefore not requiring at least some level of project review by designated planning agencies (DPAs) and NJDEP.

Therefore, this provision should be reworded as follows: “The Department shall determine if a project or activity is located within an assigned sewer service area as delineated on

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an adopted areawide wastewater service area map, as part of the Department's review of a permit application. There is a rebuttable presumption that a project or activity that generates wastewater that is proposed to be conveyed to a NJPDES regulated wastewater facility is consistent with the areawide plan if it is within an assigned sewer service area of an adopted areawide WMP, and is expected to generate wastewater flows less than 20,000 gallons per day."

Updated treatment plant capacity analyses should be provided to NJDEP by the applicant for projects that are expected to generate flows in excess of 20,000 gallons per day, for consideration as part of the consistency determination process. However, the rule should require that copies be simultaneously submitted to areawide WMP agencies for review within the context of the analyses performed as part of adopted areawide WMPs; and the Department should be required to take into consideration their review findings. Guidance should also be provided in the rules as to the circumstances under which one or a combination of amendments would generate the need for a regional amendment or update to an areawide WMP. (139, 196)

RESPONSE: N.J.A.C. 7:15-3.2(b) provides, in part, that the Department shall determine if a project or activity is located within an area eligible for sewer service as part of the Department's review of a permit application.

As defined at N.J.A.C 7:15-1.5, "eligible for sewer service area" means areas determined to meet the criteria for designation as sewer service in accordance with N.J.A.C 7:15-4.4 that are either assigned or unassigned to a specific wastewater treatment facility in the areawide WQM plan(s). As assigned and unassigned sewer service areas are features reflected in GIS mapping, "areas eligible for sewer service" are, by definition, mapped as well. N.J.A.C 7:15-1.3 re-

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designates all previous wastewater service area designation adopted prior to these rules as follows: (1) All areas designated as a sewer service area associated with a specific wastewater treatment facility are designated as assigned sewer service area; (2) All general wastewater service area designations for wastewater facilities with planning flows less than 20,000 gallons per day and which discharge to ground water are designated as non-sewer service area; and (3) All general service area designations for wastewater facilities with planning flows of 2,000 gallons per day or less and which discharge to ground water and areas designated as non-discharge areas are designated as non-sewer service area. Therefore, there should be no confusion between what was designated on a previously adopted map and its meaning in the context of these rules, and the determination of whether a parcel is in a sewer service area to allow for permitting to proceed.

As noted in the Response to Comment 166 above, any project with flows greater than 2,000 gallons per day would require a NJPDES permit and, therefore, a consistency determination. This applies to projects that generate wastewater flows less than 20,000 gallons per day. With respect to reviewing treatment capacity information for plants over 20,000 gpd, the Department assumes that the facility is not already in the sewer service area, otherwise there would be no need to review WQMP consistency. In that instance, the applicant would need to apply for a site-specific amendment. N.J.A.C. 7:15-3.5(h) provides that an applicant for a site-specific amendment must provide the WMP agency and others a copy of the application at the time of submission. This should satisfy the request to have such information. Additionally, the Department has provided the flow data for each NJPDES permitted facility that is required to submit DMRs on its website at www.nj.gov/dep/wrm.

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169. COMMENT: Would a project or activity outside the designated eligible areas automatically be denied an amendment, even if it would meet the criteria? While it would appear from N.J.A.C. 7:15-3.2(d) that an amendment could still be considered for a project/activity that is within a non-sewer service area, and, therefore, areas that could be considered eligible could have a non-sewer service designation, this is not clear from the proposed definitions. The definitions of “eligible for sewer service area” and “non-sewer service area” should be modified for clarification and consistency with this subsection. (139, 196)

RESPONSE: Any proposed project or activity proposing to use a wastewater treatment facility outside an eligible sewer service area is inconsistent with the adopted areawide WQMP and, in accordance with N.J.A.C. 7:15-3.2(a), the Department could not issue a permit or approval unless that inconsistency is resolved. As indicated in N.J.A.C. 7:15-3.2(d), if the applicant wishes to proceed with its plan to use a wastewater treatment facility to address wastewater for a proposed development in a non-sewer service area, the applicant must adopt an amendment pursuant to N.J.A.C. 7:15-3.5 or a revision pursuant to N.J.A.C. 7:15-3.4. Alternatively, an applicant could resolve the inconsistency by redesigning the project or activity so that it conforms to the areawide WQM plan.

The commenters did not specify what changes they suggest should be made to the definitions of “eligible for sewer service area” and “non-sewer service area” to clarify the definitions or resolve any perceived inconsistency with N.J.A.C. 7:15-3.

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170. COMMENT: The stipulation at proposed 7:15-3.2(f)6 that all residual use or disposal practices are deemed consistent is very helpful and sensible, since residuals management is already regulated under NJPDES regulations. (57)

RESPONSE: The Department acknowledges the commenter's support.

171. COMMENT: In N.J.A.C. 7:15-3.2(f), the Department recognizes that certain projects and/or activities do not generate sewage and, therefore, should be automatically deemed consistent with the WQMP. The language should be clear that if a project or activity does not generate sewerage, then it is automatically deemed consistent. We recommend that all site remediation activities would be deemed consistent with the WQM plans. The Department should specifically include remedial actions taken under the supervision of a Licensed Site Remediation Professional (LSRP) as being deemed consistent. (6, 46, 134, 168, 185, 199, 236)

RESPONSE: N.J.A.C. 7:15-3.2(f) lists a very limited set of activities that would be automatically deemed consistent with the areawide WQM plan. Consistency determinations are not limited to projects that generate sewage. New or expanding treatment plants (those which are not in CSO communities) must still obtain a consistency determination pursuant to N.J.A.C. 7:15-3.1 and 3.2.

With respect to remediation sites, the rules include provisions for activities automatically deemed consistent. N.J.A.C. 7:15-3.2(f)1 provides that removal or remedial actions performed or required by the Department or by Federal agencies or by their agents, under any statutes

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authorizing Department or Federal removal or remedial actions for hazardous substances, shall be deemed consistent with adopted areawide plans. N.J.A.C. 7:15-3.2(f)10 allows certain General Permit Authorizations (GPAs) issued by the NJPDES Program under an approved General Permit to be considered consistent without review of the sewer service area maps. These types of discharges are often short-term, non-residential, do not generally involve off-site generation or disposal, and are classified as minor permits by the USEPA. Types of general permits issued by the Department include: general petroleum product clean up permits, ground water remediation permits, hydrostatic testing, non-contact cooling water, swimming pool discharges (non-residential), potable water treatment plant filter backwash, lined surface impoundments, sanitary subsurface, dental amalgam, basin discharges at sanitary landfills, and other similar types of operations or facilities.

172. COMMENT: N.J.A.C. 7:15-3.2(f)7 should be clarified to demonstrate that this provision is also protective of groundwater resources and surface waters for which TMDLs have not been established. (196)

RESPONSE: Even if deemed consistent with an adopted areawide WQM plan, an industrial treatment works that only treats wastewater generated from on-site activities, must obtain and comply with a NJPDES permit. In addition, the effluent limitations must reflect an applicable TMDL.

Delineation Requirements

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173. COMMENT: The theory that you don't designate a sewer service area for a thousand-unit development when there is not enough available water supply, and where environmentally sensitive features are present, has been repudiated by this proposal because it no longer makes those planning functions mandatory. This proposal will lead to sewer service area designations that will invite development and investment, and raise expectations from municipalities to counties to the private sector and then put tremendous pressure on the Department in the permitting process to deny a permit. (290)

RESPONSE: With reference to water supply consideration, please see Response to Comments 152 through 156 above. While water supply analysis is no longer required to be part of the areawide plan for the reasons explained in that response, as indicated in that response, water supply concerns continue to be addressed by other Department programs. Regarding the protection of environmentally sensitive areas, the rules continue to protect these areas such that, with limited exceptions, environmentally sensitive areas are not eligible for sewer service. See also Response to Comments 30 through 36 above.

174. COMMENT: The process, requirements and criteria for delineating unassigned sewer service areas should be set forth. Unassigned sewer service areas should be delineated by WMP entities, in collaboration with counties, municipalities, WQM Plan entities, State and regional planning entities and the Department. The delineation of unassigned sewer service areas for existing developed neighborhoods and redevelopment areas that are served by a preponderance of failing and/or outdated ISSDS for which alternative wastewater management solutions are

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needed to protect public and environmental health and safety, and where implementation of these solutions will occur prior to the end of the areawide WMP's 20-year planning horizon year should be encouraged. (196)

RESPONSE: N.J.A.C. 7:15-4.5(b)2 provides the process, requirements and criteria for delineating areas eligible for sewer service, which consist of areas that are either assigned or unassigned to a specific wastewater treatment facility. Assigned sewer service area is that for which a specific DTW or industrial treatment works has been identified. Unassigned sewer service area means areas eligible for sewer service for which a specific DTW or industrial treatment works has not been identified. Thus, the process, requirements, and criteria for the delineation of unassigned sewer service area are the same as the criteria for assigned sewer service area; once an area eligible for sewer service has been identified, and assigned sewer service area has been identified, the remainder of the area eligible for sewer service is unassigned.

Regarding capacity treatment analysis in unassigned sewer service areas, N.J.A.C. 7:15-4.5(b)1ii refers to the projected future wastewater flows that will be generated from future developments under N.J.A.C. 7:15-4.5(b)1ii, which provides that future wastewater flows shall be calculated based on whether the relevant municipality is identified as urbanized pursuant to N.J.A.C. 7:15-4.5(b)1ii(1), or as non-urbanized pursuant to N.J.A.C. 7:15-4.5(b)1ii(2). When a project within an unassigned sewer service intends to connect to an identified DTW or industrial treatment works facility, there is no requirement that the WMP be immediately updated with this information. However, the Department anticipates that, at or about the same time the NJPDES

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permit is issued, the Department will initiate an amendment to the areawide WQM plan to amend the WMP sewer service area map to reflect the expansion of the assigned sewer service area. As part of the proposed amendment, consultation with the relevant WMP agency and all affected governmental and private entities will occur in accordance with N.J.A.C. 7:15-3.5(g)6.

Additionally, when determining the delineation of sewer service area for any unassigned sewer service area, the Department would also consider local planning objectives as provided at N.J.A.C. 7:15-4.4(h).

175. COMMENT: The proposed rules prohibit sewer service areas in threatened and endangered habitats, even though the Water Quality Planning Act does not include any such language. Further, the proposed rules retain water quality-related threatened and endangered habitat reviews, which are duplicative since all such issues are already addressed in FHACA and Wetland Permit Program applications. (176)

RESPONSE: The rules are promulgated under several of the Department's authorizing Legislative acts including the WQPA, the WPCA, the FHACA, and the Natural Heritage Program Act. The Department has determined that sewer service areas should not include environmentally sensitive areas, including threatened and endangered species habitat, except in limited circumstances as addressed elsewhere in this document. An applicant has the option of pursuing an HSD or HIA to refine the impact on threatened and endangered species habitat for a particular project.

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The Landscape Maps identify areas that provide presumptively suitable habitat for a particular species based on modeling that intersects confirmed endangered and threatened wildlife species occurrences with known behavior/life history requirements of a particular species. The use of the Landscape Project methodology to identify area of documented and suitable habitat has been affirmed by the Appellate Division, See ZRB, LLC v. DEP, 403 N.J. Super. 531 (App. Div. 2008); *In re Adopted Amendments to N.J.A.C. 7:7A-2.4*, 365 N.J. Super. 255 (App. Div. 2003), and its use in the water quality planning process has also been upheld. See *In re Adoption of N.J.A.C. 7:15-5.24(b) and N.J.A.C. 7:15-5.24(e)*, 420 N.J. Super. 552, 568-571 (App. Div. 2011).

176. COMMENT: The proposal references 180,000 acres of environmentally sensitive lands that were removed from SSAs. Because of the constraints under which these acres were removed, the definition of environmentally sensitive areas, and the elimination of constraints in the proposal, those 180,000 acres can be re-entered in sewer service area. The Christie Administration has added over 120,000 acres into sewer service and now they have created an even bigger loophole to add tens of thousands of more acres. This will open the door to amend or extend sewers into environmentally sensitive areas of the Pinelands, Highlands, open space, and nearby reservoirs and streams. Please clarify this on adoption, because it looks like these areas can come in through site-specific amendments and include permit applications which are not considered in the planning process. (107, 273, 290)

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RESPONSE: As indicated in the proposal summary at 47 N.J.R. 2533, since 2008, the statewide sewer service area mapping effort initiated under the prior WQMP rules resulted in the removal of approximately 180,000 acres of environmentally sensitive area from areas that were previously identified as sewer service area, while approximately 10,000 acres of sewer service area were added for a net decrease in sewer service area of 170,000 acres. The basis for the commenters' assertion that 120,000 acres of sewer service area have been added is unclear.

The WQMP rules exclude environmentally sensitive areas from areas eligible for sewer service, except in limited circumstances specified in N.J.A.C.7:15-4.4, which significantly limits delineation of additional sewer service area in environmentally sensitive areas.

In general, for areas outside of the Pinelands area, Highlands preservation area and conforming municipalities in the Highlands planning area, N.J.A.C. 7:15-4.4(d) provides that environmentally sensitive areas are not eligible for sewer service area designation. Limited exceptions are provided at N.J.A.C. 7:15-4.4(i), but even in the limited circumstances identified there, the area will remain not eligible for sewer service unless the Department has determined that the area is not critical to the survival of a local population of endangered or threatened wildlife species. Natural Heritage Priority Sites are specifically excluded from potential inclusion within sewer service area under N.J.A.C. 7:15-4.4(i). Finally, N.J.A.C. 7:15-4.4(k) provides strict criteria that must be satisfied in order to delineate sewer service area impacting environmentally sensitive areas designated as environmentally sensitive based upon the Landscape Maps.

In the Pinelands and Highlands areas, additional sewer service area in the Pinelands Area, Highlands preservation area and conforming municipalities of the Highlands planning area can

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only occur when the applicable Pinelands CMP or Highlands RMP, respectively, has been amended to identify the area as appropriate for development requiring sewers.

Further, delineation of sewer service area is for planning purposes only, and any development would still be subject to permit review. Where an application satisfies the WQMP requirements for inclusion in sewer service area, an amendment or revision under the rules would be appropriate.

177. COMMENT: We encourage the Department to add language that reinforces the ability of municipalities to plan for redevelopment and land uses that are focused on transit use, affordable housing and fiscal balance. This is a particularly important municipal planning issue in light of the March Supreme Court decision, as many municipalities are redoing their housing plans.

(176)

178. COMMENT: We are back to where we were in the 1980s where developments will be used under the excuse of affordable housing in the middle of nowhere. (273)

RESPONSE TO COMMENTS 177 AND 178: The Department encourages municipal planning for redevelopment, transportation and affordable housing that is consistent with these new rules. Consideration of local planning for these and other issues through local master planning and zoning is reflected in N.J.A.C. 7:15-4.4(h). While local planning initiatives are an important component of wastewater management planning, sewer service area delineation will only be

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approved if it complies with all requirements of the WQMP rules designed to protect environmentally sensitive areas and protect water quality.

179. COMMENT: The Department proposes at N.J.A.C. 7:15-4.4(j)2 to allow the use of a Habitat Suitability Determination (HSD) to rebut Landscape Project and Natural Heritage Priority Site data, and to allow (at N.J.A.C. 7:15-4.4(k)) the use of a Habitat Impact Assessment (HIA) to determine whether a proposed project will actually impact the habitat. Under the current rules, it is difficult to rebut Landscape Project data, and there are no rules to determine whether impact to a particular habitat would occur with proposed development. The proposed rules regarding delineation of SSA will protect threatened and endangered habitat where it exists, but will not unnecessarily restrict SSAs where habitat does not exist or impact can be avoided. (6, 57, 134, 168, 185, 199)

RESPONSE: The Department acknowledges the commenters' support.

180. COMMENT: N.J.A.C. 7:15-4.4(a) should be revised as follows: "Sewer service areas should be determined in accordance with the provisions of this section". The new rule must clearly distinguish between the terms "areas eligible for sewer service" and "sewer service areas", which have very different meanings. The rules should specify that sewer service areas can be either "assigned sewer service areas", "unassigned sewer service areas", or "non-sewer service areas". (196)

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181. COMMENT: N.J.A.C. 7:15-4.3(c) specifies the features that must be illustrated on the maps that must be included in areawide WMPs, none of which include the delineation of areas eligible for sewer service. As such, it is strongly recommended that the term, “areas eligible for sewer service” be substituted with the term “assigned and unassigned sewer service areas” in N.J.A.C. 7:15-4.4(a), (b), (c), (d), (f), (g), (h). This change is also necessary to ensure the re-designation of adopted wastewater service areas pursuant to N.J.A.C. 7:15-1.3 is valid. (196)

RESPONSE TO COMMENTS 180 AND 181: As specified at N.J.A.C. 7:15-1.5, “eligible for sewer service area” are areas that have been found to be appropriate for connection to a domestic treatment works or industrial treatment works in accordance with N.J.A.C. 7:15-4.4, and are either assigned to a specific wastewater treatment facility in the areawide WQM plan, or unassigned if no treatment facility has yet been identified. Assigned areas are those that currently are connected and convey flows to a specific wastewater treatment facility and those areas within which development is reasonably expected to connect to that facility. Unassigned sewer service areas are not associated with a specific wastewater treatment facility. The definition for “sewer service area” includes the land area that has been determined to be eligible to pursue a permit to connect to a domestic treatment works or industrial treatment works. This definition additionally makes clear that inclusion in a sewer service area does not guarantee that capacity exists or will exist to provide treatment for all flow from that area. In accordance with N.J.A.C. 7:15-4.3(c)3vi, assigned and unassigned sewer service area, which together form the area eligible for sewer service, are required to be mapped on the Wastewater Service Area Map 3.

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As provided at N.J.A.C. 7:15-1.3(a), all previously-adopted plans and modifications remain in full force and effect until the WMP agency proposes a new revision or amendment. Upon application for a proposed revision or amendment, the plan must adhere to the re-designations provided at N.J.A.C. 7:15-1.3(b). Since areas eligible for sewer service consist of assigned and unassigned sewer service areas, and modifications to previously-adopted plans or plan modifications must adhere to the re-designations provided at N.J.A.C. 7:15-1.3(b), the rules address the concerns raised by the commenter.

182. The Department's recognition of management areas designated as appropriate for growth within the Pinelands Comprehensive Management Plan (CMP) as areas eligible for sewer service, specifically Regional Growth Areas, Pinelands Villages and Pinelands Towns, is supported. (232)

RESPONSE: The Department acknowledges the commenter's support.

183. COMMENT: N.J.A.C. 7:15-4.4(c)3 finally makes it clear that Highlands Planning Area towns that do not conform to the RMP may use the same standards in determining septic density as any other community in the state. This should enable those towns to move ahead with their WMPs. (17, 266)

RESPONSE: The Department acknowledges the commenters' support.

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184. COMMENT: It is recommended that a new sentence be added before the last sentence of N.J.A.C. 7:15-4.4(d), stating “Further, areas shall not be delineated for sewer service where a municipal master plan or zoning explicitly states that sewer service is not to be provided.” This provision would make an explicit connection to local planning efforts and not override local decisions to have an area not served. (125)

RESPONSE: N.J.A.C. 7:15-2.4(a)5 directs that the Department shall consider other pertinent planning documents, such as local land use plans, when reviewing proposed amendments and revisions. Further, N.J.A.C. 7:15-4.4(h) directs that land uses allowed in zoning ordinances, future land uses shown in municipal and county master plans, and local land use objectives shall be considered in the delineation of areas eligible for sewer service.

Municipal master plans and municipal zoning ordinances can sometimes be inconsistent. If a municipality clearly demonstrates that certain areas should not be included in a sewer service area and provides a basis for that determination, the Department will give additional weight to the municipality’s determination when making a decision on sewer service area delineation. While these rules seek to coordinate as much as possible with local, regional and State planning, the Department retains final decision making authority regarding wastewater management planning. Therefore, no change is being made.

185. COMMENT: The proposed provision at N.J.A.C. 7:15-4.4(d) that “These represent the minimum standards; WMP agencies may incorporate more protective standards into the applicable WMP” is opposed. (101)

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RESPONSE: The Department believes that the standards for a WMP outlined in the rules achieve the goal of baseline wastewater management planning. As indicated in Response to Comment 184 above, the Department through the WQMP rules recognizes the role of the local government planning process. The role of the WMP agencies and local land use planning is further recognized by the WQPA at N.J.S.A. 58:11A-2(b) and 7. In the event a county or municipality desires more protective standards based on local considerations, this provision provides those governing bodies with the discretion to impose them.

Environmentally sensitive areas and local planning objectives

186. COMMENT: The Department's GIS-based Threatened and Endangered Species Habitat dataset is subject to change, and this data layer is a determinant of "areas eligible for sewer service." Therefore, it is inappropriate to apply "areas eligible for sewer service" in the same manner as "sewer service areas," which are represented as "Service Areas for Facilities to Discharge to Surface Water," "Service Areas for Facilities Discharging to Groundwater" and "Septic Areas" and form the basis of the countywide FWSA Maps adopted previously by the Department pursuant to the 2008 WQMP rules. (196)

RESPONSE: That Landscape Maps are subject to change and are a factor in delineating sewer service area existed under the previous rules, and will continue to exist under these rules.

Landscape Map changes may result in areas that have not been in sewer service being converted to eligible for sewer service area (if it is determined that an area previously identified as habitat

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no longer qualifies as habitat), as well as areas that are in sewer service area being re-designated to no longer be eligible for sewer service (if a previously unmapped habitat area for threatened and endangered species triggering N.J.A.C. 7:15-4.4(e) is identified). In the latter situation, the Department could initiate an amendment to the WQMP, or, if there is an actual project that is proposed, then at the permitting stage, the technical review of the project would identify the existence of mapped threatened and endangered species habitat, which would trigger Department initiation of an amendment to the WQMP. To the extent an applicant disagreed with the basis for the area being classified as threatened or endangered species habitat, the applicant could apply for a site-specific amendment for the parcels pursuant to N.J.A.C 7:15-3.5 and provide the information required by N.J.A.C. 7:15-4.4(j) in order to rebut the mapped environmental data. Inclusion in a sewer service area does not guarantee approval of any required permits for the project.

187. COMMENT: The demarcation of sewer service areas using the 25+/- acre environmentally sensitive delineation that considers only four environmental features is opposed. It would be much more productive to review these environmental features when considering other significant planning factors such as economic development, agriculture and farmland retention, recreation, urban and suburban redevelopment, historic preservation, public facilities and services, transportation, housing, educational facilities, etc. (220)

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RESPONSE: N.J.A.C. 7:15-4.4(e) specifies how environmentally sensitive areas, which are generally not eligible to be included in area delineated for sewer service, are to be determined. This provision is designed to ensure that environmentally sensitive areas are protected from the higher intensity development that generally occurs in areas served by sewers. The rules do allow environmentally sensitive areas to be included in sewer service area in limited circumstances where an area has been recognized as appropriate for growth taking into account many of the factors mentioned by the commenter through plan endorsement approved by the State Planning Commission or when the area is located within Planning Area 1 on the State Plan Policy Map in the State Development and Redevelopment Plan. However, the area will only be included in sewer service area if the Department determines that the area is not critical to survival of a local population of endangered or threatened wildlife species. Outside of environmentally sensitive areas, local land use planning based upon factors including those cited by the commenter are considered in the delineation of areas eligible for sewer service in accordance with N.J.A.C. 7:15-4.4(h).

To the extent the commenter is suggesting that environmentally sensitive area should not receive special consideration in the delineation of areas eligible for sewer service, but should instead be balanced against economic development and other local planning considerations, the WQMP rules have in the past reflected the Department's recognition of the significance of these areas and the importance of protecting them; this will not change in the new rules.

188. COMMENT: The Department should add wellhead protection areas (WHPAs) as a feature of environmentally sensitive areas. The type and intensity of development that occurs

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within a WHPA directly affects the quality and quantity of New Jersey's drinking water. Over time, sewers leak and break, and, when placed in WHPAs, unnecessarily risk contamination of drinking water sources. Therefore, sewer service areas should not be located within WHPAs.

(213)

189. COMMENT: The Department should add high groundwater recharge areas to the definition of environmentally sensitive areas. Sewer service areas and the high percentage of impervious cover that they support are inappropriate for high aquifer recharge areas, which sustain drinking water sources for more than 25 percent of New Jersey residents. (213)

190. COMMENT: The Department should consider amending the environmentally sensitive areas definition to include forest patches larger than 100 acres, as well as 300 foot buffers surrounding trout production and maintenance streams, as well as streams upstream of surface water intake points. These forest and stream features hold special ecological significance for maintaining clean water resources, maintaining biodiversity, and combating global warming.

(213)

RESPONSE TO COMMENTS 188 THROUGH 190: As defined at N.J.A.C. 7:15-1.5, "environmentally sensitive areas" are areas that are important to the maintenance or improvement of water quality, or to the conservation of the natural resources of the State. The definition of environmentally sensitive areas also identifies four environmental features for illustrative purposes, and indicates that environmentally sensitive areas are not limited to only

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these four features. When previously assisting WMP agencies in the delineating sewer service area through the development of FWSA maps, the Department identified environmentally sensitive areas as provided at N.J.A.C. 7:15-4.4(e). This was a starting point to identify the environmentally sensitive areas the Department wanted to protect, and for which the Department possessed accurate geospatial data that could be used to readily identify such areas. Once the Department generated the map, the WMP agency could consider other environmentally sensitive features or factors, pursuant to N.J.A.C. 7:15-4.4(h)3, such as the land uses permitted in local zoning ordinances, future land uses as provided in local master plans, public open space, source water protection, or other areas that are not expected to support development which would require connection to sewers. Additionally, WMP agencies could rebut the environmentally sensitive area data provided by the Department using the criteria in N.J.A.C. 7:15-4.4(i) – (l). Further, environmentally sensitive areas have been specifically identified as excluded from sewer service area in 201 Facilities Plans grants (i.e. steep slopes, prime agricultural land, etc.). Limiting the definition could impact these 201 Facilities Plan grant limitations by creating confusion as to what distinct areas are effected by the limitations.

191. COMMENT: The proposed rule, at N.J.A.C. 7:15-4.4(e), provides a link to a digital GIS wetland file, but the “Wetlands” GIS file does not exist at the link provided. What is the GIS wetland layer meant to be referenced in the proposed rule? (171)

RESPONSE: The wetlands GIS data is available, as stated in the rule, as a download on the Department’s webpage at <http://www.nj.gov/dep/gis/listall.html> titled “Wetlands.”

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192. COMMENT: Of major concern is that the Landscape Maps are still the focus of Threatened & Endangered Species (T&E) analysis. The Landscape Maps were created to guide the acquisition and stewardship of land, not to be a basis for lot-by-lot development regulation. Although the references to Planning Area 1 and centers allow some flexibility, this is still a flawed basis for delineating sewer service areas. While the proposed rules include updated procedures for challenging the Landscape Map delineations (including Habitat Suitability Determinations and requests for the Department to perform Habitat Impact Assessments), this puts the applicant in a defensive position to rebut inaccurate Landscape Maps and involves considerable time and expense in order to return to a sewer service area. (176)

RESPONSE: The Superior Court of New Jersey, Appellate Division has ruled that the application of the Landscape Mapping in the context of the development of WQMPs is consistent with the DEPs overall mission of protecting the State's natural resources. See *In re Adoption of N.J.A.C. 7:15-5.24(b) and N.J.A.C. 7:15-5.24(e)*, 420 N.J. Super. 552, 568-572 (App. Div. 2011). In the context of land use planning and regulation and from a scientific standpoint, the Landscape Project geographic information systems (GIS) data are designed to identify habitat of endangered, threatened and special concern wildlife species and thus provide scientifically sound information that transparently document those habitats. Landscape Project habitat delineations are based on documented wildlife occurrences that undergo a rigorous quality assurance/quality control (QA/QC) (see http://www.state.nj.us/dep/fgw/ensp/landscape/appendix_i.pdf) process and one of the most

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detailed and accurate statewide land mapping datasets in the nation, NJDEP's 2007 Land Use/Land Cover (LU/LC) (see <http://www.nj.gov/dep/gis/lulc07shp.html>). The most recent version of the mapping embodies the latest science on home ranges of listed species and the specific habitat types they require to carry out their life history processes – foraging, sheltering and breeding. Landscape Project maps do not predict species presence based on a suite of landscape characteristics favored by a particular species, but rather depict habitat patches that species use based on real occurrence locations and habitat associations that have been reviewed and mapped according to established scientific protocols. For each documented species occurrence, a “species occurrence area” (SOA) is applied that is based on the average home range or territory size, or other appropriate life-history parameters as reported in peer-reviewed scientific literature, or from information obtained through Division of Fish & Wildlife research and expert opinion. In other words, since species need to move to carry out their life cycle, a scientifically derived area is applied to the actual point on the landscape where it occurred. This SOA represents the habitat that supports the individual occurrence and often indicates the presence of a species population beyond the individual documented occurrence. SOAs are overlaid onto species-specific habitat patches that are developed by performing a review of scientific literature and/or from information obtained through ENSP research (See Appendix IV and Appendix V of the Landscape Project Report at http://www.state.nj.us/dep/fgw/ensp/landscape/appendix_iv.pdf, and http://www.state.nj.us/dep/fgw/ensp/landscape/appendix_v.pdf, respectively). A SOA will value habitat it overlays only if that habitat is appropriate for the species. Since imperiled species are typically not abundant across the landscape, a single occurrence may represent a significant

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portion of the local population and often indicates the presence of a larger population within a habitat patch. Landscape Project habitat delineations represent the habitat needed to support local populations indicated by individual documented occurrences. The Landscape Project mapping method is covered in detail in the Landscape Project Report (Version 3.1). Please see http://www.state.nj.us/dep/fgw/ensp/landscape/lp_report_3_1.pdf.

The new rules have provided several options at N.J.A.C. 7:15-4.4(j) that have streamlined the manner in which an applicant may demonstrate compliance, making the process more efficient and less costly. To this extent, the Department believes the rules have reached an appropriate balance between the need to encourage development where appropriate and protecting habitats that support the State's ecological and economically important natural resources. In the event an applicant believes a map is inaccurate, the applicant may apply for a Habitat Suitability Determination pursuant to N.J.A.C. 7:15-4.6.

193. COMMENT: Every Federally listed species has its own biological requirements. The proposed exclusion related to acreage appears arbitrary. (243)

RESPONSE: There is no acreage limitation to the evaluation of threatened and endangered species habitat. The 25-acre limitation is applied only to the review for the delineation of sewer service area. If an environmentally sensitive area consisting of threatened and endangered species habitat covers less than 25 acres, the area could potentially be included in the sewer service area for planning purposes, however; the project is still subject to any State and Federal regulatory programs that would be triggered when an applicant applies for permits for a specific

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project on that site. Through the permitting programs, the potential impact of a proposed development or other regulated activity on the threatened and endangered species habitat will be assessed and necessary action taken, including potential denial of the permit application, to protect that habitat.

194. COMMENT: For adopted sewer service area maps, please clarify whether the Department will evaluate the conditions of N.J.A.C. 7:15-4.4(g) on a case-by-case basis. (90)

RESPONSE: Under the prior rules, as part of a consistency determination review in accordance with prior N.J.A.C. 7:15-3.2(c)1x, the Department evaluated the existence of 201 Facilities Plan grant conditions on a case-by-case basis when an application was made for a site specific amendment, and, if the proposed site specific amendment was adopted, the updated sewer service area GIS layer would reflect those areas excluded as a result of the grant condition. The FWSA maps adopted under the prior rules were not required to contain information that reflected the 201 Facilities Plan grant conditions addressed in the new rules at N.J.A.C. 7:15-4.4(g). In these rules, the mapping requirements for a WMP now specify, at N.J.A.C. 7:15-4.3(c)2viii, that the Selected Environmentally Sensitive Feature Map 2 must include the boundaries of environmentally sensitive areas in which 201 Facility Plan grant limitations prohibit the extension of sewer service, if available. This map would be reviewed as part of the processing of any site specific amendment application. Should the map indicate that the proposed site specific amendment impacts an area subject 201 Facilities Plan grant limitations, that area would be excluded from consideration for inclusion in sewer service area in accordance with N.J.A.C.

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7:15-4.4(g) unless the applicant provided documentation that proved that a map revision or waiver had been granted by EPA.

195. COMMENT: Under this rule there are now areas that could have sewer extension that are prohibited under EPA grant requirements. These prohibited areas are environmentally sensitive, like flood hazard areas, or places where the endangered species have habitat. This violates conditions of EPA grant requirements for sewer plants under Section 208 of the plan. (107)

RESPONSE: Pursuant to N.J.A.C. 7:15-4.4(g), environmentally sensitive areas subject to 201 Facilities Plan grant limitations that prohibit the extension of sewer service may not be included in areas eligible for sewer service absent specific approval from USEPA. Mapping of these areas is not readily available for all areas, but it remains applicable on a site-specific basis. An applicant may achieve extension of sewer service to these areas only by obtaining the approval of a mapping revision or waiver from USEPA.

196. COMMENT: N.J.A.C. 7:15-4.4(g) should be amended to provide further clarity, as follows: “N.J.A.C. 7:15-4.4(g) Environmentally sensitive areas, as defined in (e) above”. (101)

RESPONSE: “Environmentally sensitive areas” are defined at N.J.A.C. 7:15-1.5 as land areas possessing characteristics or features that are important to the maintenance or improvement of water quality, or to the conservation of the natural resources of the State. Such areas include areas beyond the four examples listed in the definition and the four types of environmentally

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sensitive areas taken into account in N.J.A.C. 7:15-4.4(e). Areas subject to 201 Facilities Plan grant conditions that preclude extension of sewer service area may include types of environmentally sensitive areas beyond those considered for the purposes of N.J.A.C. 7:15-4.4(e).

As indicated in the definition of “eligible for sewer service area,” the purpose of the mapping of areas eligible for sewer service area is to reflect areas that are connected or will potentially connect to a DTW. Accordingly, inclusion of areas subject to Federal grant conditions precluding sewer service within areas eligible for sewer service purely because the environmentally sensitive area is not one considered for the purposes of N.J.A.C. 7:15-4.4(e) would be inappropriate.

197. COMMENT: N.J.A.C. 7:15-4.4(h) recognizes the importance of local land use planning and zoning in determining where, when and whether sewer infrastructure should be extended. This recognition is strongly endorsed. It also leads to a potentially simple formulation for determining where sewerage should be extended. (76, 83)

RESPONSE: The Department acknowledges the commenters’ support.

198. COMMENT: The word “considered” in N.J.A.C. 7:15-4.4(h) is a weak, non-actionable term that should be replaced with “addressed” to make clear the intent to fully coordinate with local planning where possible. (125)

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RESPONSE: The connection to local planning efforts is articulated at both N.J.A.C. 7:15-4.4(h), and at N.J.A.C. 7:15-2.4(a)5. N.J.A.C. 7:15-4.4(h) provides that local zoning ordinances, municipal or county master plans, and local land use objectives will be considered in the delineation of areas eligible for sewer service. N.J.A.C. 7:15-2.4(a)5 provides that the Department shall consider other pertinent planning documents, such as local land use plans, when reviewing proposed amendments and revisions. However, there are municipalities in which the county or municipal master plan is not consistent with local zoning. Thus, the Department must maintain flexibility to consider these factors based on the particular circumstances of an application. Therefore, the Department declines to change the provision as suggested.

199. COMMENT: Sewer service should not be provided to future development that has a density insufficient to result in sustainable, cost-effective operation and maintenance of the collection system. (125)

RESPONSE: The Department agrees that an analysis of the capacity necessary and the appropriate wastewater management system selected includes consideration of short-term and long-term infrastructure needs.

200. COMMENT: N.J.A.C. 7:15-4.4(h)3, particularly the provision stating “or other areas that are not expected to support development that would require connection to sewers,” should be clarified. As proposed, the provision was too vague and could be based on speculation at the

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local level. N.J.A.C. 7:15-4.4(h)3 should be revised as follows: “Local land use objectives, such as agricultural activities, preservation of permanently preserved farmland or public open space, forests, wildlife management areas, natural areas, preserves or other conservation areas, source water protection, or other areas that are not expected to support development that would require connections to sewers shall be appropriate to include in non-sewer service areas”. (101, 196)

RESPONSE: The language suggested by the commenters adds “agricultural activities” to the examples already provided of possible subjects of local land use objectives, as well as the indication that these areas “shall be appropriate to include in non-sewer service areas.” The list of examples of potential local land use objectives included in N.J.A.C. 7:15-4.4(h)3 is not intended to be all-inclusive, but is instead simply intended to provide some examples of the most common local objectives that will be considered in determining whether an area is appropriately delineated as eligible to receive sewer service. These objectives are considered in conjunction with local zoning and master plans. The Department believes the examples are sufficiently illustrative and that preservation of agricultural uses would be captured to the extent such intent is reflected in local zoning, master planning, or through farmland preservation activities.

The purpose of N.J.A.C. 7:15-4.4(h) is to identify factors related to local land use planning that must be considered in the delineation of areas eligible for sewer service, not to identify any particular area as appropriate for inclusion in either area eligible for sewer service or non-sewer service area. Accordingly, addition of the suggested language at the conclusion of this provision would be inappropriate.

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State Plan considerations and infill development

201. COMMENT: That the plan endorsement process is “costly, complicated, and time-consuming” does not permit the Department to circumvent that process to create centers by adding areas into a sewer service area. Again, the Department is misplacing its emphasis on economic development, not environmental protection. (213)

RESPONSE: N.J.A.C. 7:15-4.4 does not grant the Department the authority to create centers. Rather, where the area proposed to be included in sewer service area is within an area identified for growth in an endorsed plan approved by the State Planning Commission, the Department is adding flexibility to the delineation process. Thus, an area that would otherwise be precluded from sewer service area due to the presence of endangered or threatened wildlife species, may be included in the sewer service area, but only if the area is not critical to the survival of a local population of endangered or threatened wildlife species.

202. COMMENT: That the State Planning Commission may be transitioning away from a State planning policy map to criteria based on growth planning process means even more uncertainty with regard to the future of this rule proposal. (222)

RESPONSE: In developing this rule, the Department carefully re-examined whether it could better incorporate the New Jersey State Development and Redevelopment Plan (State Plan) developed in accordance with the New Jersey State Planning Act, N.J.S.A. 52:18A-196 et seq., into the water quality management planning process. The State Plan was developed to provide a

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balance between growth (development and redevelopment) and conservation (environmental protection and preservation). The State Plan Policy Map reflects planning policies geographically. The Policy Map serves as the underlying land use planning and management framework that informs funding, infrastructure improvements, and preservation for programs throughout New Jersey. The Department will continue to monitor the evolution of the State Plan and subsequently amend these rules, if necessary.

203. COMMENT: The proposed rules provide additional flexibility for the delineation of sewer service areas in Planning Area 1, endorsed plans or infill development to include threatened or endangered species habitat, if deemed not critical to survival of the species. The new strategies for addressing habitat impacts are another tool that can support re-use and redevelopment, as well as environmental restoration within the urbanized portions of the State where growth is desired. (101, 176, 196)

RESPONSE: The Department acknowledges the commenters' support.

204. COMMENT: The Department's proposal to increase the amount of sewer service area in environmentally sensitive areas in growth areas is more expansive than those permissible under the State Plan. According to the State Plan, "[a]s a result of limited system capacity, locational limits or other factors, not all Centers have to plan for growth." State Plan, p. 235. Permitting the extension of sewer service area into an environmentally sensitive area merely because of its listing as a growth area is improper. (213)

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RESPONSE: The statement referenced by the commenter continues that “In these cases, the Center Boundaries should be delineated tightly around these existing places, making them Centers with limited future growth potential.” N.J. Development and Redevelopment Plan, 235 (2001) (See <http://www.nj.gov/state/planning/docs/stateplan030101.pdf>). Thus, the State Plan provides for flexibility in the delineation of areas eligible for sewer service in areas designated for growth.

Flexibility is reflected in several provisions of the rule and is, in part, intended to funnel growth to areas slated to handle that growth while ensuring that environmentally sensitive features are appropriately protected. If the area proposed to be included in sewer service area is identified for growth in the State Plan Policy Map as in Planning Area 1, within an area identified for growth in an endorsed plan, or considered infill development, the rules establish a more manageable approach to water resources planning and management in New Jersey, and for ensuring that projects and activities approved by the Department are consistent with the environmental protection requirements in areawide WQM plans. This will be accomplished by simplifying the process for delineation of sewer service area, and by relying on the technical review associated with processing permits and other approvals to ensure that the water quality is protected.

The WQMP rule provides for the delineation of areas eligible for sewer service for planning purposes only. While the rule requires an analysis of wastewater treatment capacity, resolution of any capacity deficiency is resolved in the permitting stage, when a plant seeks a TWA connection.

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205. COMMENT: It is particularly disturbing that the proposed WQMP rules seek to establish a lesser standard of protection for municipalities that have participated in plan endorsement by allowing such center based developments to be located in an environmentally sensitive area if “the Department determines that the environmentally sensitive areas included in the sewer service area are not critical to a population of endangered or threatened species, the loss of which would decrease the likelihood of the survival or recovery of the species in the State” N.J.A.C. 7:15-5.24(h)1. It is strongly urged that the language allowing center based development to locate in environmentally sensitive areas be deleted from the final rules. (213)

RESPONSE: The rules include changes that simplify the WQM plan amendment process, for both WMPs and site-specific amendments, eliminating redundancy, and relying on permitting programs for technical reviews for permitted activities.

N.J.A.C. 7:15-4.4(i)1i, allows the extension of sewer service in an environmentally sensitive area, for planning purposes only, if the area is located within an area of an endorsed plan identified for growth and approved by the State Planning Commission. N.J.A.C. 7:15-4.4(i)2 and 3 provide that the Department must determine that such areas are not critical to the survival of a local population of endangered or threatened wildlife species, and that such areas remain subject to Department regulatory permitting programs on a site-specific basis.

The language cited by the commenters is language from the 2008 rules repealed as part of this rulemaking. Rather than focus on the impact loss of the local population would have on the likelihood of the survival or recovery of the species in the State, the new rule focuses on the

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impact on the local population. The Department believes that the limited exception provided for PA1 and other areas designated for growth from the general rule of environmentally sensitive area being precluded from eligibility for sewer service, provided the habitat impacted is not critical to a local population of threatened or endangered species, is appropriate.

206. COMMENT: The Department is proposing to include environmentally sensitive areas in a sewer service area in Planning Area 1 regions as a default based on the idea that environmentally sensitive areas are only permitted to be in sewer service area after a Habitat Suitability Determination and a finding that the area is not critical to the survival to the species. This approach is extremely problematic, not in concept but in the manner in which requirements are lifted without regard to the SDRP's overall framework and specific provisions. The default finding should be that the environmentally sensitive area is not part of the sewer service area until such time as the HSD is performed. (54, 213)

RESPONSE: The rule does not allow for the inclusion of environmentally sensitive areas in sewer service area as a default in areas located within Planning Area 1 on the State Plan Policy Map. Instead, the rule generally excludes environmentally sensitive areas from delineation as area eligible for sewer service. Rather than environmentally sensitive area being automatically included in area eligible for sewer service in Planning Area 1, such area will only be considered for inclusion in area eligible for sewer service if requested in a WMP or as part of a site-specific amendment application.

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Further, inclusion of environmentally sensitive area as eligible for sewer service will only be approved if the Department determines, in accordance with N.J.A.C. 7:15-4.4(i)2, that the area is not critical to the survival of a local population of endangered or threatened wildlife species.

A habitat suitability determination in accordance with N.J.A.C. 7:15-4.6 seeks to demonstrate that the habitat rank on the Department's Landscape Maps of Habitat for Endangered, Threatened and Other Priority Wildlife is not accurate; that the area is not suitable habitat for endangered or threatened wildlife species and the area accordingly should not be classified as environmentally sensitive on the basis of such habitat. A habitat suitability determination is not applicable under N.J.A.C. 7:15-4.4(i).

207. COMMENT: Parks, Preserves and other open spaces in Planning Area 1 – where their social value is extremely high – should be protected in the rule proposal. (54)

RESPONSE: These rules intend to accommodate growth in appropriate areas while reducing pressure for growth in less appropriate areas and ensuring that important resources are protected. Planning Area 1 was originally delineated based upon existing development patterns and the presence of existing infrastructure to support it. Statewide, there are approximately 840,000 acres in Planning Area 1. Of those 840,000 acres, an estimated 68,000 acres were outside of sewer service area, including open spaces. However, in open spaces, bathrooms and recreation facilities in Planning Area 1 require treatment connections, as septic systems are inappropriate and impractical for these types of uses.

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Even if a parcel is added to the sewer service area under this provision for planning purposes, it will be subject to the requirements of the Department permitting programs, local approvals and any applicable deed restrictions that may be in place if it was purchased with public funds through programs like the Green Acres program. Inclusion in a sewer service area for planning purposes does not guarantee that applicable Department permits will be issued for a particular parcel or project area, and an applicant must satisfy the relevant permitting requirements before a project or activity may proceed.

208. COMMENT: Invoking the PA-1 designation from the SDRP's now 14-year-old mapping will require additional mapping using SDRP criteria and a careful examination the SDRP's Goals, Policies and Objectives for PA-1 and incorporation of applicable policies in the proposed rule. (54)

RSEPNSE: In developing this rule, the Department carefully re-examined whether it could better incorporate the New Jersey State Development and Redevelopment Plan (State Plan), developed in accordance with the New Jersey State Planning Act, N.J.S.A. 52:18A-196 et seq., into the water quality planning process. The State Plan recognizes and attempts to balance growth (development and redevelopment) and conservation (environmental protection and preservation). One of the State Plan's specific goals, "Goal #2: Conserve the State's Natural Resources and Systems," provides the strategy for balancing growth and the environment. The strategy is:

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“[to] Conserve the state’s natural resources and systems as capital assets of the public by promoting ecologically sound development and redevelopment in the Metropolitan and Suburban Planning Areas, accommodating environmentally designed development and redevelopment in Centers in the Fringe, Rural and Environmentally Sensitive Planning Areas, and by restoring the integrity of natural systems in areas where they have been degraded or damaged. Plan, design, invest in and manage the development and redevelopment of Centers and the use of land, water, soil, plant and animal resources to maintain biodiversity and the viability of ecological systems. Maximize the ability of natural systems to control runoff and flooding, and to improve air and water quality and supply.”

The Department believes that no additional mapping is necessary given the various environmental reviews that are required when environmentally sensitive areas are present at a site. These rules are consistent with the State Plan policy with respect to balancing growth and conservation.

209. COMMENT: Planning Area 1 was never viewed by the SDRP as a monolithic entity.

The boundaries of PA-1 routinely bump up against PA-5, PA-4, and PA-4b, and more intense growth facilitated by the expansion of sewer service areas will create “spillover” effects on the more environmentally sensitive planning areas. The Department’s approach to using the SDRP

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must reflect a hierarchy that carries out the Plan's intent and should not treat Planning Area 1 as a "fire free zone" for capacity expansion. This improper classification violates the WQPA, which calls for close consistency. (54, 107, 273)

RESPONSE: There are instances throughout the State where Planning Area 1 abuts Planning Areas 4, 4b and 5. However, there is no spillover effect resulting in pressure to expand sewer service area into PA-4, 4b or 5. These rules will not impact sewer service area in these areas, since sewer service area, generally, cannot be extended into these areas without a planning area designation change (mapping change) approved by the State Planning Commission.

Additionally, these rules provide flexibility intended to funnel growth to areas slated to handle that growth, while ensuring that environmentally sensitive features are appropriately protected.

The Department is adding flexibility to the delineation process where an area proposed to be included in sewer service area is identified for growth in the State Plan Policy Map as within Planning Area 1, within an area identified for growth in an endorsed plan, or where the proposed development is considered infill development. That area which would otherwise be precluded from sewer service area due to the presence of endangered or threatened wildlife species may be included in the sewer service area for planning purposes only, but only if the area is not critical to the survival of a local population of endangered or threatened wildlife species. Any site remains subject to the technical review associated with processing permits and other approvals.

210. COMMENT: Under N.J.A.C. 7:15-4.4(i)1ii, the Department should expand sewer service areas to include all lands designated as Planning Area 2, excluding environmentally sensitive

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areas. Planners of the State Plan determined that areas meeting Planning Area 2 criteria should support future development. Planning programs, such as the WQMP, should take a similar approach and allow sewer service areas to be defined in Planning Areas 2 even if current infrastructure is not in place. The Department will always have the right to review proposed development projects in these areas through the existing regulatory programs. (46)

211. COMMENT: Planning Area 2 locations were not given the same flexibility as Planning Area 1 as far as potentially including Environmentally Sensitive Areas in sewer service areas. Planning Area 2 represents the future development potential in the State and is often centered on transportation facilities and interchanges. This area should have the same flexibility, particularly when slated for development in county and municipal master plans. (101, 176)

212. COMMENT: The State Plan is over 20 years old and does not have environmental criteria in it including Category One streams or threatened and endangered species. The extension of sewers in Planning Area 2 requires no analysis of environmental impacts, and this rule did not require build-out and allows automatic sewer extension into Planning Areas 1 and 2. The State Plan also does not have maps for environmentally sensitive areas or flood prone areas. (107, 273)

RESPONSE TO COMMENTS 210 THROUGH 212: As indicated in the proposal summary, due to the overlap in many of the characteristics shared by Planning Areas 1 and 2, the Department evaluated whether it would be appropriate to allow sewer service in environmentally

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sensitive areas if they are in Planning Area 2 areas. However, the Department determined that such an allowance would not be appropriate. In contrast to the information regarding existing development and existing infrastructure relied upon in the original delineation of Planning Area 1 areas, when Planning Area 2 was originally delineated in the mid-1980s by the then Office of State Planning (now the Office for Planning Advocacy), staff relied heavily on the sewer service area delineations of the time. At the time, sewer service areas included vast areas of “planned” sewer service with little to no infrastructure in place to support the development and the delineations were made absent the environmental features considerations required under the current rule. Further, while some goals overlap, Planning Area 2 does have different planning goals than Planning Area 1, including protecting natural resources and reversing observed patterns of sprawl development. Accordingly, the Department has determined to retain the limitations set forth in the previous rule regarding sewer service area delineation in Planning Area 2.

With reference to the age of the State Plan and mapping under the State Plan, as indicated in Response to Comment 208, the Department believes that no additional mapping is necessary given the various environmental reviews that are required when environmentally sensitive areas are present at a site.

213. COMMENT: The operational 2001 State Development and Redevelopment Plan (SDRP) wholly fails to embrace the lessons learned from repeated flooding events from storms by the names of Floyd, Lee, Irene, and Sandy. Use of the outdated SDRP to direct increasing growth and density places people, property, and the environment in harm’s way. The Department

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cannot simply cherry-pick a few predevelopment policies from the SDRP without considering the balance of the plan's policies. (54)

RESPONSE: In developing this rule, the Department carefully examined whether it could better incorporate the SDRP into the water quality planning process. The Department believes that the SDRP serves as the underlying land use planning and management framework that informs funding, infrastructure improvements, and preservation for programs throughout New Jersey. Therefore, the Department will continue to recognize the SDRP as a significant influence on the Department's wastewater management program. Should changes be made to the SDRP, the Department will coordinate implementation efforts as necessary.

214. COMMENT: The language in N.J.A.C. 7:15-4.4(i)1iii should be expanded as follows: "Included to accommodate infill development, or remove undulations in the sewer service area boundary as necessary to create a linear boundary that coincides with recognizable geographic, political or environmental features depicted in Department and/or WMP agency GIS Coverages". (196)

RESPONSE: The Department does not support the addition of the "WMP Agency" qualifier for GIS coverages. It is important that one GIS coverage, the one maintained and updated by the Department, be applicable for all determinations under the rules. However, if the WMP Agency believes that it has information that is more accurate than the information contained in the

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Department's GIS coverages, the Department would evaluate any information from the WMP agency to determine if an amendment to a Department GIS data layer is appropriate.

215. COMMENT: Allowing the loss of T&E habitat for "in fill" or smoothing of future sewer service area sets up an unacceptable trade off: limited valuable habitat is being traded for administrative efficiency, or simply to accommodate more development. The concept of "in fill" is nothing more than additional development unless linked to an effective, enforceable smart growth or growth management plan that leverages the "in fill" against conservation of other areas outside a planned for and defined growth boundary. (73, 298)

RESPONSE: For the purposes of this rule, infill development refers to undeveloped and underdeveloped areas in an otherwise built-up area already connected to centralized wastewater treatment infrastructure. To qualify as infill, an area will need to be contiguous to and substantially surrounded by developed areas in existence as of the effective date of these rules. Including an effective date for existing development is intended to avoid incremental application of this concept, which is important to limit cumulative impacts. A project that generates wastewater flows of less than 8,000 gpd does not require a TWA from the Department pursuant to N.J.A.C. 7:14A-22.3(a)2. The Department has determined that this is an appropriate regulatory threshold for providing the type of relief intended for infill development while ensuring larger development and cumulative impacts remain subject to wastewater management planning review. Further, mere inclusion in a sewer service area for planning purposes does not guarantee that applicable Department permits will be issued for a particular project. An

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applicant must still satisfy Department permitting requirements for a project or activity to proceed.

216. COMMENT: Throughout the rules, the proposal allows the extension of SSAs into ESA as long as the area is not critical to the survival of a local population of endangered or threatened wildlife species or is within a Natural Heritage Priority Site. This definition is too limiting as mitigation is not always successful or adequate to replace the habitat that was lost. Areas that are important or would be beneficial to the survival of a local population should be protected as well.
(213)

RESPONSE: The critical to the survival of the local population of endangered or threatened species standard referenced by the commenter appears in two places within the new rules.

First, under N.J.A.C. 7:15-4.4(i), environmentally sensitive area may be included within sewer service area where the area is within an area identified for growth in an endorsed plan approved by the State Planning Commission, located in a Planning Area 1 in the SDRP or qualifies as infill development in a substantially developed area as long as it is determined by the Department that the area is not critical to the survival of the local population of the endangered or threatened wildlife species. This potential exception to exclusion of environmentally sensitive area from sewer service area is not applicable to Natural Heritage Priority Sites.

The second place the rules reference the critical to survival of the local population of a threatened or endangered species standard is with reference to a Habitat Impact Assessment pursuant to N.J.A.C. 7:15-4.7. There, as one of the findings that the Department may issue in

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response to a Habitat Impact Assessment application, the rules at N.J.A.C. 7:15-4.7(e)3 cross-reference N.J.A.C. 7:15-4.4(i) indicating that the Department may “issue a written finding ... that the proposed project or activity will or will not adversely impact an area critical to the survival of a local population of endangered or threatened wildlife species.” While a HIA may allow insignificant or discountable effects to the natural resource elements occurring within the Natural Heritage Priority Site, the finding pursuant to N.J.A.C. 7:15-4.4(i) is limited to threatened and endangered wildlife species.

The new rules provide for mitigation only through a Habitat Impact Assessment prepared in accordance with N.J.A.C. 7:15-4.7. Mitigation is not allowed for impacts to the natural resource elements of a Natural Heritage Priority Site (see N.J.A.C. 7:15-4.7(e)1iii). The only impacts to a Natural Heritage Priority that may be allowed under a Habitat Impact Assessment is an impact determined by the Department to result in insignificant or discountable effects on the natural resource elements occurring within the Natural Heritage Priority Site. For threatened or endangered wildlife species, mitigation is only allowed when it is demonstrated that the impacts to endangered and threatened wildlife species habitat cannot be avoided, and that the proposed project or activity includes implementation of conservation measures that will minimize to the maximum extent practicable all adverse modification of suitable habitat. If impact cannot be avoided and any impact is minimized to the maximum extent practicable, the mitigation must result in no net loss of habitat value to the endangered or threatened species, including the local population of that species.

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Allowing mitigation is not a new concept and is consistent with the Department's permitting programs for protection of important environmental resources in the Freshwater Wetlands Protection Act Rules, N.J.A.C. 7:7A, and the Flood Hazard Control Act Rules N.J.A.C. 7:13.

Regarding mitigation requirements in growth areas, mitigation focuses on ensuring that a local population of endangered and threatened wildlife species that has been documented in the area proposed for sewer service area will continue to sustain itself. The Department will prohibit activities that have a high probability to cause extirpation of a local population. The Department's focus in growth areas is on population impacts, which can include habitat impacts that immediately translate into population losses or extirpation. In "non-growth" areas, the Department's mitigation focus is on prohibiting or avoiding impacts to habitat that would likely prevent maintenance and growth of the local population within un-occupied or under-occupied, but suitable, habitat.

The Department believes the rules provide appropriate limits on potential expansion of sewer service area into habitat of threatened and endangered wildlife species and Natural Heritage Priority Sites, and further place appropriate conditions to ensure threatened and endangered plant and animal species are protected.

217. COMMENT: The regulation has the caveat at N.J.A.C. 7:15-4.4(i)(2) that such environmentally sensitive areas must not be critical to the survival of a local population of endangered or threatened wildlife species or within a National Heritage Priority Site. While this

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is a new and better standard, please clarify the factors that the Department would apply to determine whether the area is “critical”. (101)

RESPONSE: In general, the Department would consider areas documented to provide suitable breeding, resting, or feeding habitat for a known local population, or habitats that feature characteristics consistent with documented breeding, resting, or feeding habitats that are proximate to a documented species location and which are considered necessary to support the continued existence of the local population, as areas critical to the survival of a local population of endangered or threatened wildlife species. These may include, but are not limited to, amphibian breeding ponds and dispersal habitat, avian nesting and roosting habitat, or reptile dens, nesting sites, basking sites or hibernaculum sites. Areas used for foraging or that serve as important movement corridors may also be considered critical habitat as they provide for the continued survival of the local population on a case by case basis.

218. COMMENT: The overall delineation of sewer service area based upon environmentally sensitive areas is opposed, since other existing laws, land use regulations and Department permitting programs already regulate such areas and thus would result in redundancy in regulation. (101)

RESPONSE: The WQMP rules complement and are consistent with Department regulatory programs to protect environmentally sensitive areas. Outside of specific regions of the State where endangered or threatened species habitat is explicitly identified for protection (i.e. the

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Pinelands, Highlands and, to a lesser extent, the CAFRA area), the protection of environmentally sensitive areas classified as such based upon the presence of threatened or endangered species habitat is jurisdictionally limited. By incorporating environmentally sensitive area identification and protection within the broader planning goals of the WQMP rules, development can be directed away from regional habitats identified as most critical to maintaining water quality and natural resource diversity. Identification of environmentally sensitive areas at the planning stage in the WQMP process also benefits landowners by identifying environmental concerns at an early stage in project development. Such information may be used to craft a development proposal sensitive to these concerns, thereby minimizing the potential for costly and time consuming conflicts which could arise during future permitting reviews.

Opportunities to rebut Department environmental data and Habitat Suitability Determinations

219. COMMENT: The two-step process of habitat evaluation, where the applicant challenges the Landscape Project mapping itself, presents acceptable methods of crafting re-examination of the Landscape designations for these purposes. (73, 298)

RESPONSE: The Department acknowledges the commenters' support.

220. COMMENT: If any project has a Federal nexus, it is expected that the Federal agency or their designee will complete the necessary Section 7 consultation and abide by all sections of the Federal ESA. Section 7 of the ESA requires Federal agencies to use their authorities to carry out conservation programs to benefit endangered and threatened species. As

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a result, Federal agencies have a unique opportunity and obligation to assist recovery implementation by addressing threats that result from their programs and actions. In the absence of a Federal nexus, all provisions of Section 9 of the ESA apply to the NJDEP. (243)

RESPONSE: The Department will continue to coordinate with the United States Fish and Wildlife Service (USFWS) regarding Federal endangered and threatened species.

221. COMMENT: Too many provisions in the proposed rules allow sewer service areas to find their way into environmentally sensitive areas. There is no DEP oversight on endangered species; therefore, it is up to the applicant to evaluate for T&E habitat. Habitat Impact Assessments and Habitat Suitability Determinations are essentially variances to allow development in ESAs. (107, 264, 273)

RESPONSE: Rather than relying upon an applicant to evaluate for threatened and endangered species habitat, the rules rely upon the Department's Landscape Maps of Habitat for Endangered, Threatened and Other Priority Wildlife, and the Department's Natural Heritage Database.

In all cases where the rules allow for sewer service area to be extended into ESAs, there is a standard that is evaluated associated with threatened and endangered species to ensure that threatened and endangered species are appropriately protected. At N.J.A.C 7:15-4.4(i), a proposal to extend sewer service area into ESAs in areas determined to be appropriate for growth can be considered only when the area is not critical to the survival of a local population of threatened and endangered species. As indicated in Response to Comment 217 above, in

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contrast to the equivalent provision in the 2008 rules, the new provision focuses on making clear that the local population must be protected, regardless of whether loss of that local population would have a significant impact on survivability or recovery of the species statewide. At N.J.A.C. 7:15-4.4(k), which establishes standards that must be satisfied in order for an area designated as an ESA to be included in sewer service area through a Habitat Impact Assessment, further standards are established that must be met before ESA may be included in sewer service area. Particularly, if the area added to sewer service area does not entirely avoid the threatened or endangered species habitat, the HIA must demonstrate to the Department's satisfaction that the proposed project or activity will result in insignificant or discountable effects on the maintenance of local breeding, resting or feeding of the threatened or endangered species or, if impacts to threatened and endangered species habitat cannot be avoided, the proposed project includes conservation measures that will minimize to the maximum extent practicable all adverse modification of suitable habitat and will mitigate for any such adverse modifications in a manner that provides for no net loss of habitat value to threatened and endangered species, including the local population of that species. Within the definition of "no net loss of habitat value" at N.J.A.C. 7:15-1.5, the Department outlines the general goals that any conservation measures, including a mitigation proposal, must satisfy. The language specifically addresses both habitat and species population concerns.

Through these safeguards, the rule allows for flexibility and opportunity to develop mitigation proposals that meet the intended standard of "no net loss," while ensuring that threatened and endangered species and their habitat are protected.

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Finally, through a Habitat Suitability Determination, the applicant seeks to demonstrate that the area is not suitable habitat for endangered or threatened wildlife species. If the applicant is able to demonstrate that to the satisfaction of the Department, and the sole basis for classification of the area as environmentally sensitive was the mapping of the area as endangered or threatened species habitat on the Department's Landscape Maps, the area is no longer classified as environmentally sensitive. Accordingly, the result of a successful Habitat Suitability Determination is not a 'variance' allowing sewers in an environmentally sensitive area – it is a recognition that the area is not appropriately classified as environmentally sensitive.

222. COMMENT: Allowing an applicant to determine the presence of T&E species, the Department is ceding authority to people whose best interest is not necessarily involved in establishing that T&E species are in place on a site. (257)

223. COMMENT: The process outlined at proposed N.J.A.C. 7:15-4.4(j)1-4, where an applicant "may rebut the presumption that the environmental data identified in (e) above is accurate ..." is of concern. (101)

RESPONSE TO COMMENTS 222 AND 223: The Department is not ceding its authority in the review of the presence of threatened and endangered species habitat. The Department's Landscape Maps serve as the source for the identification of threatened and endangered species. The Landscape Maps identify areas that provide presumptively suitable habitat for a particular

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species based on modeling that intersects confirmed endangered and threatened wildlife species occurrences with known behavior/life history requirements of a particular species.

The Habitat Suitability Determination process at N.J.A.C. 7:15-4.6, as well as the Habitat Impact Assessment at N.J.A.C. 7:15-4.7, provides an applicant the opportunity to rebut the Department's determination that an area should be considered ineligible for sewer service based on the presence of endangered or threatened wildlife species habitat, with the applicant attempting to demonstrate to the Department either that the area is not actually endangered or threatened species habitat, or that any impact would occur to the habitat from a proposed project or activity is necessary, minimized, and can be compensated for in a manner that will result in no net loss of habitat value. The Department will review the applicant's HSD or HIA application before making a decision based on the best information available to the Department at the time. In both cases, it is the Department that decides whether the applicant has made the demonstrations required by the rules; the Department will not approve inclusion of environmentally sensitive area in eligible for sewer service area if the applicant has not satisfied it that the rule standards have been met. Should the Department determine that the applicant has met the standards contained in the rules and an amendment to the sewer service area delineation in the WMP is appropriate, the Department's decision on either a HSD or HIA application will be included in the public notice for the proposed amendment and will be subject to public comment.

224. COMMENT: The Department would retain use of the Landscape Project maps as a basis for excluding Future SSA. However, the Department proposes to allow mitigation for some

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habitat types in order to allow expansion of FSSA into such habitats. The rule fails to specify whether it would focus on habitat value, as is done under the Freshwater Wetlands Protection Act and Coastal Zone Management rules, or on habitat acres. (73, 298)

RESPONSE: Within the definition of “no net loss of habitat value,” the Department outlines the general goals that any mitigation proposal must satisfy. The language specifically addresses both habitat and species population concerns. The specified standard is intended to ensure that there is no net reduction in the ability of an area to support a similar size, healthy population of the threatened or endangered species as the area supported prior to any impact, which may or may not be satisfied by an equal area of mitigation, with the necessary area to be determined on a case by case basis.

225. COMMENT: N.J.A.C. 7:15-4.4(k)4 outlines the procedure to include “agriculture dependent wildlife habitat” in sewer service area. Requiring conservation measures and mitigation to be implemented and monitored by a State agency or nonprofit is unacceptable. This would hinder the creation of expanded wastewater treatment for some farm-needed improvement on a farm supposedly mapped as areas 3, 4, or 5 on the Landscape Project maps, proven erroneous in many cases. It also implies loss of productive farmland or the need to purchase more land elsewhere, which presents a major expense. There should be a separate process for creating or expanding sewer service on working farms. (17, 266)

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RESPONSE: The Department will require that conservation restrictions be filed to ensure no net loss of habitat value, by itself or in combination with other conservation measures, on-site or off-site. Conservation measures may include habitat management plans that require active habitat enhancement over a period of time. In Pinelands Preservation Alliance v. State, Dept. of Environmental Protection, 436 N.J. Super. 510 (App. Div.), certif. denied 220 N.J. 40, 41 (2014), the Appellate Division upheld the Department's application of on-site and off-site conservation measures. In issuing the requisite land use permit, the Department found that, although the project would cause the direct loss of pine snake habitat on the construction site, and could result in a number of secondary impacts, such impacts would cause "no net loss" because of the applicant's proposed habitat enhancement activities both on and immediately adjacent to the development, and the applicant's preservation and enhancement of additional mitigating parcels would improve the habitat in the surrounding area.

There are other programs in the State, such as the Department's Green Acres program, that allow for conservation measures that are administered by a third party. When a party engages in mitigation activities, it does so willingly. Mitigation does not reflect a loss of agricultural land, rather, it helps to conserve certain farming practices already in place by having a conservation agreement that binds the use of certain parcels for a specific term to continued planting of crops on which the agriculturally dependent species depend. Conservation measures are identified and described in a conservation restriction or other recorded and enforceable document.

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226. COMMENT: A truncated Habitat Suitability Determination when a Landscape Project mapping error is obvious or the Landscape Map has been updated by the Department and the Sewer Service Area map in the adopted WQMP does not reflect the most recent Landscape Project mapping data is supported. (46)

RESPONSE: The Department acknowledges the commenter's support.

227. COMMENT: The application information required for a Habitat Suitability Determination is very onerous. Considering "suitable habitat" to be any site that provides any of the components necessary to sustain any endangered or threatened wildlife species of natural resource elements of a Natural Heritage Priority Site, seems to indicate that the result of the determination will most likely be "suitable", making the Landscape Project mapping and Natural Heritage Database nearly impenetrable. (220)

RESPONSE: The requirements for submitting an HSD are carried forward from the 2008 rules. The Department's experience in implementing the 2008 rules for demonstrating suitable habitat has resulted in the inclusion of Landscape mapped properties into the sewer service area.

Habitat Impact Assessments

228. COMMENT: The Department should consider providing more information on its practical application of the Habitat Impact Assessment to the regulated community and the public. The Department should amend proposed sections N.J.A.C. 7:15-4.6 and 4.7 to include

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timeframes for DEP to make a decision for the Habitat Suitability Determinations and Habitat Impact Assessments. Moreover, such issues are more appropriately addressed through the regulatory permitting process. Requiring review in the Water Quality Management process is unnecessary, duplicative and likely to add delay to the administrative process of site-specific amendment applications. (101)

RESPONSE: The HIA process is new and is not a duplication of any existing permitting program. As discussed in Response to Comments 30 through 36 above, the HIA process provides a new mechanism that allows an applicant to request review of a proposed project or activity for inclusion in the sewer service area because it avoids the habitat, will cause only insignificant or discountable effects to the wildlife habitat or natural resource elements, or, with respect to endangered and threatened wildlife species habitat, the project or activity includes conservation measures that will minimize to the maximum extent practicable all adverse modification of suitable habitat, and will mitigate for any adverse modification of habitat so that there is no net loss of habitat value for the local population of endangered or threatened wildlife species documented on-site, or their suitable habitat.

It is anticipated that an applications seeking Department review of a HIA will be in most cases be submitted as part of a packet including a Department permit application and an areawide WQM plan amendment application, as allowed by N.J.A.C. 7:15-4.7(c), which will allow the review to be conducted concurrently. Similar provision for concurrent review is provided for HSD applications under N.J.A.C. 7:15-4.6(b). However, not all projects and

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activities impacting threatened and endangered species habitat require a permit from the Department. In such cases, no review of impact occurs. Accordingly, it is appropriate to evaluate the designation of an area for sewer service using the HIA process as part of the WQMP rules.

Because habitat evaluation is often seasonally dependent and based on the lifecycle of the species, the time required for accurate and effective assessment may vary. As such, the rule cannot establish set timelines for the Department to make a decision regarding Habitat Suitability Determinations or Habitat Impact Assessments.

229. COMMENT: The proposal would permit the expansion of a SSA into an ESA under certain circumstances. The Department suggests that such a situation is appropriate as it would avoid environmental impacts caused by ISSDs. This proposal runs counter to the theme espoused by the Department that site-specific and project specific determinations are inappropriate in the planning stages and are only appropriate at the time when a project applies for permits. Following this logic, it would be inappropriate for the Department to include an area as SSA without the full submission of the plans for development and a permit application. (213)

RESPONSE: As indicated in the proposal summary beginning at 47 N.J.R. 2543, N.J.A.C. 7:15-4.4(k) and (l), specify the limited circumstances, in the context of an application for a site-specific amendment, under which areas designated as environmentally sensitive based upon the Department's Landscape Maps or natural resource elements of Natural Heritage Priority Sites may be included in sewer service area based upon the results of a Habitat Impact Assessment.

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In contrast to delineation of area eligible for sewer service for a larger geographic area based upon potential future build-out analyses, consideration of local planning objectives, and other factors specified in the rules, a site-specific amendment identifies a specific parcel and the HIA includes a detailed analysis of the specific site information required to be submitted as part of the application (including vegetation, elevation, slope and aspect, topographic feature information, soils information and other information regarding the site). Particularly, N.J.A.C. 7:15-4.7(d), requires that the application include all information specified in N.J.A.C. 7:15-4.6(c) as well as information regarding threatened or endangered species habitat, information on any species potentially impacted, and information on Natural Heritage Site boundaries on and surrounding the identified site. The detailed information provided through the Habitat Impact Assessment allows the Department to determine whether any portion of the site may be included in sewer service area. The Department anticipates that the request for Habitat Impact Assessment review will be received at the time of permit application in a packet including the permit application and an areawide WQM plan amendment application, as allowed at N.J.A.C. 7:15-4.7(c), with the Department to review the three applications, including the detailed permit application, concurrently.

In no case will the Department approve inclusion of ESA in sewer service as the result of a Habitat Impact Assessment unless the applicant demonstrates to the Department's satisfaction that the standards identified in N.J.A.C. 7:15-4.7(e)1 are satisfied.

The site-specific amendment process has been continued in the new rules in recognition that not all areas of the State are covered by adopted sewer service area maps and that, even for those areas that are, conditions can change over time. With reference to timing of the Habitat

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Impact Assessment in relation to permitting, as indicated above, the Department anticipates in many cases the application will be submitted either with the permit application or in close proximity to permitting. However, the rules specifically specify that the finding of a Habitat Impact Assessment is based upon conditions and information available at the time of assessment with it made clear that any Habitat Impact Assessment obtained prior to permit application may be subject to review to ensure that the passage of time has not in any changed the determination made by the Department as a result of changed conditions or the presence of additional information not available when the determination was initially made (see N.J.A.C. 7:15-4.7(c) and (f)).

The Department believes that the level of information required in the context of a site-specific amendment, as well as the safeguards built into the rule to make sure that changes between the time of the Habitat Suitability Determination and actual permitting of the project or activity do not affect the continued validity of the determination made by the Department, strikes an appropriate balance between regulatory flexibility and environmental rigor in ensuring protection of endangered and threatened wildlife species and their associated habitat.

230. COMMENT: N.J.A.C. 7:15-4.4(k)1 should be revised to read “Avoids the habitat of both endangered and threatened wildlife species” for clarity. (125)

RESPONSE: The Department believes the provision is clear. Therefore, no change is made on adoption.

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231. COMMENT: The rule proposal improperly relies upon the decision in Pinelands Preservation Alliance v. Jaylin Holdings, which in fact does not support the rule proposal's broad endorsement of a "no net loss of habitat value" policy. At the Department's urging, the Court in that case declined to consider the habitat trading embodied in the CAFRA permit at issue there as a policy, but instead ruled that on the specific facts and with the specific analyses prepared in defense of the permit, the permit was a permissible exercise of the agency's discretion in that case. This ruling, moreover, represented dicta, because the court reversed and remanded the permit on other grounds. For both these reasons, the Jaylin ruling cannot be cited as an endorsement of the proposed rules. (21)

RESPONSE: In Pinelands Preservation Alliance v State, Dept. of Environmental Protection, 436 N.J. Super. 510 (App. Div.), certif. denied, 220 N.J. 40, 41 (2014), while the Appellate Division reversed issuance of the permit on other grounds, the Court upheld the Department's use of the no net loss of habitat value examination to assess the impacts of development as part of the permit review. Nevertheless, the Department is exercising its regulatory authority to protect threatened and endangered species and their associated habitats as part of the wastewater planning process under these rules. Therefore, the rule explicitly codifies the no net loss principle.

232. COMMENT: The rule provides no scientifically supported metrics or performance measures by which to make any judgement as to the adequacy of the mitigation, only an undefined, arbitrary and purely speculative measure of "no net loss of habitat value." There are

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no requirements for the collection of baseline data, no requirement for a procedure based on verified research or peer-reviewed habitat enhancement procedures, and no obligation to monitor or measure future success. This concept allows the destruction of critical habitat, and mitigation proposed for the loss of habitat is solely the manipulation of other habitats to (hypothetically) increase species density (value of habitat). The acquisition of unprotected habitat as mitigation creates no replacement value. If successful, results would only be short term, as such physical manipulations would not persist—habitats change through ecological succession—and eventually, "value" benefits will be lost. Therefore, to allow an area to be included as a SSA based upon mitigation must require that the mitigation has already taken place and has demonstrated that it has achieved, in the long term, “no net loss of habitat value.” (69, 73, 125, 213, 235, 298)

RESPONSE: N.J.A.C. 7:15-4.4(k) allows sewer service to be established in a portion of endangered and threatened wildlife species habitat as identified by the Landscape Project, provided identified suitable habitat is avoided to the maximum extent practicable and conservation measures are undertaken to ensure that there is no net loss of habitat value. When mitigation is requested as a conservation measure, the request for mitigation is evaluated on a case-by-case basis considering the factors specified in the definition of “no net loss of habitat value” at N.J.A.C. 7:15-1.5. As specified there, the proposed mitigation will be evaluated to determine if it results in an equivalent capacity to support a population of the endangered or threatened wildlife species similar in size and health as the area proposed to be impacted is capable of supporting prior to conduct of the proposed activity.

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Mitigation has been effectively used in other programs, such as the Freshwater Wetlands Protection Act Rules, at N.J.A.C. 7:7A-15. In each case, the Department evaluates the components of the habitat that support feeding, breeding, nesting and resting, and their spatial relationship to each other. When one of these components is not present in the proposed mitigation area, the value of the habitat is generally not considered of equal value. Additionally, when conducting an analysis of a particular habitat, the Department weighs the quality of the habitat present, with the likelihood that the species in question would use the habitat as part of an overall habitat or impact assessment. The evaluation of each of the components that make up the habitat offered for mitigation will ensure the viability of the remaining habitat to support endangered and threatened wildlife species.

It is recognized that mitigation takes many forms, and as result, a varying amount of time. Some mitigation includes an action that may take several months or more to complete. As part of review of an HIA, the Department will require a schedule for the mitigation activity. As indicated in the discussion of the definition of “no net loss of habitat value” in the proposal summary at 47 N.J.R. 2544, the schedule must demonstrate that the habitat in the region must remain, or be created, within a reasonable timeframe with mitigation implementation to occur before any impacts could result in irreparable harm to the local population. As further indicated in the proposal summary, in most cases, regional habitat carrying capacity will be required to return to existing capacity within three to ten years depending upon the species impacted.

Further, as indicated at N.J.A.C. 7:15-4.4(k)3, the terms of the approved mitigation must be memorialized in an enforceable document approved by the Department, generally a

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conservation restriction. Such a document will include all terms determined to be necessary to ensure the projects meets the no net loss standard and continues to function as designed. Where a conservation restriction is required, a plan amendment allowing environmentally sensitive area to be eligible for sewer service is not effective until the Department is provided with a filed copy of the conservation, further ensuring that the mitigation project is performed in accordance with all requirements approved by the Department and future owners of the area are on notice as to the restrictions applicable to the mitigation area.

In these ways the rules ensure that mitigation is not only performed, but continues to provide the benefits it is designed to provide going forward.

233. COMMENT: The Department's proposed requirement of "no net loss of habitat value" is of concern; as is the note by the Department, that "not every habitat can be mitigated." The extent of time required to institute the mitigation actions that must "precede the adverse impacts" (i.e. development activity), ensure that the habitat can support the same species population, and "compensate for at least 100 percent of the loss or decrease in habitat value anticipated to result from development in the habitat area" may provide little or no incentive to pursue the project.

(101)

RESPONSE: One of the goals of the WQMP rules is to strike the proper balance between a property owner's interest in developing land and the State's interest in appropriately protecting

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species habitat, preserving water quality, protecting the environment and conserving public resources.

The sections addressing endangered or threatened species habitat provide the methods an applicant could pursue to potentially allow development utilizing sewer service in locations identified by the Department as ESAs on the Department's Landscape Map. While the Department believes that providing such avenues to allow limited areas to be designated for sewer service subject to strict standards is appropriate pursuant to a Habitat Impact Assessment where it can be shown through the extensive information required to be submitted as part of an application under N.J.A.C. 7:15-4.7 that the impacts cannot be avoided, are minimized to the maximum extent practicable and it is possible to provide mitigation that will result in no net loss of habitat value, this subsection is not intended to allow ESA to be included in sewer service area in all cases or to be an incentive to development. Instead, the allowance is carefully crafted to ensure that only in the limited circumstances where the Department is able to make the required findings that threatened and endangered species and their habitat are adequately protected will inclusion of ESA in sewer service area be allowed.

234. COMMENT: At N.J.A.C. 7:15-4.4(k)3, the reference to "agriculturally dependent species" should be replaced with "the species" as the agriculturally dependent species are addressed separately in N.J.A.C. 7:15-4.4(k)4. (125)

RESPONSE: The commenter is correct. At N.J.A.C. 7:15-4.4(k)3, the Department has incorporated and codified the concept that minimization and mitigation through conservation

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measures may provide for “no net loss of habitat value.” While this concept is applicable to protection of habitat of all endangered and threatened species, as indicated in the proposal summary at 47 N.J.R. 2544 and specifically referenced in the first sentence of N.J.A.C. 7:15-4.4(k)3, N.J.A.C. 7:15-4.4(k)4 provides specific standards for minimization and mitigation when the threatened or endangered species is an agriculturally dependent species. Accordingly, the second sentence of N.J.A.C. 7:15-4.4(k)3 providing examples of mitigation should not reference specifically agriculturally dependent species, but, consistent with the first sentence of N.J.A.C. 7:15-4.4(k)3, should reference instead the endangered and threatened wildlife species generally. The Department has made this clarifying change on adoption.

235. COMMENT: The process for agriculturally dependent species seems complicated. Even if there is an abundance of appropriate cover, a species may favor one particular area to nest, such as a high spot on the landscape. It is also likely to be difficult to provide on-site mitigation on smaller sites (less than 25 acres). Even if the Department allows for mitigation and conservation measures, it is acknowledged in the rule proposal that “changes in farming practices in response to market and other forces over time could result in the diminution or complete loss of habitat values for these species.” For the above reasons, the Department is strongly urged to not move forward with incorporating the new term of “agriculturally dependent endangered or threatened wildlife species” and implementing the related new process. (101, 220)

RESPONSE: N.J.A.C. 7:15-4.4(k)4, which specifies standards for minimization and mitigation when the threatened or endangered wildlife species is an agriculturally dependent species, is

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intended to acknowledge that habitats suitable for this specific class of species are subject to change depending upon farming decisions made for the area. In recognition of the transitional nature of this habitat, which in many cases relies on continued human agricultural operations for continued habitat suitability, the rules provide a supplemental pathway to mitigation beyond that provided for other threatened and endangered species habitats identified in areas for which sewer service area is sought. Not adopting the proposed definition and mitigation standards for these species, as suggested by the commenters, would mean that they would be subject to standards applicable to all other threatened and endangered species, including required permanent mitigation. The Department believes that the proposed special treatment of these species is appropriate.

236. COMMENT: From a planning perspective, the development and inclusion of the Habitat Impact Assessment for certain instances is appropriate. The Department is encouraged to develop a conservation easement GIS database, if it has not already done so, and work with counties, municipalities, regional entities, nonprofits, etc. to assist in the Department's efforts to protect, enhance, create, maintain and restore habitats, breeding grounds, etc. of threatened and endangered species. (171)

RESPONSE: To meet the overall protection goals of the proposed rules, especially as they relate to agriculturally dependent species, the Department concurs that coordination with various outside parties will be necessary. The New Jersey Geospatial Forum's Preserved Lands/Open Space Task Force, which includes members from the Department, has worked to develop a

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database that would include conservation easements

(https://njgin.state.nj.us/OIT_NJGF/njgf_each_taskforce.jsp?tf=15). However, the Department agrees that a more comprehensive database is appropriate and will evaluate the feasibility of establishing such a database.

237. COMMENT: The expanded opportunities to rebut the Department's science and environmental data, for example, through Habitat Suitability Determinations and now through the newly proposed Habitat Impact Assessment process are of concern. On one hand, the Department seems to be proposing a more science-based approach, but at the same time opening the door wider to those who want to circumvent the rules. (222)

RESPONSE: N.J.A.C. 7:15-4.4(j) allows an applicant for an amendment to rebut the presumption that the environmental data identified at N.J.A.C. 7:15-4.4(e), upon which an area was excluded from sewer service area, is correct based on the results of a Habitat Suitability Determination (HSD), a Letter of Interpretation (LOI) that demonstrates that an area is not wetlands, or any other information that demonstrates that the Department's GIS coverage is not accurate at a particular location. In each case, any change is based upon Department determination that the information presented more accurately reflects actual conditions in the area. The Department proposed an additional basis for rebuttal at N.J.A.C. 7:15-4.4(j)1, which provides that an applicant may rebut the presumption that an area is endangered or threatened wildlife species habitat without conducting a full HSD by demonstrating that the most current version of the Landscape Maps no longer depicts a site or project area as an endangered or

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threatened wildlife species habitat. In such a case, the Department's Endangered and Non-Game Species Program has already made a determination that the prior map is no longer accurate and the change made under this chapter simply reflects correcting the prior determination of ineligibility for sewer service which was based upon the information that was available at the time of the previous Landscape Map analysis. Similarly, if the Department has issued a Letter of Interpretation (LOI) under the Freshwater Wetlands Protection Act Rules finding that an area previously included as ESA under these rules on the basis of the area being freshwater wetlands is not actually appropriately classified as freshwater wetlands, the change made under this chapter is purely a correction to reflect the Department's determination under the LOI that the area isn't appropriately classified as ESA.

The Department has expanded the options available under these rules to demonstrate that an area should not be excluded from being eligible for sewer service from a planning perspective. Particularly, at N.J.A.C. 7:15-4.4(j)2, the HSD process is expanded to allow applicants to rebut the presumption that the habitat is suitable for the natural resource elements in a National Heritage Priority Site. Further, the rules provide for potential inclusion of areas designated as environmentally sensitive based upon the presence of threatened or endangered wildlife species habitat or Natural Heritage Priority Sites as the result of a HIA. Particularly, N.J.A.C. 7:15-4.4(k) and (l) allow sewer service in areas deemed environmentally sensitive based on the occurrence of mapped threatened or endangered wildlife species habitats or Natural Heritage Priority Sites where, in the context of an application for a site-specific amendment, the Department is able to determine, through a Habitat Impact Assessment (HIA) submitted pursuant to N.J.A.C. 7:15-4.7, that the proposed project or activity avoids endangered and threatened

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wildlife species habitat or natural resource elements, or will result in insignificant or discountable effects on the maintenance of local breeding, resting or feeding of the species or on the natural resource elements within a Natural Heritage Priority Site. If neither of these standards can be met, the HIA may be used to demonstrate that the potential impacts to endangered or threatened wildlife species habitats are minimized to the maximum extent practicable and mitigated through the use of project redesign or modification, implementation of timing restrictions, best practices, or other proposed conservation measures in a manner that provides for no net loss of habitat value to the endangered wildlife species. These rules do not allow mitigation or conservation measures to compensate for impacts to natural resource elements within a Natural Heritage Priority Site; in such cases, the area will be denied inclusion in the sewer service area.

In order for an environmentally sensitive area to be included within sewer service area pursuant to N.J.A.C. 7:15-4.4(k)2 or 4.4(l), the Department must be able to determine that the project or activity avoids the habitat, or the natural resource elements, or that the proposed loss or modification of habitat would result in insignificant or discountable effects on the maintenance of local breeding, resting, or feeding of the endangered or threatened wildlife species or the natural resource elements within the Natural Heritage Priority Site.

The Department believes that the HSD and HIA processes provide for a proper balance between reasonable development and sustainable habitat, and that the opportunities to rebut Department environmental data do not present opportunities to circumvent the rules, but rather present an opportunity to ensure that the information upon which the Department makes decisions in sewer service area planning is based upon the best available data and that sewer

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service is only allowed in ESA in situations where local populations of threatened and endangered species are protected.

238. COMMENT: N.J.A.C. 7:15-4.7 outlines a welcome process to investigate further the question of whether a project will negatively affect a threatened or endangered wildlife species. It would allow an applicant a way to amend the proposal so as to do avoid the damage or reduce it to a minimum. (17, 266)

RESPONSE: The Department acknowledges the commenters' support.

239. COMMENT: While the Department's development of a mechanism to address and balance habitat concerns with development activity is appreciated, the commenter cautiously looks forward to better understanding the new mitigation framework and the application of the newly-defined agriculturally dependent species provision. Reliance on mitigation has always been a concern because of its associated costs that could make projects economically infeasible. (101)

RESPONSE: The Department acknowledges the commenter's support. The Habitat Impact Assessment is intended to provide an optional process to provide relief in certain limited circumstances where it can be determined that threatened and endangered plant and animal species are protected. Where the applicant cannot demonstrate that the proposed project or activity avoids or does not adversely impact habitat of a threatened or endangered wildlife

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species, the rules require mitigation to ensure that inclusion of the area in sewer service area does not result in any new loss of habitat value; where that standard cannot be demonstrated to be met, the application for amendment will be denied. The mitigation requirements will be implemented as indicated in other responses to comment, including Response to Comment 232 above.

240. COMMENT: There should be an appendix added to the proposed rule that would present the HIA process or model with much more detail. The model should not be used to allow development in areas with endangered species if the model is not properly reviewed through a peer review that includes a calibration of the model with actual conditions from case studies. If the model does not become part of the rule, then the portions of the rule that allow development through mitigation should be removed until the model receives a more thorough review and is actually calibrated and field tested. (163)

241. COMMENT: The Department should clearly define that some of the Landscape Project habitat mapping is based on a model projection and not based on actual sightings or field studies. (46)

RESPONSE TO COMMENTS 240 AND 241: In most cases, a demonstration of no net loss necessarily involves a case by case analysis taking into account specific information regarding the site and the species involved, including all information required to be part of a HIA application under N.J.A.C. 7:15-4.7(d) and, by reference, N.J.A.C. 7:15-4.6(c). Thus, this type

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of analysis does not lend itself to modeling. However, as the Department reviews Habitat Impact Assessments, it intends to provide guidance for the preparation of mitigation plans.

242. COMMENT: N.J.A.C. 7:15-4.7(a) should be modified to require the applicant to perform the HIA. (163)

RESPONSE: N.J.A.C. 7:15-4.7(b), requires an applicant to prepare and submit the HIA.

243. COMMENT: N.J.A.C. 7:15-4.7(c) provides that a HIA obtained prior to a permit application may be subject to review to ensure that conditions and/or information have not changed since the issuance of the original assessment. The HIA should be considered valid for a period of two (2) years after the field data for the report was collected. (163)

RESPONSE: N.J.A.C. 7:15-4.7(c) and (f) are intended to reserve the Department's right to reconsider the findings of an original Habitat Impact Assessment if circumstances change such that the original HIA is no longer accurate. This reservation is consistent with the goal of the rule to base wastewater management planning on the best available information to ensure protection of environmentally sensitive areas, including threatened or endangered species habitat, and recognizes that a significant passage of time can increase the potential for the information on which the Habitat Impact Assessment was based to have changed or relevant new information to have become available. While the Department agrees with the general concept of providing an expiration of an HIA, it is not feasible to provide a uniform timeframe given the variety of

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species and underlying habitat conditions that warranted issuance of the HIA. However, the Department intends to review the HIA and take into account its issuance date in determining whether additional site review is appropriate as part of the permit application for the project or activity.

As indicated in Response to Comment 228 above, in most cases the Department anticipates that the HIA application will be received as part of a packet including a permit application and areawide WQM plan amendment with Department review of the parts of the packet proceeding concurrently. In such a case, the part of N.J.A.C. 7:15-4.7(c) cited by the commenter would be inapplicable.

244. COMMENT: The term “person” should be replaced with “experienced professional” in N.J.A.C. 7:15-4.7(e)1ii, as this analysis requires expert capability. (125)

RESPONSE: N.J.A.C. 7:15-4.7(e)1ii specifies one of the findings that the Department may make to support its determination that a proposed project or activity will not adversely impact local populations or habitat of endangered or threatened wildlife species, or natural resource elements within a Natural Heritage Priority Site. Specifically, this subparagraph provides that such a determination is appropriate based upon a finding that there will not be an adverse impact because the project or activity will result in insignificant or discountable effects. The determination to be made as to whether the consequences are “so minute that a person could not measure or detect such responses” is one that will be made by the Department. The Department will make this determination based upon the “person” being qualified to make such

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measurements or detect such responses. The use of “person” in this provision is based on the USFWS Final ESA Section 7 Consultation Handbook, March 1998. However, the Department anticipates that the analysis under this provision will be performed by a qualified professional.

245. COMMENT: N.J.A.C. 7:15-4.7(e)3 references N.J.A.C. 7:15-4.4(i)4. There is no subsection 4.4(i)4 in the proposed rule. (163)

RESPONSE: The Department acknowledges the incorrect cross-reference pointed out by the commenter and has corrected the error upon adoption to instead reference N.J.A.C. 7:15-4.4(i)2, which contains the Department determination regarding whether the area is critical to the survival of a local population of endangered or threatened wildlife species reference in N.J.A.C. 7:15-4.7(e)3.

246. COMMENT: There should be an additional sentence at N.J.A.C. 7:15-4.7(e)3 to clarify what happens if adverse findings occur: “A finding of adverse impacts under this paragraph shall preclude the inclusion of this area in sewer service area.” (125)

RESPONSE: N.J.A.C. 7:15-4.7(e)2 provides, in part, that a finding of adverse impacts will preclude the inclusion of the area in sewer service area. Further, in accordance with N.J.A.C. 7:15-4.4(i)2, environmentally sensitive areas may be included in sewer service area only if the Department has determined that the area is not critical to the survival of a local population of endangered or threatened wildlife species.

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247. COMMENT: N.J.A.C. 7:15-4.7(d)2 of the proposal states “The accuracy of these coordinates shall be within 50 feet of the actual center point of the site” but most sites delineated under this provision will be polygons that may have odd shapes. This provision should be clarified. (125)

RESPONSE: GIS software commonly includes a tool to generate a center point on any polygon shape. This generated GIS center point will have an X, Y position in State plane coordinate system, and a 50-foot buffer can be created for it. Field GPS of the site can be compared to this GIS-generated center point with the 50-foot buffer.

248. COMMENT: At N.J.A.C. 7:15-4.7(d)2, GIS shapefiles should be required, not USGS quad maps, to facilitate GIS-based proposal reviews. In N.J.A.C. 7:15-4.7(d)3, note that there may be multiple lots and blocks involved. (125)

RESPONSE: Generally, the Department anticipates that an application for a Habitat Impact Assessments will be filed as part of site-specific amendment, for which GIS shapefiles are required. Note that use of the singular terminology may also include the plural.

249. COMMENT: The proposed Habitat Impact Assessment would allow the destruction of Threatened and Endangered habitat without any mitigation if that mitigation was not practicable. Therefore, this provision should not be adopted. (213)

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RESPONSE: In accordance with N.J.A.C. 7:15-4.4(k), environmentally sensitive area may only be included in sewer service area pursuant to a Habitat Impact Assessment if the Department determines that the endangered or threatened species habitat is entirely avoided, if any impact is determined by the Department to result in insignificant or discountable effects on local breeding, resting, or feeding of the species, or, for species other than agriculturally dependent endangered or threatened wildlife species, to the extent impacts to habitat cannot be avoided, any impact is minimized and any impact necessary is mitigated for in a manner that provides for no net loss of habitat value. For impacts to agriculturally dependent endangered and threatened species habitat, similar measures, including mitigation, are required with the allowance that mitigation may be for a specified number of years. The rules do not include any waiver of mitigation based upon practicability.

250. COMMENT: The claim that the new HIA process “will cause only insignificant or discountable effects to the wildlife habitat or natural resource elements” assumes without substantiation that knowledge of these effects can be scientifically demonstrated over a limited area. “Conservation measures that will minimize to the maximum extent practicable all adverse modification of suitable habitat” is an end-around the current protections and is technically unproven. Provisions for mitigation are disingenuous – scientific studies have shown most so-called environmental mitigation to be ineffective. Therefore, this provision should not be adopted. (119, 213, 264)

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RESPONSE: The Department believes that it is possible to reasonably assess likely impacts of approved activities based upon best available scientific information regarding species requirements, life history and habitat associations, and to develop mitigation plans on a case-specific basis that will achieve the no net loss standard. There are several decades of experience and an extensive body of published work related to the U.S. Fish and Wildlife Service's administration of the Sections 7 and 10 of the Federal Endangered Species Act and the effectiveness of mitigation for habitat impacts, upon which the Department can and will draw to provide guidance. To a lesser degree, other states have administered their state endangered species regulations in a similar manner to this regulation (e.g., Massachusetts "Conservation and Management Permits -- 321 CMR 10.23) and the Department will draw on their experience as well. Where the Department determines that mitigation may need to provide for adjustments to ensure that the level of success required from the mitigation is met, an adaptive management approach will be incorporated into the approved mitigation plan.

The Department also notes that, pursuant to N.J.A.C. 7:15-4.7(e)3 and N.J.A.C. 7:15-4.4(i)2, an amendment requesting inclusion of environmentally sensitive area within sewer service area will be denied where it is determined that the area proposed to be impacted is critical to the survival of a local population of endangered or threatened wildlife species.

251. COMMENT: The exclusion of Natural Heritage Priority Sites from sewer service in urban areas without a proper a habitat analysis to determine whether such urban sites can be included within a future SSA is supported. (73, 298)

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RESPONSE: The Department acknowledges the commenters' support.

252. COMMENT: The concept of no net loss of habitat value is an amorphous promise masquerading as science. The definition here says that habitat within a region must remain or be created within a reasonable time frame capable of supporting the same or greater population of the T&E wildlife species as it is currently capable of supporting. Twice the word "capable" is used. No one will measure how many individuals are there, or what density the individuals are, or what the regional density of individuals is. No one will measure the density as a baseline or after habitat management work is done to see if it actually worked because they can't, because most of these species are too difficult to measure. So the process is complete speculation, having nothing to do with science. (69)

RESPONSE: Protection of habitats, and by extension, use of habitats as a surrogate for wildlife populations, is appropriate and intentional. These rules, similar to other Department land use regulations, explicitly address impacts to habitat for endangered and threatened species as opposed to the populations of the species themselves. The Department believes that habitat capability is a preferred basis for assessing impacts to habitats because a species' population number at any given time at a specific location is subject to natural variation from other factors beyond habitat capability (e.g., predation, disease, competition) and, other factors being equal, populations generally reflect habitat capability or suitability. Given that habitat is the target subject of this regulation's provisions with regard to endangered and threatened wildlife, it is appropriate that habitat provide the basis of designing and evaluating mitigation measures.

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253. COMMENT: Management for habitat value must not occur in a separate subpopulation or in a location separated from the proposed development site by a possible population barrier that inhibits animal movement between the site of impact and the site of alleged habitat value increase. (222)

RESPONSE: The rules seek to ensure the continued vitality of the endangered or threatened species population impacted by any project or activity by prohibiting impact to habitat critical to the survival of the local population at N.J.A.C. 7:15-4.4(i) and (k). Where mitigation is allowed, it must meet the no net loss of habitat value standard specified in the definition of “no net loss of habitat value” at N.J.A.C. 7:15-1.5 with mitigation required that will provide for no net loss of habitat value to endangered or threatened species, including the local population of the species. Finally, N.J.A.C. 7:15-4.4(k)3 requires mitigation to be as near as feasible to the project or activity that is adversely impacting the endangered or threatened species habit; generally, within the municipality or county where the project or activity is located. In determining whether the location of the proposed mitigation satisfies the no net loss standard, the Department will take into account the particular species impacted and factors such as the mobility of that species. The Department believes these provisions provide appropriate assurances that habitat is protected.

254. COMMENT: A farmland owner required to keep land in a certain state or crop permanently to provide habitat for a certain wildlife species cannot do crop rotation to better the condition of his soil or change crops to meet better market conditions. If any party wishes to

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prevent necessary change to the agricultural land use for the purpose of wildlife habitat, they should buy an easement or purchase the property. Otherwise this regulation mandates one use to the exclusion of any others and could be considered a “taking.” And decisions about wastewater treatment are permanent while presence of any of the listed species could change yearly because of conditions in populations or habitat elsewhere. (17, 266)

RESPONSE: The proposed rules do not place any mandates or limitations on farmland requiring it to be maintained in any particular state of succession or crop rotation. The rules would only apply to a farmed parcel when sewer service is requested for a particular property or project area.

Upon request for a sewer service approval, the Department will evaluate the suitability of property based upon recent habitat conditions to determine if any environmentally sensitive areas are present. Should such features be present, the rules offer the HIA process to allow an applicant to request that the Department consider alternatives, such conservation methods including mitigation, in order for areas to be provided with sewer service.

Only sites that have been designated as mitigation sites with the approval of its owner would be subject to management under an associated conservation easement or plan that would affect the type or cycle of crops on the parcel to ensure suitable habitat for the particular agriculturally dependent species of concern is present during each year.

255. COMMENT: Please clarify who is able to delineate habitat, and more specifically, who has the final authority over habitat delineation. The proposed rules do not provide for a “Habitat Impact Assessment” to be challenged and there is no appeals process other than litigation. (159)

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RESPONSE: The Department determines the existence of habitat and develops the Landscape maps. However, an applicant may seek to rebut the Department's delineation of habitat through the HSD process provided at N.J.A.C. 7:15-4.6, and the HIA process at N.J.A.C. 7:15-4.7.

N.J.A.C. 7:15-4.6(a) and 4.7(a) provide that the applicant may request from the Department a Habitat Suitability Determination or a Habitat Impact Assessment, respectively. N.J.A.C. 7:15-4.6(e) and 4.7(e) provide that the Department has final authority over habitat delineation and impact assessment. If the applicant for a plan amendment disagrees with the Department's HSD or HIA decision, N.J.A.C. 7:15-3.6 provides that a Department decision on an amendment or revision to an areawide WQM plan is a final agency action, and any appeal of that decision shall be taken to the Superior Court, Appellate Division.

256. COMMENT: Section 7 of the Endangered Species Act directs Federal agencies to help conserve threatened and endangered species, including consultation with the U.S. Fish and Wildlife Service or National Marine Fisheries Services on actions a lead Federal agency authorizes, funds, or carries out. The lead Federal agency will make a determination of either "no effect" or "may affect." The Endangered Species Act contains no provisions for HIA processes or mitigation of adverse effects to suitable habitat. (243)

RESPONSE: The Department has previously consulted with the US Fish and Wildlife Service in the administration of these rules on projects with a Federal nexus. These rules include a new provision that allows an applicant to submit a Habitat Impact Assessment for the Department to

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review a proposed project or activity for inclusion in the sewer service area because it avoids the habitat, will cause only insignificant or discountable effects to the wildlife habitat or natural resource elements, or, with respect to endangered and threatened wildlife species habitat, the project or activity includes conservation measures that will minimize to the maximum extent practicable all adverse modification of suitable habitat, and will mitigate for any adverse modification of habitat so that there is no net loss of habitat value for the local population of endangered or threatened wildlife species documented on-site, or their suitable habitat. In its evaluation of an HIA, the Department will continue to complete any required Section 7 consultation and abide by all sections of the Federal Endangered Species Act in the implementation of these rules.

257. COMMENT: If management of a mitigation project is proven effective, future management must be funded in perpetuity. If not, the concept of a habitat value increase that has offset the loss due to development is an unscientific deception, at best. If scientifically documented habitat management techniques that increase population density exist in the literature, then those techniques must be utilized within the same local population of the impacted species. (222)

RESPONSE: All habitats, whether naturally created and maintained, or established or enhanced by human action, are subject to environmental factors or ecological process (such as natural succession, and storm damage) that may negatively or positively affect their suitability for particular species over time. The intent of the rules is to require that any mitigation project

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results in equivalent benefits as those impacted by the proposed project or activity. Once it is demonstrated that the mitigation area has been managed to the point that it has become stable and is satisfying the no net loss of habitat value requirement, the mitigation area will generally be allowed to follow the same successional route that would have been applicable if the area impacted had been left undisturbed. The time scale over which management should ensure maintenance of habitat suitability will be set at a duration appropriate for the types of habitats and types of impacts associated with an individual project taking into account consideration of what might be expected to occur in a natural situation, i.e. what would likely happen to similar habitats nearby in the absence of human-caused adverse impacts and management.

Where mitigative steps are being taken to offset impacts by enhancing an existing habitat, the Department agrees that there is a need to evaluate the value of any proposed enhancements not only for its short-term merits, but also its values projected into the future. These are factors that will be considered in the valuation of a mitigation proposal to meet a “no net loss” standard with respect to habitat suitability.

CAFRA

258. COMMENT: The exclusion of Coastal Planning Areas identified within the Rules on Coastal Management as ineligible for sewer service is supported. (73, 298)

RESPONSE: The Department acknowledges the commenters’ support.

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259. COMMENT: Please clarify why, in the Department's opinion, there would be greater "flexibility to the delineating process if the area proposed to be included...is in a CAFRA growth area." (101)

RESPONSE: The rules continue to limit sewer service in certain areas within the State's coastal areas. Particularly, at N.J.A.C. 7:15-4.4(f), the Department excludes from eligibility for sewer service area Coastal Fringe Planning Areas, Coastal Rural Planning Areas, and Coastal Environmentally Sensitive Planning Areas, with limited exception. In the 2008 rules, the only means to include areas within these Coastal Planning Areas within the sewer service area was to change the Coastal Planning Area designation. This process was found to be administratively challenging and unnecessarily burdensome in some cases. Therefore, the new rules allow inclusion of portions of the identified Coastal Planning Areas in sewer service area where necessary to address an imminent public health and safety issue, or to accommodate infill development, as well as creating linear boundaries to achieve manageable sewer service area delineation without the need to first modify the Coastal Planning Area designation. This approach is similar to that applied to environmentally sensitive areas other than Natural Heritage Priority Sites under N.J.A.C. 7:15-4.4(i).

While this provision creates an administratively efficient means to address these circumstances, it does not impact requirements otherwise applicable to development in these coastal areas. Any proposed project or activity in such areas would still need to qualify for a CAFRA or other coastal permit, if applicable.

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260. COMMENT: N.J.A.C. 7:15-4.4(f)(1)(iii) refers to a linear boundary that coincides with “political” features. Please clarify what is meant by “political” as it relates to delineations. (101)

RESPONSE: Political features are man-made features or boundaries that may be used to delineate an area, as opposed to a natural feature such as a river. The most recognizable political features are municipal, county, state, and national boundaries. For the purposes of this rule, political features also include the jurisdictional boundaries of such entities as the Highlands Council and the Pinelands Commission.

261. COMMENT: N.J.A.C. 7:15-4.4(f)1 should be further clarified regarding exceptions to this inclusion for abating an existing imminent public health and safety issue. While it is clearly appropriate under the threat of an imminent health or safety issue to consider sewerage an area, what qualifies as “imminent” should be defined, as well as establishing requirements for consideration of alternatives to addressing the “threat.” (73, 298)

RESPONSE: The term “imminent” in the phrase “imminent public health and safety issue” is intended to have its commonly understood meaning with this paragraph intended to allow public health and safety issues, such as an area of failing septic systems, to be addressed in the listed Coastal Planning Areas without the necessity of undergoing the process of having the Coastal Planning Area designation of the area subject to the public health and safety issue changed. As to when a public health or safety issue is considered imminent will to some extent depend upon the action needed to address the issue (for example, a public health or safety issue that can only

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be addressed by construction of extensive infrastructure), it is impossible to define a specific timeframe for what will be considered to be imminent in all instances. While the rule does not use the term “threat,” inclusion of an area within sewer service area in accordance with N.J.A.C. 7:15-4.4(f)1 does not relieve any project proposed to address the public health or safety issue from obtaining all necessary approvals and complying with all requirements of the Coastal Zone Management Rules, N.J.A.C. 7:7, and any other applicable permit program, including requirements designed to ensure that any necessary impacts are the minimal necessary.

Modifications to areawide plans (*N.J.A.C. 7:15-3.3, 3.4, and 3.5*)

262. COMMENT: The simplified WQMP modification procedures proposed at N.J.A.C. 7:15-3.3 are simpler and clearer than those in the existing rules. The proposed coordination with Pinelands and Highlands authorities appears to avoid duplication of review requirements, for instance. Modifying WQMPs under the existing rules has proven very complicated and time-consuming, and NJDEP’s proposal to improve the effectiveness of the process is appreciated. (6, 57, 134, 168, 185, 199)

RESPONSE: The Department acknowledges the commenters’ statement.

263. COMMENT: The identification of strategies for addressing the wastewater needs of unassigned sewer service areas should be a required component of the areawide WMPs of which the unassigned sewer service areas are a part, and these strategies should be reflected in new

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language added to N.J.A.C. 7:15-3.3. Additionally, the new rule should provide guidelines for the delineation of boundaries for unassigned sewer service areas as part of regional amendments under N.J.A.C. 7:15-3.3(a). “Unassigned sewer service areas” delineated through the “regional amendment process” should be comprised of developed areas that are served by a preponderance of failing and/or outdated ISSDS for which alternative wastewater management solutions are needed to protect public and environmental health and safety; or for planned/proposed centers or redevelopment areas identified in adopted county and municipal master plans and zoning ordinances for which sanitary sewer-dependent development is anticipated to occur prior to the end of the areawide WMP’s 20-year planning horizon year. (159, 196)

RESPONSE: Please see Response to Comments 180 through 181 above. Because unassigned sewer service area encompasses the entire area eligible for sewer service that has not been connected to an identified treatment plant, the Department believes that limiting delineated unassigned sewer service areas adopted through an amendment process to developed areas with documented failing and/or outdated ISSDS, and to areas identified for planned/proposed centers or redevelopment areas is unnecessary. The Department encourages these solutions to address the potential environmental impacts of inadequately functioning septic systems and of providing centralized sanitary sewer service to growth areas as part of the WMP planning process at N.J.A.C. 7:15-4.5(c)1vi and N.J.A.C. 7:15-4.4(f), respectively.

264. COMMENT: While the proposal clearly describes the process required for a site-specific amendment, there is no process described for a “regional amendment.” Since these are by

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definition of a larger scale and carry greater primary and secondary impacts, this process should be encouraged and carefully controlled by establishing an appropriate process and criteria. A new section (N.J.A.C. 7:15-3.3(c)) should be added that sets forth the process through which regional amendments to areawide WMPs can be advanced, and the forms that these regional amendments may take. (54, 196)

RESPONSE: N.J.A.C. 7:15-3.3 identifies the methods available to modify an areawide plan, through either a revision or an amendment. The two types of amendments are described as regional and/or site-specific amendments. The phrase “regional amendment” is a term used to describe an amendment to the areawide WQM plan through the adoption of a new or updated WMP or a TMDL. Thus, as indicated by the commenters, a regional amendment has a broader scope than a site-specific amendment. N.J.A.C. 7:15-3.5 provides the procedure for the review and adoption of any amendment, regional or site-specific. While differing notification requirements are applicable to site-specific amendments, with the exact requirements dependent upon the scope of the site-specific amendment proposed, other aspects of the amendment process are the same whether the amendment is a regional or site-specific amendment. While the process is the same, reflective of the different scope, development of a WMP is a more complex process with a different focus. Subchapter 4 provides the criteria for the development of a WMP.

265. COMMENT: N.J.A.C. 7:15-3.3(b) is unacceptable since “eligible sewer service area” is not a feature adopted as part of areawide WMPs, and can lead to actions by the Department that are inconsistent with areawide WMPs. “Areas eligible for sewer service” should be replaced by

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the phrase “assigned and unassigned sewer service area,” or the language should be modified to specify that “site-specific amendments are applicable to that portion of non-sewer service areas that have been determined to be eligible for sewer service, for the purpose of expanding existing assigned sewer service areas to include projects or activities that are consistent with County and Municipal Master Plans and zoning, as well as with the State Development and Redevelopment Plan and applicable regional plans.” (159, 171, 196)

RESPONSE: As indicated in Response to Comments 180 through 181 and in the definition of “eligible for sewer service area” at N.J.A.C. 7:15-1.5, areas eligible for sewer service include both areas assigned to a specific wastewater treatment facility and areas determined to meet the criteria for designation but which are not within the sewer service area of a treatment facility. A site-specific amendment is only needed if an area is not designated as eligible for sewer service in the areawide WQM plan; the site-specific amendment application seeks to have the area redesignated from “non-sewer service area” to “eligible for sewer service area.” The Department believes that N.J.A.C. 7:15-3.3(b) accurately describes the types of amendments allowed under the rules utilizing terminology defined in the rules with no changes necessary.

266. COMMENT: While the Department’s proposal to limit the filing of site-specific amendment and revision applications only for “an actual identified project or activity” is understandable, pursuant to N.J.A.C. 7:15-3.3(b), the Department should include a process to include properties (without a project) that had been improperly removed from sewer service area. (101)

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267. COMMENT: The underlying data used to generate the proposed and now adopted sewer service area maps under the existing WQMP rules is faulty. As a result, property owners and applicants will continue to utilize site-specific amendments and revisions to correct mapping errors. (101)

RESPONSE TO COMMENTS 266 AND 267: In response to P.L. 2011, c. 203, 17 counties adopted Future Wastewater Service Area Maps, which resulted in parcels being both added and removed from sewer service area. The Department held an open and extensive public review process with respect to the changes proposed to sewer service areas that exceeded the requirements applicable under the WQMP rules at the time. The Department held numerous meetings with the public, municipal officials, and affected agencies during the four years in which the FWSA maps were adopted. Pursuant to Administrative Order 2010-03, the Department held public meetings throughout the State to present draft FWSA maps for public review and gave ample opportunity for the public to submit comments on the then draft sewer service area map and to present information to the Department regarding specific properties. The public comment process provided under Administrative Order 2010-03 was in addition to, and occurred prior to, the formal publication of the preliminary amendment notice of the FWSA maps in the New Jersey Register. Prior to the public meetings, the draft FWSA maps were posted on the Department's website for public review. During the Administrative Order 2010-03 public comment period, the Department received a significant amount of input from residents, property owners, municipal officials, and other agencies regarding mapping corrections and

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other issues. Where commenters identified that additional information was needed to make a determination whether a given request for a change in sewer service area was compliant with N.J.A.C. 7:15, the Department provided detailed guidance regarding steps that would be necessary to designate a property as being within the sewer service area. At that time, changes were made to make the maps compliant with N.J.A.C 7:15 and included the then-draft sewer service area map.

In light of the enhanced public notice that was provided during the FWSA mapping process, the maps reflect updated review of areas eligible for sewer service. Accordingly, no change to the rules is necessary.

268. COMMENT: Conceptual or “sketch” plans are not “actual projects” suitable for use in making decisions on WMP amendments. By definition, concept plans are broad in nature, require minimal investment, commitment, include few details and are used as a basis for discussion to help formulate an actual plan/project. Equating conceptual site plans with “actual projects” perpetuates the same process NJDEP currently employs for WMP amendments. NJDEP should provide clarification on the issue. (171)

RESPONSE: As indicated at N.J.A.C. 7:15-3.3(b), the Department will only use the site-specific process to modify the sewer service area to address a specific project or activity. An application for a site-specific amendment would require the submittal of sufficient information for meaningful review, including a conceptual site plan identifying the building footprint, the wastewater flow projections and the location of infrastructure (i.e. roads, stormwater, etc.). In

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practice, applicants commonly submit detailed site information and analysis to support the request.

269. COMMENT: The Department's proposed amendments that distinguish the inherent differences between determining whether a project or site should be eligible for sewer service area in comparison to wastewater treatment considerations are appreciated. (101)

RESPONSE: The Department acknowledges the commenter's support.

270. COMMENT: Can the Department explain the need for the two different categories of site-specific amendments pursuant to N.J.A.C. 7:15-3.3(b)1-2 and whether there are different review criteria for each category? The defining characteristics of the two site-specific amendments should be based solely on anticipated wastewater flow rather than size of project and flow. (90, 101)

271. COMMENT: The distinction between site-specific amendments will perpetuate the historic and chronic problem of piecemeal amendments to WMPs, as there are few development proposals in New Jersey that occur on sites in excess of 100 acres. (73, 298)

RESPONSE TO COMMENTS 270 AND 271: Under N.J.A.C. 7:15-3.5(f)3 site-specific amendments are divided into two categories (those comprising less than 100 acres or generating less than 20,000 gallons per day of wastewater, and those 100 acres or more or generating 20,000

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or more gallons per day of wastewater) in order that differing levels of public notification and process may be specified depending upon the size of the proposed project. The separation of site-specific amendments into two groups seeks to align the administrative process with the potential impact of the amendment, ensuring that there is an appropriate opportunity for fact finding and consideration of broader interests, such as the interests expressed by the community, when considering the merits of larger site-specific amendments.

As indicated at N.J.A.C. 7:15-3.3(b), the Department will only use the site-specific process to modify the sewer service area when there is an actual identified project or activity. In order to ensure coordination of land use planning at the State, county, and municipal levels, the rules at N.J.A.C. 7:15-3.5(g)3 require that an applicant for a site-specific amendment submit proof that a request was made to the municipality and county for a resolution indicating whether the proposed land use is consistent with the municipal master plan and zoning ordinances and the county master plan. For site-specific amendments adding 100 acres or more to the sewer service area, or 20,000 gallons per day or more of wastewater, N.J.A.C. 7:15-3.5(j)2 provides that the capacity analysis required at N.J.A.C. 7:15-4.5(b) must be modified to reflect the change associated with the project or activity. In addition, for site-specific amendments adding 100 or more acres to the sewer service area, or that would add 20,000 gallons per day or more of wastewater, N.J.A.C. 7:15-3.5(f)3 requires the applicant to demonstrate that all property owners who will experience a change in their wastewater service area designation have been made aware of the requested change in sewer service area status.

With regard to the capacity analysis, a site-specific amendment adding less than 100 acres to the sewer service area or less than 20,000 gpd of wastewater is only required to identify

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the wastewater needs for the specific project. For small, single projects, there is notification and opportunity to comment at the local level, and when Department permits are required.

272. COMMENT: What is a “proposal” and does that refer to a pending application? What are practical effects of proposals that add “either solely or in conjunction with other proposals” areas greater than or equal to 100 acres to the sewer service area or that would generate 20,000 gallons per day of wastewater? Would the proposals have to be contiguous properties? (101)

RESPONSE: At N.J.A.C. 7:15-3.3(b), site-specific amendments are limited to proposed alterations to eligible sewer service area as needed to address a specific project or activity. The term “proposal” in N.J.A.C. 7:15-3.3(b)1 and 2 refers to a request for such an alteration.

The rules divide site-specific amendments into two groups to allow additional notice and process requirements to be applicable to requests for site-specific amendments proposing to add larger areas of land to sewer service area and those generating a greater volume of wastewater flow. In this way, smaller amendments are only required to meet standards requirements that take into account the scope of the project and are not required to meet these higher standards which would not be meaningful in the context of the smaller change.

When considering whether a project has reached the acreage or flow limitations established for the two types of site-specific amendments, the Department would evaluate what the project entails, whether it is related to another project, and the relevant parties involved in the different projects, such as principals or builders. The parcels would not have to be contiguous to be considered in conjunction with other proposals, rather the Department would examine

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proposals in the general vicinity to determine whether the 100 acre or 20,000 gallons per day of wastewater threshold is met.

273. COMMENT: We agree that the proposed rules streamline application requirements for site-specific amendments less than 100 acres or 20,000 gallons per day. The change is positive, as the previous designation of areas that would “generate less than 20,000 gallons per day” was an excuse for poor planning of commercial and industrial areas outside of sewer service areas. (73, 176, 298)

RESPONSE: The Department acknowledges the commenters’ support.

274. COMMENT: It should be clear that once a wastewater treatment facility associated with an unassigned sewer service area has been granted all required permits by the Department, the associated unassigned sewer service area would convert to an assigned sewer service area in accordance with an appropriate corresponding regional revision process. This should be added as a new provision under 7:15-3.4. (196)

RESPONSE: The Department agrees that the WMP should be amended to reflect the change from unassigned to assigned sewer service area when a wastewater facility has been identified, although the Department believes this should be accomplished through a WMP update or amendment.

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275. COMMENT: What happens when an area eligible for sewer service is not included in a municipal WMP but an applicant submits a WMP amendment to have it added in as an unassigned or assigned SSA? (171)

RESPONSE: If the site is not already in an area designated as eligible for sewer service, an applicant can apply for a site-specific amendment (assuming there was an actual project or activity) to add the site to the sewer service area. If an area designated as eligible for sewer service area is not recognized in the WMP, the addition of the area would have to be accomplished through an amendment to the WQM plan, either through a site-specific amendment or a revision. There would be no need to apply again to amend the WMP.

276. COMMENT: In N.J.A.C. 7:15-3.4(a)3 “map adjustment” should be replaced with “action” as the provision has three possible actions, only one of which is a map adjustment to the Highlands RMP. (125)

RESPONSE: N.J.A.C. 7:15-3.4(a)3 identifies a class of changes that can be made to WQM plans through the revision process. Particularly, a wastewater service area map can be updated through revision to reflect changes in the Highlands area accomplished through a Highlands Regional Master Plan map adjustment, or designation of a Highlands center, or Highlands redevelopment area by the Highlands Council. Each of the adjustments specified are accomplished through amendment of the Highlands RMP map and, accordingly, no change is necessary.

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277. COMMENT: These rules propose a series of categorizations for the review of proposed changes to the WMPs, including “revisions” and “amendments.” Several of these types of changes are of significant enough importance that they should be available for public review and comments. N.J.A.C. 7:15-3.4(a)4 refers back to N.J.A.C. 7:15-2.8, which lacks a public process. This lack of public involvement is not appropriate. (73, 125, 298)

RESPONSE: N.J.A.C. 7:15-3.4(a) identifies certain actions that have been determined to be minor and/or administrative in nature such that changes to the recorded content of an areawide WQM plan need not go through the full amendment process under N.J.A.C. 7:15-3.5, but can be accomplished by simply providing public notification of the change. These changes are referred to as revisions and are only allowed in very limited circumstances, described at N.J.A.C. 7:15-3.4(a)1-5. As indicated by the commenters, N.J.A.C. 7:15-3.4(a)4 allows transfer or assignment of wastewater management plan responsibility under N.J.A.C. 7:15-2.8 to be reflected in the areawide WQM plan through a revision. N.J.A.C. 7:15-2.8, to which N.J.A.C. 7:15-3.4(a)4 refers, allows wastewater management planning responsibility to be reassigned from the county board of chosen freeholders to a municipality for all areas within that municipality’s boundaries upon request by the municipality.

While revisions are not required to undergo the same process required for amendments due to their more minor and/or administrative nature, N.J.A.C. 7:15-3.4 does provide a process designed to allow affected entities to review a revision as part of the application submittal and to comment prior to any adoption. Of note, N.J.A.C. 7:15-3.4(f) requires that a proposed revision

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be shared with a number of interested entities whose duties or benefits would be altered by the transfer of WMP responsibility, and those entities will have 21 days to provide comment on the proposal. With reference specifically to alternative assignment of WMP responsibility under the provision cited by the commenters, N.J.A.C. 7:15-3.4(a)4, as part of the revision process a municipality assuming WMP responsibility is required to commit to a schedule for submission of a WMP as part of the application to the Department seeking approval of the revision. The resulting WMP would be processed as an amendment under N.J.A.C. 7:15-3.5 with opportunity for comment not just from affected entities, but also from all members of the public.

The Department believes that the rules provide for appropriate input for all changes to the WQM plan, both those processed as amendments and those processed as revisions.

278. COMMENT: It is understood that N.J.A.C. 7:15-3.4(f) and (g) indicate that landowners of properties over 100 acres or requiring more than 20,000 gallons of wastewater treatment will be notified about a change that would expand the sewer service area to include their property. Why not notify landowners whose properties are being excluded from the sewer service area in the same fashion? It is even more important to notify those being harmed by a regulation than those who will benefit. (17, 266)

RESPONSE: N.J.A.C. 7:15-3.5(f)3 provides that, for projects that propose to add 100 acres or more to the sewer service area, the applicant must provide notice to property owners who will experience a change in their wastewater service area designation. The notice requirement under

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this provision applies to proposed amendments to either add or remove a wastewater service area designation.

279. COMMENT: How does municipal approval come into the WMP amendment process? Does a municipality need to approve a WMP amendment of either type under this rule proposal? Although the applicant must request consent resolutions, it appears that amendments can be approved with or without consent resolutions. Given the broader scope of these rules, the planning approval/entity consent part of the process seems to be missing. What happens when a municipality, county, or regional planning entity does not approve of an area to be added and/or reinstated into a SSA? (171)

RESPONSE: As provided at N.J.A.C. 7:15-3.5, approval or support of a request for any amendment may come from the affected municipality when an application is submitted, as part of the consent or during the public comment period on the proposed amendment. N.J.A.C. 7:15-3.5(f) and (g) provide that an applicant proposing an amendment to an areawide WQM plan must confer with governmental and quasi-governmental agencies that have a relevant jurisdictional interest in the area in which the amendment is proposed, including DPAs, WMP agencies, county planning boards, municipal government, and agencies with sewerage related responsibilities.

To ensure coordination of land use planning at the State, county, and municipal levels, N.J.A.C. 7:15-3.5(g)3 requires that an applicant for a site-specific amendment submit proof that a request was made to the municipality and county for a statement indicating whether the

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proposed land use is consistent with the municipal master plan and zoning ordinances, and the county master plan.

N.J.A.C. 7:15-3.5(f) and (g)2 provide that any entity submitting an amendment application to the Department must provide documentation demonstrating compliance with the requirements for coordination, consultation, and public notification, and that statements of consent regarding the proposed activity were solicited from the municipality in which the proposed amendment is located. N.J.A.C. 7:15-3.5(g)6 provides that all governmental entities that may be affected by, or otherwise have a substantial interest in, approval of the proposed amendment, shall be requested to issue written statements of consent regarding the proposed amendment.

Although municipal approval of an amendment is not necessarily required, any information supplied by these entities and individuals will be considered by the Department when making a final decision regarding an amendment application.

280. COMMENT: “Purveyor” or “water purveyor” should be reworded to say “means any person who owns or operates a public water supply system as defined in N.J.A.C. 7:10.” (125)

RESPONSE: The definition of “purveyor” has been edited upon adoption to reflect the commenter’s suggestion.

281. COMMENT: There should be a more streamlined process than the current site-specific amendment process. It is important to recognize that there is a greater reliance by landowners

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that their property is in the sewer service area, and therefore the amendment and revision process available to seek inclusion should be less cumbersome and more expeditious. (101)

RESPONSE: The Department has significantly revised the WQMP rules in order to streamline the planning process and better integrate it with existing permitting programs. For example, N.J.A.C. 7:15-3.2(b)-(d) provide that WQM plan consistency will be evaluated at the permitting stage. In addition, the rule summary notes that a site-specific amendment adding less than 100 acres and less than 20,000 gallons per day of wastewater is only required to identify the wastewater needs for the specific project, rather than conduct the capacity analysis and full public notification process required with larger amendments.

Further, N.J.A.C. 7:15-4.5(b)4 provides that capacity deficiencies at a receiving wastewater treatment facility need not be resolved at the planning stage; rather, adequate capacity must be assured when the project seeks a treatment works approval pursuant to the Department's TWA permitting program. And probably most significant, a complete WMP is no longer a prerequisite for obtaining a site-specific amendment. Therefore, as a result of these changes the Department believes that these rules should result in a less cumbersome and more expeditious process to obtain a site-specific amendment. The Department believes that the process for seeking an amendment under these rules includes requirements necessary to both inform the Department and those potentially impacted by any proposed changes and to provide an opportunity for public input on changes to inform the process.

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282. COMMENT: Please clarify that placement of public notices regarding amendments in newspapers of general circulation is no longer a requirement. (90)

RESPONSE: The adopted rule no longer requires the placement of the public notice in a newspaper of general circulation in WQMP areas unless a designated planning agency (DPA) procedure, approved by the Department, specifies otherwise. However, N.J.A.C. 7:15-3.5(d) provides that DPA plan amendment procedures in effect on the effective date of the rules remain in full force and effect. Accordingly, if DPA procedures require that public notice be placed in newspapers of general circulation, that requirement remains in effect until such time that the DPA adopts new procedures which remove this requirement.

Where a DPA does not have its own approved plan amendment process, the Department procedures at N.J.A.C. 7:15-3.5(g) govern. N.J.A.C. 7:15-3.5(g)5 provides, in part, that the Department shall publish the public notice in the New Jersey Register and on its website.

283. COMMENT: N.J.A.C. 7:15-3.5(a) should be expanded such that WMP agencies, counties, municipalities and wastewater treatment entities should be responsible for periodically reviewing areawide WMPs, and be authorized to propose site-specific and regional amendments. (196)

RESPONSE: N.J.A.C. 7:15-3.5(a) requires the Department and the DPAs to periodically review areawide WQM plans in order to propose amendments as necessary. The Department recognizes that areawide WQM plans include WMPs as a component adopted through the amendment

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process, and that many counties and/or municipalities have assumed responsibility to prepare and maintain WMPs.

The amendment procedures at N.J.A.C. 7:15-3.5 do not prevent anyone, including WMP agencies, from submitting a site-specific amendment application to the Department or the DPA to amend the areawide WQM plan. Moreover, although N.J.A.C. 7:15-4.2(c) requires that a WMP agency update its WMP every 10 years, a WMP agency may elect to update the WMP earlier for various reasons, such as those listed at N.J.A.C. 7:15-3.5(a).

Further, in accordance with N.J.A.C. 7:15-2.6(a), a WMP agency may prepare a WMP for submission and potential approval by the DPA and, ultimately, by the Department. A WMP agency cannot assume the role of a DPA, or bypass DPA procedures in WMP development and adoption.

284. COMMENT: N.J.A.C. 7:15-3.5(b) should be re-worded to make it clear that WMP agencies are responsible for developing, preparing and periodically submitting a WMP for their WMP area in accordance with the procedural and substantive requirements of N.J.A.C. 7:15, and that said WMPs constitute regional amendments to WQM Plans. (196)

RESPONSE: N.J.A.C. 7:15-3.5(b) is intended to address the WQMP amendment procedures and the role of the designated planning agency and the Department in amending the areawide WQM plan. The responsibility of the WMP agency to develop and update the WMP component of the areawide WQM plan is codified at N.J.A.C. 7:15-2.6 and 4.2(c). Accordingly, further reference to that role in N.J.A.C. 7:15-3.5(b) is unnecessary.

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285. COMMENT: An implication of N.J.A.C. 7:15-3.5(c) should be spelled out through addition of the following language: “The Department shall not approve an amendment that has not been approved by the relevant designated planning agency.” (125)

RESPONSE: N.J.A.C. 7:15-3.5(c) provides, in part, that plan amendment procedures developed by DPAs shall be consistent with the Department’s amendment procedures and must be approved by the Department. N.J.A.C. 7:15-3.5(f) further provides that applicants for amendments consult with local, regional and state entities, to ensure that local planning objectives have been considered, and to better ensure a thorough evaluation process by the DPA. The final decision regarding an amendment lies within the discretion of the Department. In the event the DPA fails or refuses to take action on an amendment, the Department retains authority to act.

286. COMMENT: The Department should clarify the public notice requirements of DPAs under proposed N.J.A.C. 7:15-3.5(c). The proposed rules state that the DPA’s plan amendment procedures are to be consistent with the Department’s procedures. Those DPAs with existing amendment procedures shall remain in full force and effect unless or until modified by the DPAs or the Department. In the end, under the new rules, the public notification process may be different among the counties who are DPAs and therefore cause confusion for applicants and potentially could lead to denial of the amendment due to inadequate notice for the public hearing.

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Additionally, will the Department review the counties' procedures to determine if they are consistent with the WQMP when adopted, and the timeframe for such review? (101, 159)

RESPONSE: The Department has approved WQMP procedures for 7 DPAs and recognizes that the procedures are not uniform or identical. An applicant for an amendment must comply with the public notice procedures of the DPA. The Department intends to review all approved DPA plan amendment procedures for consistency with the rules. Currently-approved DPA procedures are posted on the Department's website at <http://www.state.nj.us/dep/wrm/>.

287. COMMENT: DPAs/WMP agencies should receive notice of the types of amendments prescribed in N.J.A.C. 7:15-3.5(e) in order to provide comment on behalf of county-owned facilities. (90)

288. COMMENT: The following sentence should be added to N.J.A.C. 7:15-3.5(g)1 for clarity in the process: "Where the amendment is within a designated planning area, the application must also be submitted to the relevant designated planning agency in the same manner." (125)

289. COMMENT: A new provision should be added under N.J.A.C. 7:15-3.5(g)5 that specifies that the Department shall not adopt amendments or revisions for which consent from the WMP agency, affected county and municipality(ies) has not been granted, unless the issues

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raised by the WMP agency, affected county and municipality(ies) are adequately addressed and they agree, in writing, to the proposed solutions to each of their concerns. (196)

290. COMMENT: Regarding N.J.A.C. 7:15-3.5(g)3, it is clearly foreseeable that the municipality and county could likely delay in providing the required letter or resolution regarding the consistency of the proposed project and the relevant land use. Obtaining such consistency letters of resolutions should not be a requirement in order to be granted a site-specific amendment. (101)

RESPONSE TO COMMENTS 287 THROUGH 290: As indicated in responses to comments 279 and 285, the rules seek to provide opportunities for input from impacted entities and the public. However, while the Department values this input and any information supplied by these entities and individuals is considered by the Department when it makes a final decision regarding an amendment application, the rules, including N.J.A.C. 7:15-3.5(g)3, require that the applicant seek input, including in the case of that paragraph, a letter or resolution regarding the consistency of the proposed project with the municipal master plan and zoning ordinances, and the county master plan; if the municipality or other entity refuses to respond to the opportunity for input, that will not preclude the Department from making a determination on the application.

291. COMMENT: In reference to N.J.A.C. 7:15-3.5(f)1, as part of the amendment or revision process, the Department should obtain a consent resolution from the municipal governing body stating whether the amendment to change the sewer service area is consistent with the municipal

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zoning ordinance or master plan. If inclusion or exclusion of an area is not consistent with the municipality's interpretation of its zoning or master plan, then the Department should deny the amendment to support coordinated planning. (171)

RESPONSE: Coordination with local and county government entities is addressed throughout the rule. N.J.A.C. 7:15-3.5(f) and (g)2 provide that any entity submitting an amendment application to the Department must demonstrate that the entity has coordinated and consulted with specified local, county and regional governmental entities, and that public notice and the opportunity to comment has been made to interested parties. More specifically, N.J.A.C. 7:15-3.5(g)3 requires an applicant to request from the municipality and county a letter regarding the consistency of the proposal to the local and county Master Plans, and zoning. N.J.A.C. 7:15-3.5(g)6 provides that all governmental entities that may be affected by, or otherwise have a substantial interest in, approval of the proposed amendment, shall be asked to issue written statements of consent for the proposed amendment. This provides an opportunity for municipal governing bodies to notify the Department of any inconsistencies between the proposed amendment and its local planning objectives.

N.J.A.C. 7:15-3.5(g)9 provides that, if any information submitted during the public comment period raises substantial new issues concerning a proposed amendment, the Department may reopen or extend the public comment period, disapprove the proposed amendment, or notify the applicant that more information is required to render a decision. Pursuant to N.J.A.C. 7:15-4.4(h), the Department will evaluate several factors in the delineation

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of sewer service area, including land uses allowed in zoning ordinances, future land uses shown in municipal or county Master Plans and local land use objectives.

While amendments of sewer service area outside of the Pinelands and Highlands area are not likely to occur pursuant to a revision, the same entities identified under the amendment process at N.J.A.C. 7:15-3.5(f) are also provided with all proposed revisions and provided 21 days to comment in accordance with N.J.A.C. 7:15-3.4(f).

With reference to the suggestion that the Department should in all cases deny any application that is not consistent with the municipality's interpretation of its zoning or master plan, while, as indicated above, the rules seek to coordinate as much as possible with local, regional and State planning, as indicated in several responses above, including Response to Comment 184, the Department retains final decision making authority regarding wastewater management planning.

292. COMMENT: N.J.A.C. 7:15-3.5(f)2 does not provide clear guidance and is too broad as to who these vendors are. Consultation should only be required with the operator responsible for the wastewater treatment plant. (101)

RESPONSE: The intent of N.J.A.C. 7:15-3.5(f)2 is to ensure that the owners/operators of private treatment works are notified of any proposed changes to their sewer service area in the same way that owners/operators of public treatment works are notified. To limit this provision only to the operator responsible for the plant would omit other stakeholders which may have an interest or may be impacted by a plan amendment.

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293. COMMENT: In reference to N.J.A.C. 7:15-3.5(f)3, what constitutes a “public notification process to alert property owner?” As legal ads are often not read or seen by the general public, the rule should lay out a clear course of action for notification so that notice is consistently applied throughout the State. Further, the enhanced public notification requirement in N.J.A.C. 7:15-3.5(f)3 should apply to all site-specific amendments that would generate 20,000 GPD of wastewater, regardless whether they would add greater than, or less than 100 acres to a sewer service area. (171, 196)

RESPONSE: The Department recommends use of certified mail (return receipt requested) in order for the applicant to document satisfaction with N.J.A.C. 7:15-3.5(f)3. The public notification requirements specified in N.J.A.C. 7:15-3.5(f)3 are applicable if the site-specific amendment application proposes to add 100 acres or more to the sewer service area, or where the additional area would generate 20,000 gallons per day or more of wastewater. Accordingly, such enhanced notification is already required not only in the circumstance cited by the commenter, but also where the application proposes to add 100 acres or more to the sewer service area, even if it is not planned for that added area to generate 20,000 gallons per day or more of wastewater.

294. COMMENT: N.J.A.C. 7:15-3.5(g)3 is supported because it enhances collaboration among jurisdictions and agencies; supports the alignment of land use and infrastructure plans, policies and investments; and is consistent with the principles of sustainability and smart growth. (159)

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RESPONSE: The Department acknowledges the commenter's support.

295. COMMENT: N.J.A.C. 7:15-3.5(g)3 is supported, but it is suggested that the word "request" in this provision be changed to "application"; and that language be added to make it clear that the application to the Department must be submitted simultaneously to the municipality and county. The proposed rule should specify that counties and municipalities will be provided with a minimum of 60 days to prepare and finalize a formal written response after the application is received. This action should be in addition to, and not substitute for, the requirements concerning written statements of consent required in N.J.A.C. 7:15-3.5(g)5 and 6.

(196)

RESPONSE: The Department acknowledges the commenter's support. N.J.A.C. 7:15-3.5(f) requires that an entity preparing an application to modify a WQM plan during preparation of the proposed amendment notify, seek comments from, and offer to consult with specific interested entities, including municipalities and counties. As part of pre-application consultation, N.J.A.C. 7:15-3.5(g)3 requires that the applicant submit as part of the application proof that it has requested a letter or resolution from the municipality and county as to consistency of the proposed project with the municipal master plan and zoning ordinances, and the county master plan; the intent of this provision is not to require that a copy of the application be supplied, but instead to require that proof of the request for consistency has been made. If the Department decides that the amendment application should proceed further, the Department provides the

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applicant with a list of entities, including the municipality and county in which the proposed project is located. In accordance with N.J.A.C. 7:15-3.5(g)6, each of the identified entities must be provided with a copy of the proposed amendment.

Through the consultation required by N.J.A.C. 7:15-3.5(f), it is anticipated that all entities identified in (f) will be well-advised as to the contents of the proposed amendment. The Department believes that the process specified in the rules provides affected entities, including municipalities and counties, with sufficient opportunities for input both prior to the application being made and subsequent to application, including the 60-day period provided by N.J.A.C. 7:15-3.5(g)6iii to provide a written statement of consent or objection to the proposed amendment.

296. COMMENT: Regarding N.J.A.C. 7:15-3.5(g)5, please clarify whether the applicant must submit a copy of all application materials to those entities from which a statement of consent is required. Note that application materials would have already been given to the affected parties. Applicants should only have to submit another copy of the application if there are substantial changes. (101)

RESPONSE: The applicant should anticipate providing a complete copy of the application package to the entities from whom a written statement of consent is sought if a complete copy has not been previously provided, including updated portions of the application.

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297. COMMENT: Overall, the proposed timeframes for processing applications are too long in duration and should be shortened. Specifically, the 90-day timeframe provided for the Department to review and notify the applicant whether the application qualifies as an amendment, requires more information, or is disapproved, pursuant to N.J.A.C. 7:15-3.5(g)4 should be shortened. Further, for clarity, the following sentence should be added to (g)4: “Failure to meet this deadline does not result in automatic approval or disapproval of the proposed amendment.” (101, 125)

298. COMMENT: Based on experience with the FWSA maps over the last two years, the timing for the Department to process revisions and amendments is a concern. This concern is exacerbated by the lack of time deadlines within the rules for the Department to process and render decision on a revision or amendment. Therefore, N.J.A.C. 7:15-3.5(g)11 should be amended to provide a definitive timeframe for the Department to issue its decision. (101, 232)

RESPONSE TO COMMENTS 297 AND 298: The Department’s experience is that 90 days to disapprove, make a determination that the application qualifies as a site-specific amendment, or to determine that additional information is necessary is a reasonable time period. However, the Department often processes such applications more quickly and will continue to strive to do so. Department action on amendment applications is addressed at N.J.A.C. 7:15-3.5(g)10. In accordance with that paragraph, an amendment will only be adopted, or adopted with minor changes that do not destroy the value of the public notice based upon the Department’s consideration of the administrative record. Accordingly, the Department does not believe that it

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is necessary to further specify that failure to make a determination within the timeframes for processing applications does not result in approval of the proposed amendment.

299. COMMENT: N.J.A.C. 7:15-3.5(g)5 should be modified as follows: “If the Department’s decision is to proceed further with the amendment application, the Department will notify the applicant, municipality, county and the designated planning agency, and include the public notice for the proposed amendment and a list of entities from which a written statement of consent should be requested.” (196)

RESPONSE: N.J.A.C. 7:15-3.5(g)5 provides that, if the Department’s decision is to proceed further with the amendment application, the Department will notify the applicant and the designated planning agency, if applicable, and include the public notice for the proposed amendment and a list of entities from which a written statement of consent shall be requested. The commenter suggests that the notification be expanded to the municipality and county. N.J.A.C. 7:15-3.5(g)1 provides the governmental entities that should be consulted by an applicant regarding an amendment, and N.J.A.C. 7:15-3.5(g)6 provides additional information regarding requests for written consents, as well as what constitutes a written statement of consent. Thus, the county and municipality are adequately notified of proposed amendments according to these rules.

300. COMMENT: Under N.J.A.C. 7:15-3.5(g)8, a public hearing is not always required and whether one is held is at the discretion of the Department. It is recommended that this provision

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be amended to always require a public hearing for a County WMP when a regular update is under consideration for adoption, as a County WMP is too large an issue to avoid a hearing.
(125, 159)

RESPONSE: The Department understands the value of a public hearing for some specific types of amendments. While N.J.A.C. 7:15-3.5(g)8 continues to provide interested persons with the opportunity to request the Department hold a hearing when one has not been provided in the initial notice, the rules recognize at N.J.A.C. 7:15-3.5(g)5 the Department's authority to require a non-adversarial public hearing on its own initiative as part of the public notice of the proposed amendment published in the New Jersey Register. For county WMP updates submitted pursuant to N.J.A.C. 7:15-4.2(c), which impact planning decisions for the next 10 years, the Department anticipates requiring a public hearing in accordance with N.J.A.C. 7:15-3.5(g)5 as part of the WMP amendment process. Accordingly, no amendment to N.J.A.C. 7:15-3.5(g)8 is necessary.

301. COMMENT: N.J.A.C. 7:15-3.5(j) should be modified to require an updated capacity analysis for site-specific amendments that would generate 20,000 GPD of wastewater, regardless of whether they would add greater than, or less than 100 acres to sewer service area. This provision should also be modified to indicate that the applicant is to calculate the amount of wastewater flow that will be generated from the proposed project or activity, and submit this information to the applicable WMP agency. WMP agencies should be provided a minimum of 60 days to review the applicant's calculation (and correct it if necessary). WMP agencies should have the option of using this information along with other appropriate current data to generate an

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updated wastewater treatment capacity analysis and submit this analysis to the Department along with its determination regarding capacity availability or constraints at the treatment plant (developed in consultation with the affected sewer authority). The rules should also establish the actions that should be taken in the event the addition of new flows from the proposed project would result in exceeding 90 percent of permitted flow at the treatment plant at the time of the site-specific application. The Department should require all amendments to conduct a capacity analysis. (196, 213)

RESPONSE: N.J.A.C. 7:15-3.5(j) provides that, for a site-specific amendment that proposes to add 100 or more acres to the sewer service area or where the additional sewer service area would generate 20,000 gallons per day, the application shall include a proposed modification to the wastewater treatment capacity analysis prepared in accordance with N.J.A.C. 7:15-4.5(b), to reflect the change in projected wastewater generation associated with the project or activity. Accordingly, regardless whether a site-specific amendment proposes to add greater than or less than 100 acres to the sewer service area, any proposal to generate 20,000 gallons per day or more of wastewater must provide with the application a proposed updated wastewater treatment capacity analysis associated with the sewer service area, as reflected in the WMP.

With reference to provision of information to the WMP agency and provision of opportunities for the WMP agency to have input, N.J.A.C. 7:15-3.5(g)2 provides that applications to the Department to amend a WQM plan shall include documentation demonstrating compliance with the notification and consultation requirements provided at N.J.A.C. 7:15-3.5(f), (g) and (h). Applicants will be required to certify that they provided the

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application information to certain entities, including the WMP agency. The electronic application system will not accept the submission unless and until the applicant provides this certification. Affected WMP agencies are additionally among those that the applicant is required to seek consent from with the request providing 60 days for issuance of the statement of consent. Consistent with that requirement, N.J.A.C. 7:15-3.5(g)6iii provides, in part, that the Department will consider statements of consent and comments received within 60 days of receipt of the request under N.J.A.C. 7:15-3.5(g)6i. As a result, WMP agencies will have an opportunity to review and comment on the applicant's capacity analysis for projects larger than 100 acres or those generating flows in excess of 20,000 gpd.

The new rules do address capacity in a manner that ensures any potential deficiencies are identified and certain actions taken. N.J.A.C. 7:15-4.5(b)5 provides that, where the existing flow is 80 percent or more of the permitted flow at the time of WMP development, the WMP agency shall coordinate with the Department to ensure that adequate capacity exists. N.J.A.C. 7:15-4.5(b)4 provides that the applicant shall identify and evaluate strategies for addressing potential capacity deficiencies. Such strategies are required to take into account the size of the identified potential capacity deficiency and the time frame within which the estimated need is anticipated to exceed the current permitted flow. In addition, action may be required from the wastewater treatment facility and or sewage authorities if triggered during a review of a NJPDES permit modification or evaluation pursuant to the capacity assurance program rule.

N.J.A.C. 7:15-3.5(j) provides that delineation should be completed pursuant to N.J.A.C. 7:15-4.4, and that necessary wastewater capacity analyses should be performed pursuant to N.J.A.C. 7:15-4.5(b). The site-specific amendment application for projects that add 100 or more

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acres to the sewer service area or where the additional sewer service area would generate 20,000 gallons per day or more of wastewater is required to include a proposed modification to the wastewater treatment capacity analysis to include the proposed project or activity. This is part of the information that will be provided to entities, including the WMP agency. As provided in the rule summary, for projects that propose to add less than 100 acres or generate less than 20,000 gallons of wastewater per day, the rules require that the applicant only provide the estimated wastewater flow for the project. The Department encourages the WMP agency to review and use this information presented by the applicant, and to maintain this information in anticipation of a WMP update, when appropriate.

302. COMMENT: Under N.J.A.C. 7:15-3.5(j)2, for site-specific amendments for projects over 20,000 gallons per day, please clarify why the applicant must propose a modification to the wastewater treatment capacity analysis for the proposed project or activity. It is unclear why an applicant has to prepare such modification as it seems that the Department would already have this information. The applicant should be required to provide a summary analysis of how the project might impact the current adopted wastewater treatment capacity analysis as presented in the most recent adopted WQMP. The Department should direct all counties to prepare the wastewater treatment capacity analysis in the WQMP to be in a consistent format that allows the applicant/public to easily see a summary of the current and future treatment capacity of each public sewerage treatment facility in the planning area. (46, 101)

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RESPONSE: N.J.A.C. 7:15-3.5(j)2 provides that, for site-specific amendments that propose to add 100 or more acres to the sewer service area or where the additional sewer service area would generate 20,000 gallons per day or more of wastewater, the application shall include a proposed modification to the wastewater treatment capacity analysis. This requires that the applicant provide a capacity analysis of how the project might impact the associated SSA or wastewater treatment facility as presented in the most recent adopted WQMP. This provision is intended to evaluate the project's impact on the wastewater treatment facility that will receive the wastewater. It is unnecessary for anyone other than the applicant to prepare this analysis, since the data can be readily obtained. The applicant will be required to provide information related to the estimated flow from its project, the existing flow at the wastewater treatment plant, which will be available on the Department's website at www.nj.gov/dep/wrm, and to determine whether there is a potential deficiency in the capacity of the wastewater treatment plant to treat the project's wastewater. If there is a gap, the applicant would be required, as suggested in the comment, to provide an analysis of how that deficiency would be addressed.

Coordination with Pinelands Commission (N.J.A.C. 7:15-2.9(a)1, 3.4(a)2, 3.5(h), 4.4(b), 4.5(c)2, and related definitions at N.J.A.C. 7:15-1.5)

303. COMMENT: "Centralized wastewater treatment and collection facilities" needs to be defined to avoid confusion with similar terms in the proposed rule such as, Advanced Wastewater Pretreatment Device and Pinelands Advanced Wastewater Treatment Systems Pilot Program, N.J.A.C. 7:50-10.23. (21)

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RESPONSE: “Centralized wastewater treatment and collection facilities” is used only one time, at N.J.A.C. 7:17-4.4(b)2, in the context of eligible sewer service area delineation in the Pinelands. This phrase is specifically used in the Pinelands CMP and the 2012 Memorandum of Understanding (MOU) between the Pinelands Commission and the Department, and has been used in the CMP for decades to limit the management areas within which sewer service is permitted. In light of this context, the Department does not believe that the addition of a definition is necessary. In the Department’s experience in implementing this provision, there has been no confusion relative to the Advanced Wastewater Pretreatment Device and Pinelands Advanced Wastewater Treatment Systems Pilot Program.

304. COMMENT: The proposed rules are inconsistent with the intent of the National Parks and Recreation Act of 1978 and are a violation of the Pinelands Protection Act. The rules allow the Department to override the authority of the Pinelands Commission to uphold where sewers are permitted as per the Pinelands Comprehensive Management Plan. The proposed rules in essence would allow the Department through the WQMP process to approve sewer service in areas where they are prohibited in the CMP. (21)

305. COMMENT: The federal role in maintaining the integrity of the CMP and land capability map is embedded in both law and regulation. As a result, the proposed WQMP rules as stated above would be inconsistent with both federal and state law. (21)

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306. COMMENT: There is more concern for ratables than the environment, even though that is a false notion because more development means higher taxes. When the Pinelands Act was passed it set aside these lands for future generations to protect and manage the natural resources of the Pinelands. The Pinelands Act was passed so that the Pinelands would not become another Levittown. (273)

RESPONSE TO COMMENTS 304 THROUGH 306: These rules are not inconsistent with the intent of the National Parks and Recreation Act of 1978, nor do they violate the Pinelands Protection Act. The Department has worked closely with the Pinelands Commission in their implementation of the CMP relative to the Department's implementation of the WQMP program and will continue to do so, as provided by N.J.A.C. 7:15-2.9(a), 3.4(a)2, and 4.4(b). The Department will continue to coordinate closely with the Pinelands Commission on wastewater service issues.

307. COMMENT: Pinelands Villages should not be eligible for sewers. The Pinelands CMP permits, but does not require Villages to be sewerred. N.J.A.C. 7:50-5.27. In fact, most have never been in sewer service areas throughout the Pinelands' 34 years of existence. By adopting a sweeping inclusion of all Pinelands Villages as areas eligible for sewers without regard to their individual character or any individualized planning process for each Village, the Department would violate both the spirit and the letter of the CMP. (21)

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RESPONSE: The Pinelands CMP permits, but does not require, that Pinelands Villages may be sewerred. Specifically, N.J.A.C. 7:50-5.12 establishes Pinelands Villages as one of the eight Pinelands Management Areas within which development may be served by sewers. The Department's designation of Pinelands Villages as areas eligible for sewer service likewise provides the opportunity for sewers, but does not require or guarantee that sewers or a sewage collection system will be developed. The decision to provide public sanitary sewer service to a Pinelands Village is subject to the discretion and authority of each Pinelands municipality within which a Pinelands Village is located, subject to compliance with the Pinelands CMP and the Department's regulatory (i.e. permitting) requirements.

308. COMMENT: The justification for including Pinelands Villages as areas eligible for sewers is based exclusively on an April 13, 2012 Memorandum of Understanding (MOU) between the Pinelands Commission and DEP regarding the DEP's water quality planning process in the Pinelands. However, the MOU does not provide a lawful basis to add Pinelands Villages to sewer service areas. Neither the Pinelands Protection Act nor the CMP require sewerred of Pinelands Villages or give the Commission authority to require Villages to be sewerred. Pinelands Villages should be removed from the proposed rule. (21)

309. COMMENT: Pinelands Villages will be designated as growth areas, whether the Department calls them Priority Growth Areas or Centers of Place, and developers have already tried to install sewer plants on private property without public notice. The objective seems to be to get sewer service area into the Pinelands Villages to turn those 24,000 acres into new growth

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zones. The Department cites both the Office of Planning Advocacy and the Pinelands Commission as the basis for designating Pinelands Villages as a growth zone, but that's not true. The Pinelands Commission assumes that this is a growth zone, and there's absolutely no legal basis for doing this. (68)

RESPONSE TO COMMENTS 308 AND 309: The Pinelands CMP, N.J.A.C. 7:50, permits, but does not require, that Pinelands Villages be sewerred. N.J.A.C. 7:50-5.12 establishes Pinelands Villages as one of the eight Pinelands Management Areas within which development may be served by sewers. The Department's designation of Pinelands Villages as areas eligible for sewer service likewise does not require or guarantee that sewers or a sewage collection system be developed. The MOU between the Pinelands Commission and the Department was intended to ensure that sewer service areas would align with the boundaries of the Pinelands Management Areas within which sewer service is permitted by the CMP. Section III.A.2 of the MOU provides that Pinelands Villages, among other Pinelands Management Areas, shall be deemed within a sewer service area.

310. COMMENT: With regard to areas delineated for sewer service in the Pinelands region, proposed N.J.A.C. 7:15-4.4(b)2 indicates that the Department must also concur with "any other area approved by the Pinelands Commission as appropriate for the development of centralized wastewater treatment and collection facilities." Please elaborate on what is meant by requiring such concurrence and how this would affect the site-specific amendment and revision process.

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Would the existing Memorandum of Understanding with the Pinelands Commission remain in effect or need to be modified to reflect the concurrence? (101)

RESPONSE: While the rules allow for changes within the of the Pinelands Area to proceed as a Commission action through the revision process, any other changes to sewer service area designation in the Pinelands National Reserve must be made through an amendment, as reflected at N.J.A.C. 7:15-4.4(b)2. This applies directly to areas of the Pinelands National Reserve outside the Pinelands area, pursuant to N.J.A.C. 7:15-3.5(h). See also the response to comment 304 above regarding the Advanced Wastewater Pretreatment Device and Pinelands Advanced Wastewater Treatment Systems Pilot Program.

While taking into account provisions of the CMP for areas in the Pinelands National Reserve outside the Pinelands Area, the Department must ensure that any project outside the Pinelands Area designated for growth that may be approved for centralized wastewater treatment or collection facilities, also meets the requirements set forth in these rules. Therefore, an applicant would need to submit the application simultaneously to the Department and the Pinelands Commission, pursuant to N.J.A.C. 7:15-3.5(h), to provide the Pinelands an opportunity to evaluate and comment on the project pursuant to the CMP. Additionally, the Department would coordinate application review with the Pinelands Commission pursuant to N.J.A.C. 7:15-2.9, while following Department procedures for the review of amendments pursuant to N.J.A.C. 7:15-3.5. The Department intends to develop a memorandum of agreement with the Pinelands Commission to better define how best to coordinate this planning process and to ensure that all

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parties receive necessary documentation, including appropriate copies of relevant approvals or certifications and the GIS coverage depicting these changes.

311. COMMENT: This proposal will add even more development and extend into rural villages, towns and environmentally sensitive areas, including the State Planning Areas 1 and 2 in the Pinelands. It now makes these sewer plants more cost effective in the Pinelands and increases the size of development. (107, 273, 299)

RESPONSE: These rules will make it no easier or more difficult to develop in the Pinelands. Any application to expand sewer service area in the Pinelands must comply with these rules and with the CMP. The flexibility in delineating sewer service area in Planning Areas 1 afforded in these rules does not impact the Pinelands, as there are no PA-1 or PA-2 areas in the Pinelands Area. According to the State Plan, the Pinelands Area is one of two areas considered Planning Regions Established by Statute, specifically, the Pinelands Protection Act, N.J.S.A. 13:18A et seq. (See State Plan, p. 167.). See also Response to Comments 304 through 306 above.

312. COMMENT: The clarification in N.J.A.C. 7:15-2.9(a)1 that the Pinelands CMP will be used in the entire Pinelands Reserve Area is supported. The CMP will be used in project reviews by the Pinelands Commission in the Pinelands Protection Area and by the NJDEP/CAFRA in the remainder of the Pinelands Reserve Area. This is addressed in N.J.A.C. 7:15-2.9(a)1 but should be further modified as follows: “It should be noted that the latest approved Pinelands Commission’s Comprehensive Management Plan (CMP) is to be utilized in the review process

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by the Pinelands Commission in the Pinelands Area where the Pinelands Commission has responsibility and by the NJDEP/CAFRA in the remainder of the Pinelands Protection Area where the NJDEP/CAFRA has responsibility.” (163)

RESPONSE: The Department is unsure of the commenter’s assertion since N.J.A.C. 7:15-2.9(a)1 recognizes the CMP as a regional plan and the Department’s support of various regional plans. The rules at N.J.A.C. 7:15-3.5(h) require that applicants simultaneously submit to the Pinelands Commission and to the Department any proposal located in the Pinelands National Reserve in order to provide an opportunity for the Pinelands Commission to provide comment prior to the Department’s action on an amendment application. The Department assumes that the Pinelands Commission would use the most current version of the CMP in its evaluation and review of a proposed project. Therefore, no modification of the rules is necessary.

313. COMMENT: We appreciate the Department’s recognition of management areas designated as appropriate for growth within the Pinelands Comprehensive Management Plan (CMP) as areas eligible for sewer service, specifically Regional Growth Areas, Pinelands Villages and Pinelands Towns. (232)

RESPONSE: The Department acknowledges the commenter’s support.

314. COMMENT: As currently drafted, the revision and amendment procedures potentially will result in significant development delays for applicants in the Pinelands Area. Under the

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CMP, the construction of sewer infrastructure would now be permitted, because the lands have been redesignated as a Regional Growth Area. However, they would not be viewed by the Department as an eligible sewer service area because, at the time the WQMP was approved, the management area designation did not permit sewer infrastructure. Given that, a WQM revision must be processed before any development involving sewer could proceed. The delays would be even longer for a project approved under an MOA because, under the current proposed rules, an amendment would be required. (232)

RESPONSE: In recognition of Pinelands Commission and Department efforts to align sewer service area with the areas approved for growth in the Pinelands CMP, changes to the sewer service area in the Pinelands that reflect a re-designation of a Pinelands Management Area approved by the Pinelands Commission in accordance with the CMP, N.J.A.C. 7:50-7, or the ordinance certification procedures of the CMP at N.J.A.C. 7-50.3 to qualify as a revision pursuant to N.J.A.C. 7:15-3.4(a)2. The Department's revision process is a truncated process and the Department anticipates timely approval of revisions in the Pinelands area due to the agencies' coordination efforts. Amendments, rather than revisions, are required for projects or activities in the Pinelands National Reserve outside the Pinelands area. Although the amendment process also includes a public notice and comment period, the simultaneous submittal requirement and the coordination efforts should result in timely and consistent action by the respective agencies.

315. COMMENT: The Pinelands Commission is authorized to issue whatever approvals it feels are necessary to implement the requirements of the PPA and the Pinelands CMP, even if

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those approvals would authorize the construction of sewer service infrastructure in an area not currently identified as eligible for sewer. The Department is requiring that these types of approvals trigger the amendment process. Given that the Department may not take an action on an amendment that is inconsistent with the Pinelands CMP, there seems to be no justification to subject these types of Commission approvals to the more time consuming process of an amendment. Rather, all Commission approvals that result in a change to a sewer service area should be processed as revisions. This is how the Commission envisioned the process working as reflected in the April 2012 MOU. (232)

316. COMMENT: Under the MOU, the Department agreed that it would recognize management area changes approved by the Commission that resulted in new lands being designated within management areas in which wastewater treatment and collection facilities are a permitted use and that it would revise the affected areawide WQMP or WMP to incorporate such changes. In contrast, if the Commission approves a management area change through certification of a municipal ordinance (the conformance process) or adoption of an amendment to the Pinelands CMP, it must apply to the Department for a revision pursuant to N.J.A.C. 7:15-3.4(a)2. The eligible sewer service area in the areawide WQMP will not be revised absent an application by the Pinelands Commission and a subsequent approval by the Department. All other changes to a WQMP will require an application for a plan amendment, even if submitted by and in accordance with an approval that has been issued by the Commission. For both revisions and amendments, the Department has retained the right to adopt, change or disapprove such applications. This may result in the Department issuing decisions concerning areas eligible

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for sewer service that will be inconsistent with the requirements of the Pinelands CMP, in violation of the PPA and the CMP. (232)

RESPONSE TO COMMENTS 315 AND 316: Consistent with the MOU, the Department has designated most actions taken by the Pinelands Commission regarding wastewater management as eligible for the truncated revision process because the Pinelands Commission will have provided an opportunity for public input as part of its process. Revisions are permissible for changes to the sewer service area in the Pinelands that reflect a re-designation of a Pinelands Management Area approved by the Pinelands accordance with the CMP, N.J.A.C. 7:50-7, or with the ordinance certification procedures of the CMP at N.J.A.C. 7-50.3. Through the agencies' coordination efforts on these issues the Department will be in a position to process a revision to coincide with the Pinelands Commission's actions. While the Pinelands Protection Act provides that no State approval for the construction of any structure or the disturbance of any land within the Pinelands area shall be granted unless it conforms to the CMP, these rules are planning rules and amendments approved under these rules do not approve the construction of any structure or the disturbance of any land in the Pinelands or elsewhere in the State.

317. COMMENT: The Department should amend the language of the proposed rules to indicate that the Department would not take an action that was inconsistent with the standards of the Pinelands CMP. Such a revision merely acknowledges the Department's obligation to exercise its regulatory responsibilities in a manner consistent with the Pinelands CMP, as is required under State law, the PPA. (232)

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318. COMMENT: An additional section should be added after N.J.A.C. 7:15-4.7(e)1iii that reads as follows: “In the Pinelands Reserve, there should be a statement in the HIA that the proposed project is consistent with the latest Pinelands CMP.” (163)

319. COMMENT: In reference to N.J.A.C. 7:15-3.5(h), while simultaneous submission of an application to the Commission will ensure that it is aware of proposed revisions and amendments in the Pinelands Area, it does not adequately address the approval issue. Additionally, this process is not consistent with the State agency coordinated permitting provisions of the Pinelands CMP, which require that a State agency not deem an application complete unless it is accompanied by a consistency determination by the Commission. (232)

RESPONSE TO COMMENTS 317 THROUGH 319: The Department recognizes the Pinelands Commission as the principal planning agency for the State-designated Pinelands Area and has provided a streamlined process to implement the Commission’s implementation of wastewater planning decisions under these rules. The Department also has wastewater planning jurisdiction under the WQPA and the CWA. Through the ongoing coordination efforts of the respective agencies and the MOU, the Department anticipates efficient and timely joint reviews of applications for modifications of areawide WQM plans.

N.J.S.A. 13:18A-10c. provides that no State approval for the construction of any structure or the disturbance of any land within the Pinelands area shall be granted unless it conforms to the CMP. The WQMP rules are planning rules and amendments approved under these rules do not

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approve the construction of any structure or the disturbance of any land in the Pinelands or elsewhere in the State. In regard to amendment applications affecting the Pinelands area, N.J.A.C. 7:15- 3.5(h) requires the simultaneous submittal of the application to the Pinelands Commission in order to ensure the Commission has an opportunity to provide comment on the application.

320. COMMENT: Would the provisions of N.J.A.C. 7:15-3.5(g)5 apply to the Pinelands Commission given that there is a specific notice provision expressly pertaining to the Commission at N.J.A.C. 7:15-3.5(h)? (232)

RESPONSE: For the purpose of adopting an amendment to the Pinelands National Reserve outside the Pinelands area, an application for an amendment must satisfy N.J.A.C. 7:15-3.5(h).

321. COMMENT: As the proposed rules are currently structured, the Department may act on a WQMP revision or amendment application affecting lands in the Pinelands Area that is submitted by an entity, other than the Commission, without obtaining a consistency document (i.e. Certificate of Filing or Resolution of Approval) from the Pinelands Commission. This is inconsistent with the Pinelands CMP at N.J.A.C. 7:50-4.81(b). (232)

RESPONSE: In order to avoid inconsistent action in the Pinelands Area, the rules at N.J.A.C. 7:15-3.5(h) explicitly require simultaneous submission of the application to the Pinelands Commission to trigger the coordination process.

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322. COMMENT: These rule changes could present the possible scenario where the Department renders a decision that was inconsistent with the Pinelands CMP, and the only way to effectuate that Department approval would be for the applicant to come to the Commission and seek a management area boundary change. This would result in the initiation of a complex and time consuming regulatory process with little guarantee of success and where the applicant is caught in the middle. (232)

RESPONSE: The Department is committed to coordination with regional planning entities, including the Pinelands Commission. The Department will continue to closely coordinate with the Pinelands Commission and provide the Commission an opportunity to provide input on Pinelands-related amendments, pursuant to N.J.A.C.7:15-3.5(f)1 and 3.5(g)5. Through the coordination process, the Department anticipates consistent actions will be taken by the respective agencies in order to avoid the scenario suggested by the commenter.

323. COMMENT: In reference to N.J.A.C. 7:15-3.4(f) and 3.5(g)3 and 5, the requirement to obtain consent from Pinelands municipalities and counties for amendments raises a legal issue. A Pinelands county or municipality, even if they are the designated planning agency, lacks authority to independently change a Pinelands management area boundary; only the Commission has that authority. Therefore, it is axiomatic that such entities cannot change a Pinelands management area designation/boundary through the Department's WQMP process. The process would require the Pinelands Commission to seek the consent of an entity it regulates for a

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management area boundary change that only the Commission can effectuate. Given this, the need for notice and comment for WQMP revision and amendment applications submitted by the Commission for sewer service area changes in the Pinelands Area is questioned. Neither the Department nor the Commission should be seeking the consent of these entities for a revision or amendment based on a management area change or other approval already enacted by the Commission. (232)

RESPONSE: N.J.A.C.7:15-3.4(f) reflects the Department's commitment to seek formal input from a range of entities, including local governments, regarding applications for revisions to a sewer service area. This is the local government's opportunity to provide comment to the Department. N.J.A.C. 7:15-3.5(g)3 provides a municipality the opportunity to issue a written statement regarding the project's consistency with local master plans and zoning. N.J.A.C. 7:15-3.5(g)5 provides that, after the Department has reviewed the application and has decided to proceed further, the Department will direct the applicant to request a written statement of consent from a list of entities provided by the Department, which would include local governments. None of these provisions require the local government to approve the Department's action to amend the sewer service area through the revision process.

324. COMMENT: In reference to N.J.A.C. 7:15-3.4(f) and 3.5(g)3 and 5, counties and municipalities are provided notice and an opportunity to comment on proposed management area changes considered by the Pinelands Commission through the conformance or rule amendment processes. Notice is also given to affected counties and municipalities when the Commission

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considers an intergovernmental agreement that could result in a change to sewer service area boundaries. Given this, the further involvement of these entities in the Department's process is a potential time-consuming and unnecessary redundancy. It should only be required for revisions and amendments in the Pinelands Area that are submitted to the Department by applicants other than the Commission. Therefore, the Department should revise N.J.A.C. 7:15-3.4(f) and 3.5(f) on adoption to eliminate the notice and consent requirements for revisions and/or amendments for which the Commission has acted on a management area boundary change through the conformance process or a CMP amendment. The Department should also clarify the role of the designated planning agencies in the processing of revisions and amendments. (232)

RESPONSE: The Department agrees that seeking input from government entities could be redundant for revision and amendment applications submitted by the Pinelands Commission for proposed projects within the Pinelands Area. While the Department provides, pursuant to N.J.A.C. 7:15-3.4(f) and 3.5(g)6i, the list of entities that the applicant must contact, the Department believes that such list required when the Pinelands Commission is an applicant could be more effectively addressed in the MOU that the Department and Pinelands will effectuate with respect to WQMP coordination activities. The MOU is also the most effective vehicle to outline the role of the DPA in any amendments to the areawide WQM plans within the region of the Pinelands.

325. COMMENT: The regulations fail to identify any standards or criteria pursuant to which, the Department will make its decision to adopt, adopt with minor changes, or disapprove a

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revision or amendment. This is particularly critical with regard to revisions and amendments in the Pinelands Area, where only the Pinelands Commission has the authority to change or modify the management area designations and boundaries. The proposed rules fail to include standards governing the Department's revision and amendment process, such as a list of the items to be used by the Department when reviewing a revision or amendment. Applicants, as well as the Commission, should have clarity regarding the basis which DEP will rely on in its review and potential modification of the sewer service area boundaries reflected in a requested revision or amendment submitted by the Commission. (232)

RESPONSE: These rules require the submittal of specific information in support of revisions and amendments. This information, as well as any other information available to the Department, constitute the items to be used by the Department when reviewing a revision or amendment to determine if the proposed modification complies with the requirements specified in the WQMP rules. WQMP decisions are based on a multitude of potential scenarios and area-specific circumstances. Each application is reviewed on the merits and the record developed. The Department's determination on wastewater planning provides the rationale and bases for the Department's decision.

326. COMMENT: The MOU between DEP and the Pinelands Commission included the substantially developed portions of Military and Federal Installations within areas eligible for sewer service. These areas, however, have been withdrawn from areas eligible for sewer service areas delineated at N.J.A.C. 7:15-4.4. The rule proposal recognizes that substantially developed

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portions of Military and Federal installations are appropriate for wastewater infrastructure and the DEP is currently involved in the rulemaking process to approve additional changes to the Future Wastewater Service Area (FWSA) maps to incorporate these areas. Despite this, the proposed rule does not include these areas within Pinelands areas eligible for sewer service. This creates a direct conflict between the proposed rules and the FWSA maps. In order to correct this problem, the proposed rules should be amended on adoption to recognize substantially developed portions of Military and Federal installations as areas eligible for sewer service. (232)

RESPONSE: The Department recognizes this oversight in the rule text. The rule summary supports the commenter's request. Specifically, the proposal summary notes, at 47 N.J.R. 2546, that under the Pinelands Protection Act (PPA) and the Pinelands CMP, in order to direct development away from the ecologically-sensitive core of the Pinelands and to encourage development within the management areas appropriate for growth, the development of centralized wastewater treatment and collection facilities are only permitted in those areas identified as appropriate for growth. These include Regional Growth Areas, Pinelands Towns and Villages, and substantially developed portions of Military and Federal Installation Areas. N.J.A.C. 7:50-5.28(b), 5.27(b), and 5.29(b)2. The rule has been revised at N.J.A.C. 7:15-4.4(b)1 to include "substantially developed portions of Military and Federal Installations" among the management area designations and boundaries established within the Pinelands CMP as areas eligible for sewer service.

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Coordination with Highlands Commission (*N.J.A.C. 7:15-2.9(A)2, 3.2(h), 3.4(a)3, 3.5(i), 4.4(c), 4.5(c)3, and related definitions at N.J.A.C. 7:15-1.5 and N.J.A.C. 7:38-1.1(k)*)

327. COMMENT: The proposed rules lower or eliminate protective goals, policies, objectives and standards that protect Highlands water – all at the expense of the public and the critical water and other natural resources upon which we all depend. The proposed rules put New Jersey’s future and quality of life in jeopardy and lay out multiple opportunities to circumvent goals protective of water and wildlife. The proposed rule does not uphold the State’s somber obligation to protect our public trust resources, including both wildlife and a clean and abundant water supply. (235)

328. COMMENT: These rules could cause an enormous increase in development in the Highlands Preservation area, threatening our reservoirs. (2)

RESPONSE TO COMMENTS 327 AND 328: N.J.A.C. 7:15-2.9 codifies the Department's intention to support implementation of comprehensive regional plans and the coordination and integration of water quality planning actions undertaken or overseen under this chapter with the Highlands Regional Master Plan and other regional plans. The Department is committed to ensuring the protection of the Highlands. The Department has worked closely with the Highlands Council in developing these rules. Further, the rules ensure Highlands Commission involvement and opportunities for input throughout the WQM plan amendment process. Before an application to amend an areawide WQM plan affecting area within the jurisdiction of the Highlands Council is even finalized, entities preparing an amendment application are required to

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notify, seek comments from, and offer to consult with the Highlands Council in accordance with N.J.A.C. 7:3.5(f)1. N.J.A.C. 7:15-3.5(h) requires the applicant to simultaneously submit an application for a proposed amendment in the Highlands Region to both the Department and the Highlands Council, with the application considered incomplete if the applicant does not provide proof that the Council has been provided with the application consistent with that subsection. Additionally, N.J.A.C. 7:15-3.5(i) specifies the process to be followed for a site-specific amendment located in the Highlands preservation area that requires a Highlands Preservation Area Approval or Approval with Waiver, with specified provisions of the Highlands Water Protection and Planning Act Rules to govern. In short, through these and other mechanisms, the rules ensure that applications for amendments to an areawide WQM plan in the Highlands will continue to be reviewed by the Highlands Council for consistency with the RMP.

329. COMMENT: N.J.A.C. 7:15-4.4(c)3 should include the sentence “However, the Department may consider factors that resulted in Highlands Regional Master Plan designation of areas other than those of (c)2 in non-conforming municipalities” to acknowledge the coordination process that is supposed to exist with the Highlands Council. (125)

330. COMMENT: In the Highlands Planning Area, for municipalities that have not conformed directly to the Highlands RMP, the only environmentally sensitive areas that will be excluded from the sewer service area are any contiguous area of 25 acres or larger which consists of T&E species habitat Rank 3, 4, 5, National Heritage Priority Sites, Category One waters and wetlands. This is a very limited list of ESAs that undercuts the goals, policies and objectives

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developed by the Highlands Regional Master Plan for the identified and mapped environmentally sensitive features of the Highlands, and thereby undermines the legislative intent of the Highlands Act. The proposed rule does not exclude even an environmentally constrained existing community zone from a proposed sewer service area. The RMP has a rather long list of ESAs which should be considered and should be included in the WQMP rules. (93, 235)

331. COMMENT: The Highlands Act states that the Legislature finds and declares that the protection of the Highlands because of its vital link to the future of the state's drinking water supplies and other key natural resources is an issue of State-level importance that cannot be left to the uncoordinated land use decisions of 88 municipalities, 7 counties, and a myriad of private landowners. However, instead of leading the way to protecting the Highlands water quality and supply, the Administration's proposed WQMP rule undercuts the Highlands Water Protection and Planning Act which was put in place in order to protect the water supply and water quality relied upon by two-thirds of New Jersey's population. The proposed rule does so by undermining and failing to fully incorporate detailed RMP planning where the protection of water and the lands that provide that water. (93)

332. COMMENT: These rules are a direct affront to the Highlands rules and are really following the roadmap that the Governor started three years ago by saying he can't repeal the Highlands Act but certainly he can add to the regulatory system which, clearly, these rules are starting to do. (203)

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RESPONSE TO COMMENTS 329 THROUGH 332: The new WQMP rules ensure protection of environmentally sensitive areas through a variety of means, as discussed in Response to Comments 30 through 36 above. As referenced in Response to Comments 327 and 328 above, the rules reference the Department's recognition of the role of the Highlands Council and the RMP in this significant area of the State; the Department does not believe further language is needed to reflect the Department's intent to seek and consider the Highlands Council's input on applications affecting that area.

For those Highlands planning area municipalities that do not conform with the Highlands RMP, N.J.A.C. 7:15-4.4(c)3 provides that the Department will determine sewer service eligibility in accordance with the procedures established at N.J.A.C. 7:15-4.4(d) and (e). This includes the review of a project for the existence of environmentally sensitive areas. The Department's list of environmentally sensitive areas provided in the definition is not exclusive; therefore, the existence of other environmental factors will be considered in sewer service area delineation determinations. As discussed in Response to Comment 145 above, the Department did not believe it would be appropriate to require non-conforming Highlands municipalities to delineate sewer service according to the Highlands RMP since conformance with the RMP is optional. The Department and the Highlands Council intend to enter into an MOU regarding the ongoing wastewater coordination efforts for this region.

333. COMMENT: In the Highlands Planning Area, the proposal outlines the areas eligible for sewer service areas "for conforming municipalities," defined as "a municipality in the Highlands planning area that has had its RMP conformance petition approved by the Highlands Council and

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has adopted a planning area conformance petition ordinance and land use ordinance amendments consistent with that approval.” Please confirm that “land use ordinance amendments” mean as further stated where “municipalities that have amended their zoning to be consistent with the RMP”. Since “checklist ordinances” are designed as a holding action in the Planning Area, remaining in place before towns adopt zoning to conform with the RMP, we assume that adoption of a “checklist ordinance” in lieu of the mandated “land use ordinance” would not allow a municipality to qualify as a “Highlands conforming municipality” under the proposed rule. (101)

RESPONSE: The commenter is correct that “a Highlands conforming municipality,” in the context of these rules, is a municipality that has had its RMP conformance petition approved by the Highlands Council and has adopted a planning area conformance petition ordinance and land use ordinance amendments consistent with that approval.

334. COMMENT: What the Department is proposing is a clear dilution of the Highlands Water Protection Act. And all the Department offers in exchange is more of the same old, concentration of nitrogen and other pollutants added to our vital drinking water system. (53)

RESPONSE: These rules do not dilute the purpose of the Highlands Water Protection Act. Instead, as more fully detailed in the proposal summary at 47 N.J.R. 2547 through 2549, the rules recognize the role of Highlands Council and the RMP, and establish coordination

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requirements to ensure that the important resources, including drinking water resources, of this area are protected, consistent with the Highlands Water Protection and Planning Act.

For example, as discussed in Response to Comments 327 and 328 above, before an application to amend an areawide WQM plan affecting area within the jurisdiction of the Highlands Council is even finalized, entities preparing an amendment application are required to notify, seek comments from, and offer to consult with the Highlands Council in accordance with N.J.A.C. 7:3.5(f)1. The rules require, at N.J.A.C. 7:15-3.5(h), that applicants simultaneously submit an application for a proposed amendment in the Highlands Region to both the Department and the Highlands Council, with the application considered incomplete if the applicant does not provide proof that the Council has been provided with the application consistent with that subsection. Additionally, N.J.A.C. 7:15-3.5(i) specifies the process to be followed for a site specific amendment located in the Highlands preservation area that requires a Highlands Preservation Area Approval or Approval with Waiver, with specified provisions of the Highlands Water Protection and Planning Act Rules to govern.

Similar to provisions regarding designation of areas appropriate for growth, and thus eligible for sewer service, in the Pinelands, N.J.A.C. 7:15-4.4(c) identifies areas that are eligible for sewer service area in the Highlands Region, with sewer service areas in the preservation area limited consistent with the Highlands Act and the RMP. In conforming municipalities, sewer service area is guided by land use capability zones identified in the RMP. Where the Council determines that map adjustments are appropriate that change areas considered to be appropriate for growth under the RMP, N.J.A.C. 7:15-3.4(a)3 addresses incorporation of map adjustments by the Highlands Council to designations of areas where wastewater treatment or collection

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facilities are permitted, allowing such adjustments approved by the Council to be reflected in areawide WQM plans through the revision process. Further, with reference to areas not to be served by sewers, in determining future wastewater treatment needs, the rules, at N.J.A.C. 7:15-4.5(c)3, specify that any application in the preservation area must comply with all requirements specified in the Highlands Rules and that the required nitrate dilution capacity analysis in conforming municipalities in the Highlands planning area must be performed in accordance with the requirements of the RMP. Further coordination efforts are discussed in greater detail in the proposal summary, as indicated above.

The Department has maintained open communication with the Highlands Council throughout the development of these rules. There is clear deference in these rules to the RMP, particularly in the preservation area and in conforming municipalities. Additionally, the Department has committed to coordinate its actions with the Highlands throughout these rules and is currently developing an MOA with the Highlands to further outline its coordination commitments.

335. COMMENT: The Department proposes to delete the current requirement at N.J.A.C. 7:38-1.1(k) of approving an amendment to an areawide WQMP for the Highlands Preservation or Planning Area only after receiving from the Highlands Council a determination of consistency with the Highlands Regional Master Plan. To adopt policies that return these decisions to lower levels of government, either county or local, or away from the Highlands Council altogether is contrary to legislative intent. While the Highlands Act required the Department to adopt stringent standards governing development in the Preservation Area, it specified that the

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Highlands Council was to be “independent of any supervision or control by the department or by the commissioner...” Without execution of a memorandum of agreement between the Highlands Council and the Department, or by specific resolution of the Legislature, the Department cannot unilaterally drop the important and well-established deference to the Highlands Council for approval of amendments to areawide WQMPs in the Highlands. The proposal that seeks to “consult” is insufficient. Removing this provision is detrimental to the Highlands Council’s ability to effectively lead State-level planning initiative in the Highlands region, as the Legislature clearly intended. The exact statutory and obligatory relationship between NJDEP authorities and the State’s regional sister agencies must be clarified in these rules. (54, 73, 93, 213, 235, 257, 273, 290, 298)

336. COMMENT: Department reviews and Highlands Council consistency determinations are not duplicative processes. The Highlands Act also recognizes several other purposes among its objectives that are not included in the narrower concerns of the proposed rule. All of these purposes are incorporated in the adopted 2008 Regional Master Plan. To quickly determine the differences between the Department’s viewpoint and that of the Highlands Council one need only compare the two consistency review processes to see that the Council’s requirements are far broader than those of the Department. The requirements for consultation and a formal consistency review should be allowed to remain throughout the Preservation and Planning Areas of the Highlands. (54)

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337. COMMENT: The Department should be required to process sewer service area, amendments and modifications in conformance with the Highlands Regional Master Plan. The Highlands Water Protection and Planning Act was enacted to protect “an essential source of drinking water” and other exceptional natural resources from ill-advised development. N.J.S.A 13:20-2. The Departments removal of this provision creates a perverse incentive for towns not to pursue plan endorsement at the Highlands Council. The Department should not be rewarding such actions, which are counter to the requirement that the Highlands areas be subject to stringent protections. (213)

338. COMMENT: In the Highlands, sewers can now be extended without determination of consistency with the Highlands Act. In the Planning Area, it will allow extension of more sewers into the environmentally sensitive areas. This goes against the Regional Master Plan. It will cause more sprawl and overdevelopment and therefore more pollution. These changes allow development in places that were previously protected areas under the Highlands Act, which is supposed to protect important natural resources through good planning and environmental safeguards. (214, 273)

339. COMMENT: The current WQMP rule requires that the determination of consistency with the Highlands RMP be obtained from the Highlands Council. But this proposed rule does not. It merely calls for “coordination” which appears to violate a Memorandum of Understanding between the Highlands Council and the DEP. (93)

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RESPONSE TO COMMENTS 335 THROUGH 339: The Department will continue to coordinate WQM plans and amendments in the Highlands with the Highlands Council. The Department will continue to seek Highlands Council comments and will take such participation into account in reaching its final decision on any WQM plan amendment or revision. N.J.A.C. 7:15-3.5(h) provides that the applicant shall simultaneously submit applications for an amendment in the Highlands Region to the Highlands Council when it submits its application to the Department. The language of the proposed change to N.J.A.C. 7:38-1.1(k) is only intended to convey that the final decision on any WQM plan amendment rests with the Department. These rules acknowledge and incorporate the RMP into the decision-making process. Further, the Department intends to develop a memorandum of agreement with the Highlands Council regarding implementation of these rules.

340. COMMENT: The rules will violate the Highlands Act by allowing sewer extension into Planning Area 1. The Highlands provides drinking water for 5.5 million people and we cannot afford to risk that. These areas are not only environmentally sensitive forested lands and wetlands, but they are some of the most pristine lands found anywhere in the country. (211, 214, 299)

RESPONSE: Currently, there are approximately 74,000 acres designated as Planning Area 1 on the State Planning map that are located within the Highlands Planning Area. All of this acreage is already located in the sewer service area.

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Statewide Water Quality Management Plan (SWQMP)

341. COMMENT: The proposal would delete the current Statewide WQM plan (SWQMP).

That document has been submitted to EPA and formed the basis of various regulatory approvals.

The SWQMP is being withdrawn and, in its place, the State is proclaiming to honor a CPP. This is substantively gutting everything we now have under wastewater management. (290)

342. COMMENT: Should the State eliminate the Statewide WQM Plan, each of the areawide WQMPs must include all the necessary plan elements originally held in the statewide plan and be consistent with one another, pursuant to 40 C.F.R 130.6(e). Specifically, the 303(d) list must be incorporated into each of the 12 areawide WQMPs. (153)

RESPONSE TO COMMENTS 341 AND 342: The Department will continue to satisfy the Federal requirements for the continuing planning process and the development of water quality management plans pursuant to 40 C.F.R. 130.5 and 130.6, respectively, including the inclusion of TMDLs in areawide plans pursuant to 40 C.F.R. 130.7(a). The Department intends to continue a comprehensive planning process. The previous rule at N.J.A.C. 7:15-2.2(a) provided that “the Statewide WQM Plan and this chapter contain the written provisions of the CPP.” The net effect of the new rule will have no impact on the functions and elements of water quality planning that endure under the continuing planning process, which encompasses both regulatory and non-regulatory strategies to protect water quality.

The Department will now refer to the CPP, which is posted on the Department’s website at <http://www.nj.gov/dep/wrm/>. The website includes a description of the Department’s CPP as

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well as statewide strategies and tools to assist in developing and implementing areawide plans and WMPs. The CPP will identify measures that have been developed or programs that are in place to address water quality issues, such as the Department's Nonpoint Source Program, Stormwater BMP manual, and other strategies or technical measures developed by the Department or USEPA to control water pollution. The CPP will also include information, such as listing of Category One waters, impaired waters and waters that have an applicable TMDL, and tools, such as model ordinances designed to address water quality issues related to steep slopes, riparian zones, and septic management. The Department will update the strategies identified on its website periodically, as appropriate.

The Department will continue to coordinate the State continuing planning process with the EPA pursuant to the CWA and 40 C.F.R. 130.5.

Subchapter 1. General Provision and Planning Requirements

343. COMMENT: The policy goals in N.J.A.C. 7:15-1.2 are supported. In particular, the addition of N.J.A.C. 7:15-1.2(a)(5) is considered highly appropriate. (196)

RESPONSE: The Department acknowledges the commenter's support.

344. COMMENT: With reference to N.J.A.C. 7:15-1.2(a)5, WQM Plans should be integrated with water supply planning to recognize the inextricable relationship between the two. The extension of sewer service is the greatest single driver of development and the determinant of its density, which has a number of effects including, but not limited to, biological, chemical and

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thermal impacts as well as impacts on groundwater recharge volumes and patterns and resultant consequences for the maintenance of base flow in streams. These water supply impacts, in turn, have direct consequences for the future development and redevelopment of areas dependent on that water supply. With the ongoing trend toward redevelopment in older urbanized areas, it is essential that the areas providing and protecting the water supply be treated as integral parts of the areas where the water is used. Limiting development impacts in the supply areas enhances the developability, sustainability and resiliency of development in the user areas providing the kind of overall balance between development and conservation that is at the heart of the State Plan and other such initiatives. (76, 83)

RESPONSE: The Department continues to recognize the importance of water supply planning. However, as indicated in the proposal summary, the Department has determined that it is appropriate to decouple the strategies for water supply from the WMP process. The Department's water supply program currently ensures planning and permitting of water supply infrastructure and new or expanded sources of water. This analysis relies on technical data that takes into account the appropriate Statewide and regional capacity issues with respect to water supply. Additionally, water supply analyses, historically, have been performed in WMP development to determine adequate water supply for undeveloped and underdeveloped parcels. These parcels may never be developed and, therefore, the water supply need could be grossly overestimated and provide a false sense of a future water supply problem in the region. Therefore, it is not necessary to require an additional analysis in the development of a WMP.

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While no longer one of the required components of wastewater management planning under the WQMP rules, as discussed in more detail in Response to Comments 152 through 156 above, water supply concerns are addressed through other mechanisms including the Safe Drinking Water Act rules at N.J.A.C. 7:10 and the Water Supply Management Act Rules at N.J.A.C. 7:19-6. Links to sources for data from Water Supply Planning Initiatives are provided in the Response to Comments 152 through 156 above.

345. COMMENT: N.J.A.C. 7:15-1.3(a) is supported because of the tremendous investment of time and resources, and the extensive collaboration with municipalities and stakeholders that occurred in order to reach this milestone. However, changes to the definitions of several key terms and how they are applied throughout the proposed rules are necessary in order prevent contradictions and uncertainties that could affect the validity of said re-designation. For example, the approach for delineating “Septic Areas” under the 2008 WQMP Rules and the resultant “Septic Areas” which are delineated on the County’s adopted FWSA Map do not match the definition of “non-sewer service areas” as defined in the proposed rules; and “unassigned service areas” were not previously delineated. (196)

RESPONSE: The Department acknowledges the commenter’s support. As provided in the proposal summary and rule text, all previously adopted or submitted WQMP revisions and amendments will remain in full force and effect until modified in accordance with N.J.A.C. 7:15-1.3. The Summary further acknowledges that, over the years, areawide plans have identified several designations for wastewater management including, for example, “septic areas.” To

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resolve confusion and contradictory applications, these rules distinguish between areas eligible for sewer service using centralized sewerage facilities, and those relying on ISSDS below the NJPDES permit threshold of 2,000 gpd. Therefore, specifically, the designation of “septic areas” pursuant to the 2008 rules and the adopted County FWSA map will maintain its meaning under its previously-adopted designation. However, upon further modification, those designations will be redesignated “non-sewer service area” pursuant to N.J.A.C. 7:15-1.3(b)3.

346. COMMENT: Proposed changes in terminology and corresponding definitions do not allow for a direct translation of the wastewater service areas adopted by the Department under the 2008 WQMP rules, described in N.J.A.C. 7:15-1.3. Specifically, a broadening of the definition of non-sewer service areas in the new rules is needed. “Septic areas” as shown on recently adopted wastewater service area maps, include low-density rural-residential and industrial areas served by ISSDS, agriculture development areas, preserved open space, as well as environmentally sensitive areas; whereas, “non-sewer service areas” as defined in the new rule are “areas that are not designated as eligible to receive sewer service from a NJPDES permitted domestic or industrial treatment works.” A broader definition is required that respects and supports local planning authority to designate areas that are not to be sewerred. Allowing the NJPDES and TWA rules to substitute for a well-defined and mapped unsewered area may lead to confusion between municipalities and the Department. (54, 159)

347. COMMENT: The definition for “non-sewer service areas” should be revised as follows (assuming the 20,000 threshold is appropriate): “Non-sewer service areas are areas where there

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are no plans in the foreseeable future to develop the area in a way that would require connection to a domestic or industrial treatment works facility that discharges to either surface or groundwater and for flows greater than 20,000 gpd pursuant to county and municipal master plans, zoning ordinances, the State Development and Redevelopment Plan and applicable regional plans; and areas that are not eligible for sewer service due to the presence of environmentally sensitive areas, coastal planning areas and areas subject to EPA grant conditions.” At a minimum, guidance about how to define such areas and a requirement for boundary definition should be included in the rule. The proposed definition is strongly opposed for the following reasons: 1) it suggests that the only areas suitable for development served by ISSDS are environmentally sensitive areas; 2) due to differences in how the terms are defined, “Septic Areas” pursuant to the NJDEP-adopted Somerset County FWSA Map does not directly translate to “non-sewer service area” as defined in the proposed rules, due to the fact that the “Septic Areas” delineated on the County’s FWSA Map also include agricultural operations, preserved farms and open space, low-density residential and non-residential areas, and rural/agricultural landscape areas consistent with municipal master plans and zoning ordinances, and comprise areas where the extension of sanitary sewers is not desired. A broader definition is required that respects and supports local planning authority to designate areas that are not to be sewerred. Allowing the NJPDES and TWA rules to substitute for a well-defined and mapped unsewered area may promote legal confusion against municipalities and the Department. It is also strongly recommended that the scientific and policy basis upon which the 20,000 gpd threshold has been established be described in the rule, to enable stakeholders and the public to

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comment on its appropriateness and to demonstrate that it furthers the goals of the Clean Water Act. (196)

RESPONSE TO COMMENTS 346 AND 347: The Department carefully considered the alternatives when determining how to designate areas for wastewater treatment. As specified at N.J.A.C. 7:15-1.3, all WQMP components (including WMPs and the FWSA maps), prepared and adopted in accordance with the 2008 rules, or PL 2011, c. 203 as amended and supplemented by PL 2013, c. 188 will be accepted as comparable components for a WQMP required under these rules, and will remain in full force and effect until modified in accordance with N.J.A.C. 7:15-1.3. Accordingly, the local planning considerations referenced by the commenters that went into designating areas previously referenced as septic areas under the prior rules will continue to be reflected in guiding where sewer service should be allowed and where it should not be allowed. Over the years, areawide plans have identified several designations for wastewater management. These include “Septic Areas,” “Discharge to Ground Water of 2,000 GPD or Less,” and “General Service Area for Wastewater Facilities with Planning Flows of Less than 20,000 GPD.” Many of these designations have been superseded by the sewer service area maps completed in accordance with the 2008 rules; however, some remain as the result of the Permit Extension Act of 2008, as amended, N.J.S.A. 40:55D-136.1 et seq..

The Department believes it is only necessary to distinguish between areas eligible for sewer service using centralized sewerage facilities, which are those permitted under NJPDES as discharges to surface water or ground water, and those areas relying on ISSDS below the NJPDES permit threshold (2,000 gpd). Therefore, N.J.A.C. 7:15-1.3(b) provides that any

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designation in an otherwise valid areawide WQM plan (such as a FWSA map) will be modified as follows. Those designations that involve service by a specifically identified wastewater treatment facility which requires a NJPDES permit will be designated sewer service area. Areas intended to be served by discharges to ground water of 2,000 gpd or less, or non-discharge zones, as well as areas that continue to be currently designated as generalized service area for discharge to ground water less than 20,000 gpd, will be redesignated non-sewer service area. As indicated above, the less than 20,000 gpd discharge to ground water general service area designation was not continued in the 2008 rules. Accordingly, areas only continue to have this designation if the WMP or sewer service area mapping has not been updated for a significant number of years, and the appropriateness of the area for continued sewer service designation was not reviewed in accordance with the 2008 rules. Therefore, it is not appropriate to continue these areas as eligible for sewer service, unless and until the appropriate analysis is completed.

348. COMMENT: Regarding N.J.A.C. 7:15-1.3(a), how long will WMPs that are currently adopted and compliant with N.J.A.C. 7:15 remain compliant? Under the current rule they are valid for six years from the date of adoption. Are previously-adopted WMPs amended to have a 10-year expiration? Specifically, for municipal WMP chapters that have been completed by the Highlands Council (conforming municipalities) and adopted by NJDEP, what are their new effective dates and which agency is responsible for revising, amending, and updating the municipal chapter? (171)

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RESPONSE: All amendments and revisions to areawide WQM plans adopted prior to the effective date of these rules shall remain in effect, until modified in accordance with these rules.

Likewise, wastewater management plans adopted prior to the effective date of the rules shall remain in effect. The development and submittal schedule for WMPs is specified at N.J.A.C.

7:15-4.2. In accordance with N.J.A.C. 7:15-4.2(b), as amended on adoption, generally a WMP

meeting the requirements of the new rules is required to be submitted within 18 months of the effective date of these rules. (See Response to Comment 419 for a discussion regarding the

replacement of 12 months to 18 months on adoption.) However, a fully compliant WMP that

received approval under the 2008 rules is deemed to have satisfied that requirement and will

continue in effect for the remainder of the term for which it was originally approved. Therefore,

WMPs that were fully compliant with the 2008 rules maintain their expiration date as provided at

the time of adoption. As such, the expiration dates of municipal WMP chapters that have been

adopted by the Department are not changed by these rules. Where only certain WMP

components, such as the FWSA map, were prepared and adopted under the 2008 rules, P.L.

2011, c. 203 as amended and supplemented by P.L. 2013, c. 188, those components will be

accepted as the comparable component of a WMP submitted pursuant to the new rules, but other

components must be submitted within 18 months from the effective date of the new rules.

Once a WMP has been submitted and approved as meeting the requirements of the new rules, pursuant to N.J.A.C. 7:15-4.2(e), the new WMP will remain effective for 10 years.

349. COMMENT: The following language should be added to N.J.A.C. 7:15-1.3(b): “All delineated sewer service areas that are not associated with a specific wastewater treatment

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facility are to be designated as “unassigned sewer service area.” Accordingly, additional criteria for defining and mapping unassigned sewer service areas must be added to the new rules.

Furthermore, if NJDEP decides to continue to delineate sewer service areas assigned to “T1” facilities that discharge to groundwater, the addition of appropriate guidance in this section as well as in N.J.A.C. 7:15-4.4 and 4.5 will be required. (196)

RESPONSE: The designations provided at N.J.A.C. 7:15-1.3(b) are established in order to account for re-designation of previously-designated sewer service area. N.J.A.C. 7:15-1.3(b) provides that any designation in an otherwise valid areawide WQM plan will be modified according to the provisions therein. N.J.A.C. 7:15-1.3(b) addresses designations in previously adopted WQM plan revisions and amendments. Since “unassigned sewer service area” was not a designation provided under previously-adopted revisions or amendments, there is no need to include “unassigned sewer service areas” among the re-designations contained in N.J.A.C. 7:15-1.3(b).

With reference to the need to add criteria for defining and mapping unassigned sewer service areas, as more fully explained in the response to comment 175 above, the criteria for delineation of “areas eligible for sewer service” is detailed in N.J.A.C. 7:15-4.4. “Unassigned sewer service area” is defined at N.J.A.C. 7:15-1.5 as “areas eligible for sewer service for which a specific DTW or industrial treatment works has not been identified.” As by definition unassigned sewer service area is simply those portions of the “area eligible for sewer service” that are not assigned to a specific DTW or industrial treatment works, the criteria for defining

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and mapping unassigned sewer service area is the same as that for assigned sewer service area.

Accordingly, no additional criteria are necessary.

As part of WMP development, the WMP agency must identify all NJPDES permitted facilities in a facilities table, pursuant to N.J.A.C. 7:15-4.3(b). There is nothing unique about T1 facilities that requires that they be addressed separately. The general T1 permit authorizes the discharge of sanitary sewage from facilities to a septic system with a design volume in excess of 2,000 gallons per day in accordance with the ISSDS rules at N.J.A.C. 7:9A.

350. COMMENT: The term, “general wastewater service area,” as used in N.J.A.C. 7:15-1.3(b)2, is not defined in the proposed rule and as a result, this provision is unclear. There are currently NJDEP-adopted sewer service areas for 24 facilities discharging to ground water, some of which are commonly referred to as “T1”, and the land area of each was decreased in acreage by NJDEP as a condition of adoption of the County’s FWSA Map. If this provision refers to “Service Areas for Facilities Discharging to Groundwater” as shown on the County’s FWSA Map, the appropriateness of this requirement is questioned, since the intent and benefit of this change is unclear. NJDEP has provided the County Planning Board with data on permitted flows for a handful of these facilities. However, planning flow data for each of these facilities will be required (but may not be available) in order to determine if they should be shown as “non-sewer service area” pursuant to the proposed rule. Since they discharge to groundwater, many may be below the 20,000 gpd threshold. This change is anticipated to generate confusion among these permit holders as well as municipalities and the public. (196)

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RESPONSE: The purpose of N.J.A.C. 7:15-1.3(b)2 is to provide clarification on what areas should be designated non-sewer service area, since terminology has changed with this rule. The term “general” is used to express non-specificity. The term “wastewater service area” is defined and used throughout the rules. Therefore, the term “general” has no specific intent other than to speak generally about wastewater service areas. This term was used in the 2008 rules (see prior N.J.A.C. 7:15-5.2(f) and 8.1(c)); the Department does not anticipate that its use in N.J.A.C. 7:15-1.3(b)2 will cause confusion.

With respect to T1 facilities, N.J.A.C. 7:15-1.3(b) addresses the planning flows associated with wastewater treatment facilities. If T1 facilities have a planning flow of less than 20,000 gallons per day, the facilities would be designated as non-sewer service area in future mapping efforts by the county. The Department maintains flow records at http://datamine2.state.nj.us/DEP_OPRA/OpraMain/categories?category=NJPDES%20Permitting. Thus, the flow information is available to the general public from the Department’s website.

351. COMMENT: Regarding N.J.A.C. 7:15-1.3(b)(2), the Department should initiate a WMP amendment to make changes to the GIS file concerning the removal of general wastewater service areas with planning flows less than 20,000 GPD. Otherwise, they will linger on and cause confusion in the planning process. (171)

RESPONSE: The Department agrees with the suggestion that GIS files should be updated and intends to dedicate resources to assist counties in their efforts to comply with the timeframe for submittal of complete WMPs as required in N.J.A.C. 7:15-4.2. The Department anticipates that

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updated maps and associated GIS files will be part of that process. All terminology will become consistent upon update of the WMP pursuant to N.J.A.C. 7:15-4.2(c).

352. COMMENT: Under proposed N.J.A.C. 7:15-1.3(b)(3), non-discharge areas will be assigned as “non-sewer service areas,” which allows for septic development. Our understanding under the current rules is that non-discharge areas presently are not allowed to support any wastewater generating facilities, sewer or septic. Under the new rule, how will non-discharge areas be regulated going forward? Will new septic systems be allowed in non-discharge areas?
(171)

RESPONSE: The commenter is correct that, pursuant to N.J.A.C. 7:15-1.3(b)3, non-discharge areas are designated as “non-sewer service area,” which are, generally, eligible for septic development. The Department recognizes that non-discharge areas are features identified on adopted FWSA maps and are not a designation that is used for any significant amount of land area on the maps. The Department will work with WMP agencies in their wastewater mapping efforts to ensure that the non-discharge mapping designation of the adopted maps is carried forward. The WMP agency should ensure that the local agency responsible for approving a septic system, typically the local health department, is aware of such areas.

353. COMMENT: “Non-sewer service area,” areas not designated as eligible to receive sewer service from a permitted facility, will include most of the farmland in New Jersey. Are these landowners allowed to increase their sewer service up to 2,000 gallons per day, or must the total

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on the property not exceed that number? If the latter, this must be replaced by a special wastewater approval process for farm operators to use when upgrading existing facilities or adding new ones to increase the profitability of their farm. (17, 266)

RESPONSE: For areas designated to be served by individual subsurface sewage disposal systems discharging 2,000 gallons per day or less to groundwater, N.J.A.C. 7:15-4.5(c)1 requires that development of such areas be determined to result in attainment of a two mg/L nitrate standard on a HUC 11 basis with the WMP to include a calculation of the number of additional allowable ISSDSs or equivalent dwelling units that can be constructed in the HUC 11 and still meet the two mg/L standard. To the extent the commenters are asking if a system designed to discharge less than 2,000 gallons per day could be upgraded to handle 2,000 gallons per day, that would not be precluded by these rules provided the increased system satisfied all design standards and appropriate approvals were obtained. To the extent the commenters are asking if additional systems could be added to the property, an applicant would have to satisfy applicable standards, including the two mg/L nitrate standard.

354. COMMENT: Discharges less than 2,000 gpd are not significant and an amendment regarding this should not be required. What is the Department's justification for requiring an amendment if applicants are able to satisfy the NJPDES standards to meet the nitrate dilution standard demonstrating that the discharge is safe? Additionally, obtaining the NJPDES permit alone should be sufficient as it automatically amends the WMP. (101)

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355. COMMENT: The rule's definition of "non-sewer service areas" as only areas with environmental constraints such as wetlands, T & E habitat, C-1 stream buffers, coastal planning areas and US EPA grant areas is too restrictive. Present Septic Areas include large rural areas with low housing density and expectations in municipal and county Master Plans that they will remain low density and be served by septic systems. Describing these as "areas eligible for sewer service" or "unassigned sewer service areas" would remove the presumption in Master Plans that these are not available for sewer service, opening the door to applications for higher density development if the developers can feasibly connect to sewer service systems. This would promote sprawl into rural areas, at a time when planning emphasis is shifting to redevelopment of areas with existing infrastructure such as sewer service. (47)

RESPONSE TO COMMENTS 354 AND 355: Discharges to groundwater less than 2,000 gpd pursuant to N.J.A.C. 7:9A do not require an amendment to the WQMP. However, as provided at N.J.A.C. 7:15-3.2(d), if a project or activity proposing use of a wastewater treatment facility is located in a non-sewer service area, the project or activity is inconsistent with the adopted areawide plan until the applicant resolves the consistency by modifying the proposed project to comply with the areawide WQM plan or obtaining an amendment or revision to the areawide WQM plan to resolve the inconsistency. Accordingly, the generation of any type of flow to a conveyance system requires a site-specific amendment if the project is not in an area designated as eligible for sewer service. In this circumstance, an amendment application requesting that the sewer service area be expanded to include the area of the proposed project or activity is necessary.

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The adopted new rules define “non-sewer service area” in relevant part as “areas that are not designated as eligible to receive sewer service from a NJPDES permitted domestic or industrial treatment works.” As indicated by the commenter on comment 356, with limited exception, non-sewer service area includes areas identified as environmentally sensitive areas as these areas are not generally eligible for sewer service in accordance with N.J.A.C. 7:15-4.4(d). However, non-sewer service area is not limited to environmentally sensitive areas. Instead, a number of other factors go into determination of which areas should be delineated as eligible for sewer service, as identified at N.J.A.C. 7:15-4.4(h). This process also results in the identification of areas not eligible for sewer service. These include local land use objectives and other local planning reflected in municipal or county master plans and municipal zoning ordinances. The Department believes that the factors identified, which all go into the ultimate determination as to which areas are eligible for sewer service and which are designated as non-sewer service area, provide appropriate flexibility for such designation to reflect local planning desires while ensuring that the State’s water resources and environmentally sensitive areas are protected.

356. COMMENT: Under N.J.A.C. 7:15-1.3(c), please clarify how applications will be handled by the Department during the “gap” period between the expiration of P.L. 2013, c.188 and the adoption the proposed rules. A delay of four to five months is not expected to have significant adverse impacts, and it appears appropriate for the Department to withhold action on pending and new applications during this “gap” until the new WQMP Rules are adopted. However, a prolonged delay could adversely impact both public and private sector applicants. (196)

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357. COMMENT: A gap of at least two months is expected between the time that P.L. 2013, c.188 expires in January 2016, and the earliest possible date of rule adoption. During that gap time no site-specific amendments, even for applications already in process, can be adopted.

While the Department may continue to review the applications, it has indicated that review will stop at public comment, and could only proceed after the rule is adopted. However, it is unclear, particularly when considered with wording proposed in N.J.A.C. 7:15-1.3(c), whether those amendments could move forward in areas where WMPs have not been adopted by the Department under the current rules. The Department should petition the legislature to extend P.L. 2013, c.188 to cover the gap between the January 2016 expiration and a sufficient time frame allotted for the adoption of a WMP under the proposed rules, at least in those areas where a FWSA Map has been adopted under the current rules. Another two-year extension should be the minimum requested. (139)

RESPONSE TO COMMENTS 356 AND 357: P.L. 2013, c.188 expired on January 17, 2016.

From that point until today's action, the Department has processed pending amendment or revision applications in accordance with the 2008 rules.

358. COMMENT: The provision at N.J.A.C. 7:15-1.3(c) requiring that revisions and amendments submitted under the legislative acts but not adopted by the effective date of the proposed rule are subject to the new rule is supported. (125)

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RESPONSE: The Department acknowledges the commenter's support.

359. COMMENT: The ability for "individual subsurface sewage disposal systems" to include "advanced wastewater pretreatment" is welcome. It is hoped that this stimulates more use of these systems for better water quality. (17, 266)

RESPONSE: The Department acknowledges the commenters' support.

360. COMMENT: The change in N.J.A.C. 7:15-1.6 to the process of notifying the public about DEP actions to provide that notice be provided through the DEP website, rather than putting them in newspapers, is supported. However, N.J.A.C. 7:15-1.6(d) should be clarified to indicate whether electronic notifications are one element of the newly proposed public notification procedures. If they are, it should be further clarified that public notifications have to reach all members of the public and not just the few who may know about the electronic service. Does the Department have an email distribution list for WQMP notifications, and if so, is there a way to subscribe only to messages of global importance and specific WQMP areas? (17, 90, 171, 266)

RESPONSE: The Department acknowledges the commenters' support. Electronic notifications are part of the new public notification procedures administered through the Department's website, which are intended to reach all members who subscribe to the WQMP List Serv. However, the electronic notification at N.J.A.C. 7:15-1.6(d) is merely a means to inform the

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public of Department actions, but it is not a substitute for the public notification requirements for amendments at N.J.A.C. 7:15-3.5. Persons or entities who wish to obtain electronic notifications may contact the Office of Water Resource Management Coordination (OWRMC) as specified at N.J.A.C. 7:15-1.6(d) and may additionally sign up to be placed on the WQMP List Serv at <http://www.nj.gov/dep/wqmp/subscribe.html> to receive notice of all Department actions related to areawide WQM plans electronically. The WQMP List Serv is not currently designed to allow subscribers to subscribe to only receive messages related to a specific areawide WQM plan. This is a design option that the Department may evaluate in the future.

361. COMMENT: N.J.A.C. 7:15-1.6 specifies how to obtain forms and other information. The WQMP forms that must be submitted with WMP chapters and/or amendments are currently out of date and include unnecessary redundancies. Will the Department update or revise these forms and, if so, when? (171)

RESPONSE: The Department has revised its WQMP application forms available at <http://www.nj.gov/dep/wqmp/applications.html>. The Department is developing an electronic application system for applications under the WQMP Rules that is anticipated to be complete in the near future. The electronic system will handle the processing of applications more efficiently, while accomplishing several goals. First, the electronic system will eliminate administratively incomplete applications. The system is designed to prohibit the submission of an application unless all of the required elements are attached. While it may still be necessary for Department to follow-up with applicants to address substantive issues with the information

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submitted, the system will ensure that there won't be entire segments of required information that are simply not submitted. Second, the system will create an electronic record that will allow the Department and applicants to easily identify when information was submitted and recover any information that may be necessary to complete an application review. Additionally, the electronic system will automatically populate the initial fields in the Department's database system, NJEMS, thereby saving administrative resources and reducing the possibility of data entry error. Finally, because the system will only accept applications that are complete, the electronic system should reduce the amount of time from the date of receipt of the application to the date of public notice. Often, a critical piece of the application, such as the GIS shapefile of the property, is not included in the initial application. It is a common deficiency identified by the Department in its initial review. A complete initial application will reduce processing time. The current on-line application forms will only be used up until the time the electronic submittal system is completed and available for use.

362. COMMENT: The Department should hold a workshop or prepare a comprehensive guidance document regarding all mapping requirements specified at N.J.A.C. 7:15-1.7. (139)

RESPONSE: As evidenced by the stakeholder process in the development of the rule proposal, the Department intends to work with counties and municipalities to continue to improve the WQM planning and modification process as the new rules are implemented. Accordingly, the Department will present the rule and its implementation mechanisms to county and municipal bodies, as well as to the general public, either through a series of live presentations,

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comprehensive guidance documents, or both. The dates and locations for such workshops will be prominently posted on the Program's website.

363. COMMENT: When considering the overall cost to businesses and timing, electronic submissions specified under N.J.A.C. 7:15-1.7(a) and (b), will help speed up the process and allow for transparency and easy access to information. While electronic submissions can streamline the amendment process, at least one hard copy and/or a PDF should also be required. N.J.A.C. 7:15-1.7(a) should be expanded to specifically allow the submission of all components associated with WMPs to the Department in electronic format via the internet, CD and/or USB-thumb/flash drive. N.J.A.C. 7:15-1.7(b), which refers to digital cartography, positional, threshold and attribute accuracy, and is intended to promote GIS dataset uniformity, should apply to both the mapping associated with WQMP amendments and revisions as well as mapping associated with WMPs. (24, 171, 196)

RESPONSE: The Department acknowledges the commenters' support. N.J.A.C. 7:15-1.7 provides that plans shall be submitted electronically. The Department is finalizing an electronic application system for WMPs and plan amendments that is anticipated to be completed in the near future. Although submission through the website is the preferred method, submission via disc or USB flash drive will also be accepted until the new electronic application system becomes operative. Once the new WQMP electronic application system is operations, it will be the only method for submitting applications to the Department.

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364. COMMENT: The website addresses provided in N.J.A.C. 7:15-1.7(b) are incorrect and should be revised to say “All maps in WQM plan amendments and revisions; and Regional WMP Amendments shall be prepared and submitted electronically, and the GIS datasets comprising the maps shall be prepared in digital format as PDF, CAD, JPEG, etc.” The digital maps shall be accurate, at a minimum, to a scale of 1:12,000. The Department recommends that the creation of new digital mapping information for areawide WQM plan revisions and amendments and for areawide WMPs be prepared in a format that conforms to the “New Jersey Department of Environmental Protection Geographic Information System Mapping and Digital Data Standards” document, as amended and updated. Guidance related to the mapping and digital data standards is available at the Department’s website at:

http://www.nj.gov/dep/rules/rules/njac7_1d.pdf and/or

http://www.nj.gov/dep/gis/NJDEP_GIS_Spatial_Data_Standards_2013.pdf” (196)

RESPONSE: The language suggested by the comment includes addition of references to mapping requirements being applicable to regional WQM Amendments and areawide WMPs, addition of language providing that the GIS datasets comprising the maps shall be prepared in digital format as PDF, CAD, JPEG, etc and substitution of different website addresses for the website address included in the proposal for guidance related to mapping and digital data standards. As indicated in Response to Comment 363 above, the requirements specified in N.J.A.C. 7:15-1.7 apply to all proposed WQM plan revisions and amendments, including amendments and revisions related to WMPs. Accordingly, all WMP amendments are subject to this provision. With reference to the format required for mapping, maps must be submitted in

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GIS format because the maps are used to update the State's Sewer Service Area GIS Layer.

Therefore, other digital formats such as PDF, CAD, or JPEG cannot be accepted. Additionally, the website address provided at N.J.A.C. 7:15-1.7(b) is correct. Guidance related to the mapping and digital data standards is available at the website address at N.J.A.C. 7:15-1.7(b). A viewer need only go to the tab labeled "Standards" and select "Mapping and Digital Data Standards."

Subchapter 2. Plans, Planning Entities, and Planning Responsibilities

365. COMMENT: The new rules promote a sense of collaboration and coordination between NJDEP and the counties and municipalities. The proposed rules are more realistic with respect to the counties' legal role and jurisdiction among State and local entities in municipal land development, especially in matters directly related to zoning. (159)

RESPONSE: The Department acknowledges the commenter's support.

366. COMMENT: Many items in the CPP – including relevant information for topics such as water quality management plans and measures concerning wastewater treatment capacity analysis strategies and tools, nitrate dilution analysis strategies and tools, ESAs and other water quality and wastewater management planning, and strategies a WMP should include to address wastewater deficits for both sewer and septic – are shown as "under development." As a result, it is almost impossible for the public to evaluate the effectiveness of these rules or comment in a sensible way about them. For instance, it is impossible to know whether the eventual rules concerning nitrate dilution will be too lax, too strict or just right, or what will be defined as

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Environmentally Sensitive areas. Further, due to the incomplete nature of the CPP, the proposal cannot be said to meet the requirements of the Administrative Procedure Act (APA), and how the current proposal meets statutory requirements remains “forthcoming.” (47, 54, 118, 159, 171, 196, 235, 257)

367. COMMENT: The CPP is not properly defined, it is vague and open-ended. This makes it impossible to fully evaluate the impacts of the proposed rules. The major components of the CPP should be included in the rule text, and the rule should make clear that the components of the CPP that are not specifically addressed in this rule (areawide WQM plans, 303d list of water quality limited waters, TMDLs) are proposed and adopted independently by the NJDEP and are incorporated by reference in the CPP. (125, 196)

368. COMMENT: The Department justifies Clean Water Act compliance in its Environmental Impact section of the rule proposal. The Department states that these requirements will still be accomplished through the TMDL process and the CPP. The CPP cannot prevent NPS pollution; only regulatory programs can require action. (119)

369. COMMENT: The classification of the CPP as a “Guidance Document” that potentially can and will be amended at the Department’s discretion without the APA process is concerning. If provisions of the CPP are to be considered non-regulatory, their effectiveness will be lowered and it will require increased staff time and resources to implement them effectively. Further, a “voluntary” CPP would constitute “backsliding” under Federal requirements. A non-regulatory

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CPP is contrary to Federal and State legislative intent and requirements. The DEP cannot have it both ways: Either the CPP is a required part of the rule under Federal requirements, or it is merely a “guidance document.” More detail is needed to move this process forward. (54, 159)

RESPONSE TO COMMENTS 366 THROUGH 369: The CPP was prepared pursuant to provisions of the Federal Clean Water Act and the New Jersey Water Quality Planning Act regarding the establishment of a continuing planning process for water quality. See 33 U.S.C. 1313(e) and N.J.S.A. 58:11A-7. The Department has restructured New Jersey’s CPP to serve as an easily accessible planning tool, to be used not only as a listing of current Department programs and rules pertaining to water quality, but as a resource for planning entities and members of the public on current policies and technical guidance on water quality issues. The CPP is not a separate rule. Instead, the CPP compiles different regulatory requirements and non-regulatory guidance concerning water quality related issues such as wastewater treatment capacity analysis, nitrate dilution analysis, environmentally sensitive areas, nonpoint source pollution management, septic management plans, regional initiatives and other water quality and wastewater management planning concerns. Non-regulatory guidance for certain topics remain under development, and the guidance will continue to evolve on the multitude of alternatives and opportunities to protect, maintain, and restore the waters of the State. The Department continues to seek stakeholder input to develop meaningful tools to complete certain sections of the CPP under development. The CPP is a ‘living document’ that will be refined through an iterative process to include new and updated information, including development and implementation of new strategies and measures to achieve water quality goals. The components of the CPP that are

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regulatory in nature have been promulgated in accordance with the APA. For example, Subchapter 4 of these rules, which provides the criteria for wastewater capacity and nitrate dilution analyses, as well as CAP provisions within N.J.A.C. 7:14A, the Surface Water Quality Standards at N.J.A.C. 7:9B, and the Ground Water Quality Standards at N.J.A.C. 7:9C, have all been promulgated pursuant to the APA.

370. COMMENT: Pursuant to N.J.A.C. 7:15-2.3(a), the identification of strategies for addressing the wastewater needs of unassigned SSAs should be a required component of the areawide WMPs. (196)

RESPONSE: N.J.A.C. 7:15-2.3(a) generally describes the purpose of areawide WQM plans and how they are utilized by the Department and Designated Planning Agencies (DPAs) for water quality management planning activities. Wastewater management planning requirements are addressed in N.J.A.C. 7:15-4. As identified at N.J.A.C. 7:15-4.1(a), WMP components include potential strategies to address any identified potential capacity deficiencies. Particularly, N.J.A.C. 7:15-4.5 requires the WMP to include wastewater capacity analyses, with N.J.A.C. 7:15-4.5(b)3ii specifying how it is determined if there is a potential capacity deficiency in any unassigned sewer service area with all calculated wastewater demand in those areas identified as potential capacity deficit. N.J.A.C. 7:15-4.5(b)4 requires the identification and evaluation of strategies to address any potential capacity deficit.

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371. COMMENT: The Department's delineation of the roles and responsibilities between the various entities in Subchapter 2 is supported as it adds clarity and guidance to the regulations.
(6, 57, 134, 168, 185, 199, 220)

RESPONSE: The Department acknowledges the commenters' support.

372. COMMENT: Does the Department have the appropriate number and expertise of staff to carry out the new rules with regard to such activities as maintenance of GIS mapping, data and website utilities, and coordinating and/or mediating between DPAs, municipalities, and/or MUAs to correct or address capacity issues? (159)

RESPONSE: The initiative to complete baseline WMPs for the entire State on a county basis is a priority for the Department, and the Department has planned accordingly for the additional resources to meet the demands imposed by these new rules. Specifically, the Department's WQMP program has added staff with expertise with GIS, and organized staff across functional lines. A specific unit has been created that is solely responsible for working with counties on the development and review of WMPs. A second unit has been created to review site-specific amendments and revisions. This structure will allow for a more focused approach in the Department's WQMP work.

373. COMMENT: The Department's responsibilities outlined under N.J.A.C. 7:15-2.4 are supported. The Department providing this information and serving as a technical assistance

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resource to the public and the designated planning agencies will go a long way towards improving wastewater management planning throughout the State. However, the lack of coordination with other State agencies in this process is a concern as there is no longer a forum for these discussions to take place. (196, 220)

RESPONSE: The Department acknowledges the commenters' support of the Department responsibilities outlined in N.J.A.C. 7:15-2.4. The Department met with a variety of State and regional planning agencies in the formulation of these rules. In doing so, the Department focused its coordination with agencies whose rules and policies impact these rules, and who will have to implement these rules. The Department coordinates closely throughout the year on water issues with many of its regional planning partners, including the Highlands Council, Pinelands Commission and the Delaware River Basin Commission. Additionally, the Department anticipates entering into a Memorandum of Understanding (MOU) with the Highlands Council to formalize its coordination efforts, as well as modify, as necessary, the 2012 MOU with the Pinelands Commission. The Department understands that continuing outreach and collaboration with affected entities is necessary to achieve effective planning and will continue to do so.

374. COMMENT: There is a consistent discrepancy between the final sewer service area maps developed by DPAs/WMP agencies and the maps that the Department posts to its GIS website. Designated planning agencies or WMP agencies should be the main data source for official sewer service area maps, maintenance/updates of the WMP, and digital mapping. The

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Department should post the maps and data developed by DPAs/WMP agencies on the Department website. (90)

375. COMMENT: In reference to N.J.A.C. 7:15-2.6(a)5, the Department should not make any changes, revisions or amendments to GIS-based adopted areawide wastewater service area maps. All changes to these GIS datasets should be handled directly by WMP agencies in coordination with the Department. Therefore, this provision should be revised accordingly. Standards, guidelines and a time schedule are also needed with regard to the sharing of WMP agency-maintained and updated GIS datasets and maps with the Department. (171, 196)

RESPONSE TO COMMENTS 374 AND 375: GIS-based maps are updated by the Department because the maps are critical to the consistency determination process when an applicant seeks a permit. All approvals impacting changes to the sewer service area must be formally adopted by the Department, and are only valid upon adoption by the Department. At the time of adoption, the Department notifies the WMP agency by providing the final adoption notice and map with instructions to update its maps. The Department updates internal GIS mapping in real-time. By posting the sewer service area approvals in both text and GIS formats, the Department keeps an official administrative record of its final action, and memorializes these actions by updating the statewide sewer service area GIS map. Further, the Department has been updating the statewide GIS mapping layer, with respect to sewer service area, more frequently than it has in the past and will continue to work to reduce this time going forward. Therefore, the Department is the appropriate data source for official sewer service area maps and updates to the WMP.

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376. COMMENT: N.J.A.C. 7:15-2.4(a)13 mentions delegation of aspects and responsibilities of the CPP to other entities, without definition of the CPP or its components, and without any specific method. Until the CPP is defined or specified, how will the public know what “aspects and responsibilities” have been delegated? (125)

RESPONSE: The CPP is intended to integrate and unify water quality management planning processes, assess water quality, establish water quality goals and standards, and develop a statewide implementation strategy to achieve the water quality standards and maintain, improve, and protect water quality throughout the State. The WQMP rules represent one component of the CPP. These rules focus on procedures for adopting areawide WQM plans, lists of water quality limited waters, and TMDLs for impaired waters. The CPP describes how these processes, along with other Department programs, integrate and unify water quality management planning processes, establish and assess attainment of water quality goals and standards, and implement control measures necessary to maintain, improve, and protect water quality throughout the State. The Department has restructured New Jersey’s CPP to serve as an easily accessible planning tool, to be used not only as a listing of current Department programs and rules pertaining to water quality, but as a resource for planning entities and members of the public on current policies and technical guidance on water quality issues.

The Department defers certain planning decisions to the Pinelands Commission and the Highlands Council, specifically, with respect to mapping decisions. The Department is deferring aspects of wastewater planning to the Pinelands with respect to those responsibilities

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agreed upon in the 2012 MOU between the Pinelands Commission and the Department, which provided for better communication between the Department and the Pinelands Commission and, among other items, memorialized the Department's recognition of the Pinelands Commission's planning role. Likewise, the Department is collaborating with the Highlands Council to develop a Memorandum of Agreement (MOA) outlining planning roles and responsibilities. The 2012 MOU with the Pinelands Commission is posted on the Commission's website at http://www.nj.gov/pinelands/infor/moa/State%20Agencies/NJDEP%20and%20PDC/MOU_PC_DEP_April_2012.pdf. The Department will post the MOU on the WRM website for ease of reference.

377. COMMENT: N.J.A.C. 7:15-2.4(a)3 provides that one role of the Department is to maintain and make available for public inspection the current areawide WQM plans, including adopted revisions and amendments. However, the areawide WQM plans are not in digital form, other than where WMPs and other amendments have been adopted that are digital in nature. NJDEP should provide digital versions of the remainder of the areawide WQM plans. (125)

RESPONSE: The Department agrees with the goal of digitizing these areawide WQM plans. However, many areawide plans were adopted over 20 years ago and are only available in hardcopy. Plan amendments are currently available from the Department and many of the amendments are available on the Department's website at <http://www.state.nj.us/dep/wrm/>.

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378. COMMENT: N.J.A.C. 7:15-2.4(a)8 should be amended to include a requirement that the Department shall provide statistical analyses regarding DMR data, as flow data alone are not sufficient for easy use in WMPs. (125)

RESPONSE: The Department currently provides DMR data online at

http://datamine2.state.nj.us/DEP_OPRA/OpraMain/categories?category=NJPDES%20Permitting

. Flow is reported on DMRs if required by the respective NJPDES permit. This may provide some of background flow data, which may be used by the applicant to perform the statistical analysis of their choosing. The Department provides data in a report format in which the data can be utilized in various analyses, such as the highest 12-month average in a five-year period. The data will be presented in a report format in which data can be generated for a specific length of time or to determine averages.

379. N.J.A.C. 7:15-2.4(a)12 should be amended to add “and incorporate any related changes to the Wastewater Service Area Map” to ensure proper public information. (125)

RESPONSE: When the Department adopts an amendment to an areawide WQM plan, it also updates the Wastewater Service Area Map pursuant to N.J.A.C. 7:15-2.4(a)10.

380. While the proposed rule states at N.J.A.C. 7:15-2.4(a)5 that the Department “must consider pertinent planning documents while developing or reviewing proposed revisions or amendments,” it does not require that the Department abide by such planning documents,

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opening the door to the Department overriding county and municipal master plans identifying sewer service areas. (47)

RESPONSE: The final adoption decision on amendments, revisions, and wastewater management plans rests with the Department. In making such a decision, the rule provides that the Department shall consider all pertinent planning documents. County and local master plans do not always align. Where the plans conflict, a requirement that the Department follow all planning documents would frustrate the decision-making process.

381. COMMENT: N.J.A.C. 7:15-2.6(a) should be expanded to specify that WMP agencies shall coordinate their wastewater management planning activities with municipal master plans and zoning ordinances as well as with County Master Plans and applicable statewide and regional plans such as the State Development and Redevelopment Plan, the Pinelands Comprehensive Management Plan, the Highlands Regional Master Plan, the Delaware River Basin Commission Comprehensive Plan and other applicable regional plans. (196)

RESPONSE: Although the Department is not making the suggested change to N.J.A.C. 7:15-2.6, which describes the role of WMP agencies under the rules, the Department agrees that the WMP agency needs to demonstrate its efforts to coordinate with municipal, county, and regional planning agencies. Accordingly, the rules include various provisions intended to ensure that consultation and coordination occurs. For example, in specifying the requirements applicable to amendment of an areawide WQM plan (which includes amendments to either put in place a new

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WMP or amend an existing WMP), the rules specify at N.J.A.C. 7:15-3.5(f)1 that, during preparation of an amendment to an areawide WQM plan, the applicant must notify, seek comments from, and offer to consult with all governmental entities that have regulatory or planning jurisdiction over wastewater, water supply, or land use in any sewer service area proposed to be modified. The required consultation includes, but is not limited to, the entities either specifically identified in the comment or responsible for the regional plans cited in the comment. The rules also require the WMP agency to seek the input of affected entities pursuant to N.J.A.C. 7:15-3.5(g)6. With reference to wastewater management planning in the Pinelands Area and Highlands Region, the rules indicate, at N.J.A.C. 7:15-4.4(b) and (c) respectively, that areas designated as eligible for sewer service are to reflect determinations made by the Pinelands Commission and Highlands Council. Should the WMP agency wish to include areas as eligible for sewer service that do not fall within N.J.A.C. 7:15-4.4(b) or (c), they would need to seek amendments through the Pinelands Commission or Highlands Council. Outside of the Pinelands Area and Highlands Region, N.J.A.C. 7:15-4.4(h) requires that the WMP agency in delineating areas eligible for sewer service consider municipal zoning ordinances and master plans, county master plans, and local land use objectives.

The Department believes that these and other provisions, such as N.J.A.C. 7:15-3.5(h) and (i), ensure that local and regional entities have input into determinations the Department makes on any amendments that may be proposed by WMP agencies and ensure that WMP agencies will consult and coordinate with those entities to ensure the amendment application will be approvable under the rules.

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382. The Department should consider providing internet links from its website to updated countywide WMPs and associated maps posted on County websites. (196)

RESPONSE: The Department will continue to post county WMP information on the Department's website any time countywide WMP information is updated, including amendment and revision adoptions, at <http://www.state.nj.us/dep/wrm/>.

383. COMMENT: How does N.J.A.C. 7:15-2.6(a)(5) differ from what the Department is required to do under N.J.A.C. 7:15-3.4(i). (171)

RESPONSE: N.J.A.C. 7:15-2.6(a)5 requires that the WMP agency maintain a current WMP, including all revisions and amendments. The purpose of this requirement is to maintain an accurate administrative record of the plan and all of its amendments for consistency between WMP agencies and the Department. N.J.A.C. 7:15-3.4 specifies the procedure followed when the Department is considering a revision to a WMP. N.J.A.C. 7:15-3.4(i) identifies the final step in the revisions process in which the Department posts the adopted revision on its website as a form of notice since, due to the limited nature of changes that can be accomplished by revision, notice of revisions are not published in the New Jersey Register. In the first case, the requirement ensures that the local agency maintains a complete, up to date copy of the entire WMP. In contrast, the object of N.J.A.C. 7:15-3.4(i) is to provide notice of a specific Department action.

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384. COMMENT: How will WMP agencies be made aware of Department-initiated revisions and amendments? (171)

RESPONSE: The Department routinely contacts the WMP agency early in the process of any potential amendments affecting the WMP area.

385. COMMENT: That municipalities and utilities authorities are responsible for providing relevant information on zoning, flows, and near term development scenarios, which will streamline, rationalize and clarify the WQM planning process, is supported. (13)

RESPONSE: The Department acknowledges the commenter's support.

386. COMMENT: The definition of "County Utilities Authority" should include any county improvement authority that may be responsible for running a wastewater utility. (125)

RESPONSE: "County Utilities Authority" is a term of art established pursuant to N.J.S.A. 40:14B-4a, and the improvement authority would need to demonstrate compliance with that provision. A county improvement authority may qualify under the definition of "wastewater-related jurisdiction."

387. COMMENT: Regarding the definition of "district," the definition of municipal authority cites N.J.S.A. 40:14A-3(5) (rather than 3(6) in this definition), and includes county utility

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authorities. The Department should reconcile those provisions, and ensure inclusion of county utilities authority districts. In addition, it seems that joint meetings and municipal systems are not authorities and yet have a “district.” (125)

388. COMMENT: Regarding the definition of “Municipal authority,” the definition of “district” cites N.J.S.A. 40:14A-3(6) (rather than 3(5) as in this definition). The Department should reconcile those provisions. In addition, the Commenter recommends that the rule include a definition of “municipal utility” as defined in N.J.S.A. 40:62-1 et seq., a unit of a municipality that operates a sewerage system and is not a municipal authority, as there are many such municipal utilities. Within the body of the rule (for example, N.J.A.C. 7:15-2.7(b)), wherever municipal authority is mentioned, municipal utility should also be listed. (125)

RESPONSE TO COMMENTS 387 AND 388: The rule accurately cites the definitions of district and municipal authority. Additionally, joint meetings and municipal systems do not have a “district;” rather, they identify a sewer service area.

389. COMMENT: Regarding the definitions of “sewerage agency” and “wastewater-related jurisdictions,” these definitions should include “municipal utility” and the rule should include a definition of municipal utility as defined in N.J.S.A. 40:62-1 et seq., a unit of a municipality that operates a sewerage system and is not a municipal authority. (125)

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RESPONSE: The Department agrees that a municipality providing wastewater services pursuant to N.J.S.A. 40:62-1 et seq. should be included in the definitions of “sewerage agency” and “wastewater-related jurisdictions,” and has made the change on adoption.

390. COMMENT: N.J.A.C. 7:15-2.7(b)1 should be expanded such that applicable entities should be required to furnish WMP agencies with tax parcel-based data for properties currently served by ISSDS so that associated future contributing flows can be taken into consideration as part of the treatment plant capacity analyses, and used to support the development, implementation and update of municipal septic management plans. (196)

RESPONSE: It is unclear if by “applicable entities” the commenter intends to refer to all entities identified in the lead-in to N.J.A.C. 7:15-2.7(b) or just those entities which would have access to information broken out by tax parcel. However, N.J.A.C. 7:15-2.7 (b)1iv provides the WMP agency the ability to request “any other information needed to satisfy the requirements of N.J.A.C 7:15-4;” the subchapter that outlines the requirements for a WMP. N.J.A.C 7:15-4.5(c)1 requires that the WMP agency provide information related to parcels served by ISSDs.

391. COMMENT: A few counties in New Jersey have a County Executive form of government in which the County Executive performs executive functions and the Board of Chosen Freeholders acts in a legislative capacity. Specifically, the long-standing approval process for WQMP amendments in Mercer County involves the Planning Board as the technical body that hears the amendment and then presents its recommendations to the County Executive

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who ultimately decides the outcome of the amendment. The Board of Chosen Freeholders has no involvement in the amendment process in Mercer County. The rules should be clarified to recognize this alternate form of county government. (90)

RESPONSE: The Department agrees and has amended N.J.A.C. 7:15-2.7 on adoption to acknowledge optional County Executive forms of government in accordance with N.J.S.A. 40:40A-1 et seq.

392. COMMENT: The Department is giving away its authority and review process for WQMP amendments to sewage authorities, other State agencies, and towns without proper reviews. This violates the Water Pollution Control Act and Water Quality Planning Act and, therefore, should be rejected. Direct oversight should remain with the Department and carried out by scientists, not political appointees; and that delegating oversight authority at the watershed level is impractical as watershed basin interconnections increasingly exist. (118, 273, 299)

RESPONSE: Areawide WQM plans, wastewater management plans, and amendments thereto continue to require review and approval by the Department in accordance with the WQPA.

393. COMMENT: N.J.A.C. 7:15-2.8 is opposed, as the alternative assignment of WMP responsibility lacks decision criteria, such as sufficient local capacity. The county WMP agency should be required to accept the loss of authority for WMP development, to ensure that alternative assignment does not damage an ongoing planning process. (125)

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RESPONSE: Alternate assignment of WMP responsibility from the County to a municipality would only be considered upon an application for a revision to the areawide WQM plan under N.J.A.C. 7:15-3.4. The Department reviews the circumstances of the request, including the relative positions of both the county and the municipality, and the ability of the municipality to satisfactorily perform the wastewater management planning function. The Department will approve an alternative assignment of WMP responsibility only upon a determination that such an action is warranted and will provide the basis of that determination as part of its decision.

394. COMMENT: There should be a clear public process so that other parties can comment on the proposed transfer of WMP responsibility. (73, 125, 298)

RESPONSE: As provided at N.J.A.C. 7:15-2.8(a), requests for municipal WMP responsibility shall be made by the municipality as part of an application for a revision to an areawide plan pursuant to N.J.A.C. 7:15-3.4. The revision process includes direct notice to relevant entities with a 21-day period provided for those entities to comment.

395. COMMENT: The Department's reference to "limited deference" is confusing given statutory requirements for conformance with at least the Pinelands CMP and certain aspects of the Highlands RMP (such as conforming municipalities). The exact statutory and obligatory relationship between Department authorities and the State's regional sister agencies must be

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clarified in these rules. To not do so leaves the rule open for arbitrary interpretation and application. (73, 298)

RESPONSE: Consistent with the WQPA at N.J.S.A.58:11A-2(b) and 7, N.J.A.C. 7:15-2.9(a) provides that the Department will coordinate and integrate WQMP actions with the appropriate statewide and regional plans and the applicable agencies responsible for their development and implementation. As discussed in the proposal summary at 47 N.J.R. 2546 – 2549, the rules specify how that coordination and integration will occur for the Pinelands in N.J.A.C. 7:15-2.9(a)1, 3.4(a)2, 3.5(h), 4.4(b), 4.5(c)2, and related definitions at N.J.A.C. 7:15-1.5, and for the Highlands in N.J.A.C. 7:15 -2.9(a)2, 3.2(h), 3.4(a)3, 3.5(h), 3.5(i), 4.4(c), 4.5(c)3, and related definitions at N.J.A.C. 7:15-1.5 and N.J.A.C. 7:38-1.1(k). The Department retains final decision making authority for all amendments and revisions adopted under these rules.

396. COMMENT: In N.J.A.C. 7:15-2.9(a)2, the Department proposes to undercut the Highlands Water Protection and Planning Act, which was put in place in order to protect the water supply and water quality relied upon by two-thirds of New Jersey's population. The proposed rule fails to fully incorporate the detailed Regional Master Plan for the protection of water and the lands that provide and protect this water. Instead, the proposed rules only minimally incorporate the RMP goals, policies, objectives and the detailed and accurate mapping that provides the empirical basis for RMP policies. (235)

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RESPONSE: Pursuant to N.J.A.C. 7:15-2.9(a)2, the Department supports implementation of comprehensive regional plans, including specifically the Highlands Regional Master Plan. The Department has reviewed and considered the RMP, including the Council's Land Use Capability map, the Land Use Capability Zone Technical Report, and the goals, policies, and objectives of the land use zones (RMP Chapter 4: Goals, Policies and Objectives, Part 6). As discussed in the proposal summary, the Department views the RMP and the WQMP rules as intending to accomplish the same basic objectives with regard to protection of natural resources and environmentally sensitive areas and the identification of appropriate areas for development. The Department recognizes the land use and development requirements of the RMP and its focus on the protection of water quality (RMP Chapter 4: Goals, Policies and Objectives, Part 2), and of environmentally sensitive areas and habitats for endangered or threatened wildlife and plant species (RMP Chapter 4: Goals, Policies and Objectives, Part 1), located both within and outside of the designated growth areas of the Highlands Region, the extensive public participation process incorporated in the adoption and amendments to the RMP, and the Department's continuing role in permitting activities, including NJPDES and TWA. As such, the Department determined that it is appropriate to modify its water quality planning process to avoid unnecessary duplication and to better incorporate Highlands Council planning and incorporated changes in the new rule designed to better accomplish that continuing goal.

The Department is continuing its water quality planning coordination efforts with the Highlands Council, initiated under the 2008 WQMP rule, in several ways. The new rules expand the coordination effort by requiring the Department to communicate with the Highlands Council to ensure that the Council has an opportunity for input on proposed WQM amendments and

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revisions in the Highlands Region. The Department will continue to ensure that the Highlands Council has sufficient opportunity to review amendments to WQM plans within its jurisdiction. In addition to N.J.A.C. 7:15-2.9(a)2, which generally recognizes the Department's intent to coordinate its actions with the Highlands Council, the Department is requiring at N.J.A.C. 7:15-3.5(h) that the applicant simultaneously submit applications for an amendment in the Highlands Region to the Highlands Council when it submits its application to the Department. This will ensure that the Highlands Council will have an opportunity to make recommendations prior to Department review of the application. Notably, in the Highlands Region, the Highlands Council conducts its own consistency determination for projects or activities. The project or activity is evaluated by the Highlands Council against the RMP, the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq., specifically N.J.S.A. 58:1A-13 and 15.1, and other requirements, as appropriate. Where an area may result in further deficit of a subwatershed, the Highlands Council may recommend that a Water Use and Conservation Management plan be implemented to ensure safety of water supply conditions. The Department will coordinate with the Highlands Council on water supply issues occurring within the Highlands Region through the Department's Water Allocation permit rules.

With respect to projects and activities in the Highlands preservation area, N.J.A.C. 7:15-3.2(g) establishes that the Department will continue to conduct consistency determinations for projects and activities in the Highlands preservation area in accordance with N.J.A.C. 7:38-11.2, 11.3, and 11.7. This requirement is retained from the 2008 WQMP rules.

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397. COMMENT: The clarification in N.J.A.C. 7:15-2.9(a)1 that the Pinelands CMP will be used in the entire Pinelands Reserve Area is supported. The CMP will be used in project reviews by the Pinelands Commission in the Pinelands Protection Area and by the NJDEP/CAFRA in the remainder of the Pinelands Reserve Area. This is addressed in N.J.A.C. 7:15-2.9(a)1 but should be further modified as follows: “It should be noted that the latest approved Pinelands Commission’s Comprehensive Management Plan (CMP) is to be utilized in the review process by the Pinelands Commission in the Pinelands Area where the Pinelands Commission has responsibility and by the NJDEP/CAFRA in the remainder of the Pinelands Protection Area where the NJDEP/CAFRA has responsibility.” (163)

RESPONSE: The Department acknowledges the commenter’s support for its efforts to coordinate and integrate water quality planning actions under the WQMP rules with Statewide and regional plans, including the Pinelands Comprehensive Management Plan. The Department will consider the most current version of the regional plans as part of its coordination efforts when reviewing areawide WQM plan amendment applications within the Pinelands National Reserve that are outside the Pinelands Area. The Coastal Area Facilities Review Act (CAFRA) is implemented through the Coastal Zone Management Rules, N.J.A.C. 7:7. Accordingly, reference to Department actions under CAFRA in these rules is not appropriate.

398. COMMENT: N.J.A.C. 7:15-2.9(a) is strongly supported. However, to be successful in accomplishing this laudable goal, the completion and adoption of an updated State Development and Redevelopment Plan pursuant to the State Planning Act, and adoption of an updated State

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Water Supply Plan are needed. It is imperative that the State re-establish its working relationship with counties statewide to develop and adopt an updated State Development and Redevelopment Plan, since the State lacks appropriate direction in its absence. This rule proposal relies on the validity of the State Planning maps, particularly with regard to the designation of metropolitan planning areas. The planning area maps are 12 years old, are inadequate, and based on outdated data. These WQMP rules are only as good as the maps the DEP relies on, which in this case needs a lot of improvement. (196, 222)

RESPONSE: The State Development and Redevelopment Plan is promulgated by the State Planning Commission pursuant to N.J.S.A. 52:18A-199 and 200, and the Department will utilize the most current version of the SDRP.

Subchapter 3. Plan Assessment, Modification, and Adoption Procedures

399. COMMENT: That the Department has added greater flexibility in the site-specific amendment and revision application process to minimize application and permitting delays by allowing for the simultaneous submission of an application to modify an areawide plan and related permit applications is supported. (101)

RESPONSE: The Department acknowledges the commenter's support.

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400. COMMENT: At N.J.A.C. 7:15-3.1(a), that the reference to “modification” should be changed to “revision or amendment” for clarity, as “modification” is not defined in N.J.A.C. 7:15-1.5. (125)

RESPONSE: Because N.J.A.C. 7:15-3.3(a) explicitly provides that an areawide WQM plan can be modified through a revision or an amendment, the suggested change is unnecessary.

401. COMMENT: N.J.A.C. 7:15-3.6 should be titled “Appeals and rescission of agency decisions” and a new (b) should added to this section, to address a situation where an amendment is approved based on information that is later shown to be false. The language should state the following: “(b) If information is provided to or discovered by the Department subsequent to a final decision under N.J.A.C. 7:15-3.5 indicating that material facts were not provided or misrepresented in the application, the Department may rescind approval of the amendment or revision subsequent to providing an opportunity to the applicant to demonstrate that the missing or misrepresented information should not have a substantive effect on the basis for the approval.” (125)

RESPONSE: Under the circumstances offered by the commenter, the Department retains the right to initiate an action as appropriate, to modify WQM plans and amendments thereto based upon any information that becomes apparent warranting such a change.

Subchapter 4. Wastewater Management Plans

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402. COMMENT: The proposed definition of “advanced wastewater pretreatment device,” which includes the technologies that are authorized in the Pinelands Area (N.J.A.C. 7:50-10.23), is supported as these devices allow for smaller residential lots and provide a regulatory path for clustering development, instead of utilizing large building lots. (220)

403. COMMENT: The proposed definition of “Infill development” and its wastewater threshold are supported. (220)

RESPONSE TO COMMENTS 402 AND 403: The Department acknowledges the commenters’ support.

404. COMMENT: “State Plan” is defined to mean the State Development and Redevelopment Plan established pursuant to the State Planning Act, N.J.S.A. 52:18A-196 et seq. Due to the long period of time between adoptions of State Plans, it is not clear which State Plan the proposed rules reference, either the proposed, but not adopted State Strategic Plan, or the State Plan, adopted in 2001 and thus considerably out of date. (159)

RESPONSE: The State Development and Redevelopment Plan or State Plan was adopted in 2001. See also Response to Comment 398 above.

405. COMMENT: “Septic Areas” as shown on recently adopted wastewater service area maps include low-density rural-residential and industrial areas served by ISSDS, agriculture

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development areas, preserved open space as well as environmentally sensitive areas; whereas “non-sewer service areas” as defined in the new rule are “areas that are not designated as eligible to receive sewer service from a NJPDES permitted domestic or industrial treatment works”.

Therefore, a broadening of the definition of non-sewer service areas in the new rules is needed.

(159)

RESPONSE: N.J.A.C. 7:15-1.3(b)3 provides that all designations for wastewater facilities with planning flows of 2,000 gallons per day or less and which discharge to ground water (e.g, Septics Areas) and areas designated as non-discharge areas are re-designated as non-sewer service area.

The Septic Areas shown on recently adopted wastewater service area maps often include agriculture development areas, preserved open space and environmentally sensitive areas. The change in terminology from “Septic Areas” to “Non-Sewer Service Areas” does not substantially impact the types of areas included or the wastewater facilities allowed.

406. COMMENT: The following is a policy statement that is unnecessary within the definition of “Sewer service area” and it should, therefore, be deleted: “Inclusion in a sewer service area does not guarantee that capacity exists to provide treatment for all flow from that area.” (101)

RESPONSE: In keeping with the intent of these rules to decouple the planning and permitting stages of development through these rules, the Department has determined that it is important to explicitly state in the definition of “sewer service area” that delineation does not guarantee

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adequate wastewater capacity exists in order to prevent confusion by persons who may otherwise assume that the term implies infrastructure and capacity are available.

407. COMMENT: The broad/blanket application of “unassigned sewer service area” is opposed since it promotes the extension of sanitary sewer conveyance systems and treatment works facilities into rural, farmland and open space areas where county and municipal master plans and zoning ordinances promote low-density development, open space preservation and agricultural land uses. The extension of infrastructure and utilities in this manner is costly, inefficient and sprawl-inducing. Development should not be encouraged in areas where investments are being made that protect the County’s rural landscape, and where open space and agriculture are a top priority, including areas shown as “Priority Preservation Investment Areas” on the County’s adopted Investment Framework Map. At a minimum, guidance about how to define such areas and a requirement for boundary definition should be included in the rule. This concept should be redefined as follows: “unassigned sewer service areas shall be comprised of existing developed neighborhoods and redevelopment areas that are served by a preponderance of failing and/or outdated ISSDS for which alternative wastewater management solutions are needed to protect public and environmental health and safety, and for which sanitary sewer solutions are needed prior to the end of the areawide WMP plan horizon year. Unassigned sewer service areas may also be delineated for new/planned centers and redevelopment areas that are identified in adopted county and municipal master plans and zoning ordinances for which sanitary sewer service is anticipated to be required prior to the end of the areawide WMP plan horizon year”. (54, 196)

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RESPONSE: The term unassigned sewer service area does not promote the extension of sanitary sewer conveyance systems and treatment works facilities into rural, farmland and open space areas where county and municipal master plans and zoning ordinances promote low-density development, open space preservation and agricultural land uses. The designation of unassigned sewer service area must meet the sewer service area criteria at N.J.A.C. 7:15-4.4, including the factors specified at N.J.A.C. 7:15-4.4(h), which include required consideration of both municipal and county master plans, as well as local land use objectives, including specifically objectives such as agricultural preservation and open space preservation. Additionally, the areawide WQM plan amendment procedures specified at N.J.A.C. 7:15-3.5 include requirements that all governmental entities with regulatory or planning jurisdiction, including county agencies be notified, requested to provide comment and provided consultation opportunities both during preparation of any amendment application (see N.J.A.C. 7:15-3.5(f)), with the applicant additionally required to provide proof with the application that counties and municipalities affected have been requested to provide a statement regarding the consistency of the proposed project with municipal and county master plans (see N.J.A.C. 7:15-3.5(g)). These and other mechanisms ensure that local objectives are identified and considered, with the Department having the discretion to exclude the types of areas described by the commenter from areas eligible for sewer service.

408. COMMENT: “Eligible for sewer service area” is a new classification that basically is defined as areas predetermined to meet criteria for designation as sewer service, but that are not

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within the SSA, while the modified definition of SSA would allow for the inclusion of eligible areas not currently sewered. (139)

RESPONSE: The commenter is correct that “eligible for sewer service area” is a new term. As provided in the rule and summary, “eligible for sewer service area” are areas that have been found to be appropriate for connection to a domestic treatment works or industrial treatment works in accordance with N.J.A.C. 7:15-4.4, and are either assigned or unassigned to a specific wastewater treatment facility in the areawide WQM plan. Assigned areas are those that currently are connected and convey flows to a specific wastewater treatment facility and those areas within which development is reasonably expected to connect to that facility. Unassigned sewer service areas are not associated with a specific wastewater treatment facility. An area “eligible for sewer service area” does not imply tacit approval to construct sewers and any future project must obtain all required permits/approvals and meet all the of the Department’s technical standards for obtaining such permits/approvals. Further, it should be noted that classification of an area as eligible for sewer service is not a default classification; an area will only be determined to be eligible for sewer service if is not disqualified from such classification under the provisions specified in N.J.A.C. 7:15-4.4, it has been proposed to be classified as such through a proposed WMP or WMP amendment, and the Department determines, after consideration of input received through required consultation with affected entities and from the public, that all requirements of the rules, including consideration of local land uses reflected in municipal zoning ordinances and master plans, county master plans and local land use objectives in accordance with N.J.A.C. 7:15-4.4(h), have been satisfied. Pursuant to N.J.A.C. 7:15-4.4, newly

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identified areas eligible for sewer service may be approved even though no treatment works has been identified.

409. COMMENT: It is impossible to know whether the eventual rules concerning nitrate dilution will be too lax, too strict, or just right, or what will be defined as Environmentally Sensitive Areas. This last category is particularly important in conjunction with “areas eligible for sewer service,” since an area not defined as “environmentally sensitive” would then be deemed eligible for sewer service and suburban sprawl. It is particularly important to continue the highest protection for Highlands areas which are water supply areas for much of the developed parts of the State, yet these are not included as “non-sewer service areas.” (47)

RESPONSE: Future wastewater treatment needs for areas outside of areas eligible for sewer service area (i.e., those in non-sewer service area to be served by discharge to ground water of 2,000 gallons per day or less) are evaluated through the nitrate dilution analysis as detailed at N.J.A.C. 7:15-4.5(c). The rules specify the nitrate models that may be used in determining the number of acres needed per equivalent dwelling unit to ensure that the 2 mg/L standard is met, and specify steps that must be taken if the number of units allowed by current zoning exceeds the number of additional units projected to be supported based upon the results of the nitrate dilution modeling. The Department’s Ground Water Quality Standards provide that the Department shall not approve a discharge from a new or expanded domestic treatment works to Class II or Class III ground water that requires a WQM plan amendment unless the Department determines, through the plan amendment process, that existing ground water quality will be maintained. A

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nitrate concentration of 2 mg/L, which is representative of the average existing ground water quality statewide, is required to be used in determining that existing ground water quality is maintained on a HUC 11 basis. N.J.A.C. 7:9C-1.8(b)3.

With reference to protections applicable to the Highlands Area, the new rules do not in any way reduce protection of waters in this area. Instead, N.J.A.C. 7:15-4.5(c)2 and 3 provide that wastewater treatment needs in both the Pinelands and Highlands shall be based on the standards and procedures set forth in the Pinelands CMP and Highlands RMP, respectively. The Department is confident that these provisions will ensure protection of water quality in these unique areas.

Environmentally sensitive areas are defined at N.J.A.C. 7:15-1.5 and the process for determining whether environmentally sensitive areas are excluded from eligibility for sewer service area delineation is described in N.J.A.C. 7:15-4.4. Pursuant to N.J.A.C. 7:15-4.4(e), such areas are defined utilizing GIS analysis and include certain threatened and endangered species habitat areas, Natural Heritage Priority Sites, 300-foot riparian zones to Category One waters, and wetlands.

Finally, these rules do not require that all areas not deemed environmentally sensitive must be identified as sewer service area. Instead, as discussed further in Response to Comment 177 above, the rules at N.J.A.C. 7:15-4.4 specify several areas in addition to environmentally sensitive areas (including several coastal planning areas), which, with limited exception, may not be identified as eligible for sewer service (and are thus to be included in non-sewer service area). Further, N.J.A.C. 7:15-4.4(h) specifies factors that must be considered in designating areas as eligible for sewer service. These factors specifically recognize that other areas will be not

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appropriate for sewer service and will thus be designated as non-sewer service area, based upon local zoning, local and county master planning, and local land use objectives. Instead of simply identifying all areas not classified as environmentally sensitive as eligible for sewer service, the rules take a holistic approach to planning recognizing that there are many factors that go into determining if an area should or should not be considered appropriate for sewer service.

410. COMMENT: The proposal defines “areas eligible for sewer service” as those that are not T&E habitat, C-1 buffers or wetlands even if they are not within a delineated assigned sewer service area. Such areas are not required to be mapped on county plans. This approach potentially allows a hopscotch pattern of amendment requests granted by the Department to override local and county planning and zoning requirements. Amendments and consistency determination should be made based on the location of the project within either an assigned sewer service area or a non-sewered designation. (54)

RESPONSE: As provided in the rule and explained in the proposal summary, “eligible for sewer service area” are areas that have been found to be appropriate for connection to a domestic treatment works or industrial treatment works in accordance with N.J.A.C. 7:15-4.4, and are either assigned or unassigned depending on whether a specific wastewater treatment facility has been identified in the areawide WQM plan. The WMP requirements at N.J.A.C. 7:15-4.4(c)3 identify the maps that are a component of the WMP, one of which is the wastewater service area map on which is required to be identified all assigned, unassigned and non-sewer service areas. While the wastewater service area maps do not include a line identified as the area eligible for

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sewer service, because this area is defined as including both the assigned and unassigned area (and, thus, including all area not identified as non-sewer service area), and each of these areas are identified on the map in accordance with N.J.A.C. 7:15-4.3(c)3vi and vii, the area eligible for sewer service is readily identifiable on the wastewater service area map.

In the delineation of areas eligible for sewer service, N.J.A.C. 7:15-4.4(h) requires that local zoning, master planning and local land use objective be taken into consideration. Accordingly, should proposed development be located within an area eligible for sewer service, local and county zoning and planning objectives would have already been taken into account before the area was determined to be eligible for sewer service.

With reference to the indication that amendments and consistency determinations should be made based on the location of the project within either an assigned sewer service area or a non-sewered designation, if the project is located within an assigned sewer service area, the project would be consistent and no amendment would be necessary. If the proposed project or activity is located in non-sewer service area, the consistency determination would find that the proposal is inconsistent with the plan and the project or activity would have to be redesigned to be consistent or an amendment or revision to the plan obtained to make the proposed project or activity consistent, in accordance with N.J.A.C. 7:15-3.2(d). Where an amendment of the plan is sought to change the delineation of areas eligible for sewer service to include the area of the proposed project or activity, the Department in its review of the proposed amendment would evaluate these factors identified at N.J.A.C. 7:15-4.4(h) as well as any comments of the proposed amendments received from local and county entities and any other interested party.

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411. COMMENT: “Agriculture dependent endangered and threatened species habitat” is a new definition added without any contact or input from any New Jersey farm agency or organization. A property so mapped is ineligible for sewer service area delineation, thus preventing a farm operator from adding capacity to increase his profitability and productivity. This term will have an impact on the areas where development activities may take place and where sewer service areas are defined. There must be a separate process for farmers to use, with help from the NJDA and USDA-NRCS, to apply for a special “revision” or “amendment” in order to continue to support the business of agriculture. The definition should be amended to explain what is meant by “suitable habitat.” (17, 101, 220, 266)

RESPONSE: The Department has acknowledged that agriculturally dependent species are a group of wildlife that currently depends on agricultural practices or other direct habitat management activities to maintain sustainable populations in the State. While these species are currently dependent on agricultural activities, most, if not all, are known to have been part of the State’s native biota prior to the establishment of the agricultural practices that now help sustain them. Previously, natural forces, most notably wildfire, provided the disturbance that maintained their habitats. It is the loss of these natural disturbance forces coupled with loss of agricultural lands and changes in agricultural practices that have resulted in these species becoming endangered or threatened. Recognizing this fact in combination with the established ability of wildlife managers to quickly and effectively establish and maintain habitats that sustain these species, the Department continues to believe that the provisions in these rules that recognize agriculturally dependent species as a distinct subset of endangered and threatened wildlife, and

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that establishes special provisions for mitigating impacts to their habitats, are consistent with the Department's responsibility to maintain the State's native wildlife while allowing for responsible, sustainable development.

While new provisions are added to the rules to acknowledge the unique nature of this group of threatened and endangered species and their habitat, the Department has not amended the list of threatened and endangered species through this rulemaking; the agriculturally dependent species identified within the definition of "agriculturally dependent endangered and threatened wildlife species" were previously designated as threatened or endangered species prior to this rulemaking and thus subject to provisions of the 2008 rules designed to protect threatened and endangered species and their habitat. Accordingly, addition of the definition separately recognizing this subgroup of threatened and endangered species does not result in increased impacts to agricultural operations. Instead, the new term and definition were added to allow the rules to include regulatory flexibility recognizing the unique nature of these species and their habitat. The 2008 rules required mapping of habitat areas for all endangered or threatened wildlife (including those that would now be defined as "agriculturally dependent") and limited the ability to include such areas in approved sewer service areas. In contrast, the new rules allow certain limited impacts to threatened and endangered species habitat if an applicant is able to demonstrate to the Department through a Habitat Impact Analysis that the proposed project or activity avoids the endangered or threatened species habitat; results in insignificant or discountable effects on local breeding, resting, or feeding of the species; or that impacts cannot be avoided, impacts are minimized to the maximum extent practicable, and mitigation is provided that ensures there is no net loss of habitat value (see N.J.A.C. 7:5-4.4(k)). Where

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mitigation is required, in contrast to the permanent mitigation required for other threatened and endangered species, the rules provide that mitigation for impacts to an agriculturally dependent species habitat may be for a specified number of years. Consequently, the new rules actually reduce the impact on areas that contain habitat for agriculturally dependent species both compared to the 2008 rules and as compared to other threatened and endangered species. Without a specific example, it is difficult for the Department to understand how this would prevent an existing agricultural operation from "...adding capacity to increase his [farm] profitability or productivity." The Department is open to working with NJDA and USDA-NRCS, to attempt to develop processes specific to ongoing agriculture where an amendment to the approved sewer service area is required to expand or improve ongoing agriculture on an existing farm in order to continue to support the business of agriculture.

The commenter also asks that the Department amend the definition of "agriculturally dependent endangered or threatened wildlife species" to further explain the meaning of suitable habitat. The Department notes that the regulations already include a definition of "suitable habitat" at N.J.A.C. 7:15-1.5 and that this definition applies in the context of "agriculturally dependent endangered or threatened wildlife species."

412. COMMENT: The definition of "agriculturally dependent endangered or threatened wildlife species" is vague as far as the types of "ongoing agricultural practices" that a species may be dependent upon (i.e. there may be other practices in addition to the specified mowing, haying and grazing) and thus require the practice to continue. Please clarify how the relevant practices would be determined and if there would be a defined list of such practices. (101)

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RESPONSE: The list of “ongoing agricultural practices” used within the definition of “agriculturally dependent endangered or threatened wildlife species” is not meant to be exhaustive but, rather, illustrative or exemplary of the types of practices that typically result in the maintenance of habitat suitable for and used by the suite a species determined to be “agriculturally dependent.” In determining the conservation measures necessary in a particular case to satisfy N.J.A.C. 7:15-4.4(k)4, the Department will consider the specific species involved and that species’ peculiar habitat needs, and will identify appropriate practices to ensure the requirements specified in the rules are satisfied. As part of that process, the Department is willing to consider any practice the applicant suggests provided that practice has been demonstrated to successfully maintain the vegetation type and structure that would support the species whose habitat would be adversely impacted by expansion of sewer service and subsequent development.

413. COMMENT: The Department should explain why riparian zones are included within the proposed definition of “environmentally sensitive areas.” Such areas are adequately protected through the regulatory process implemented pursuant to authority of the Flood Hazard Area Control Act (FHACA). Riparian zones may be accessed for development in accordance with the Flood Hazard rules and should not be excluded from designation as part of the sewer service area. Such exclusion effectively purports to regulate riparian zones under the Water Quality Planning Act where no such authority exists and is contrary to the exclusive authority of the Flood Hazard Area Control Act. (101)

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RESPONSE: The Department recognizes riparian zones as environmentally sensitive areas and identifies riparian zones as those regulated by the Flood Hazard Area Control Act (FHACA) Rules at N.J.A.C. 7:13. As provided in the proposal summary, the Department no longer requires riparian zone ordinances under the WQMP rules, as those elements are regulated pursuant to the FHACA rules. However, for planning purposes, the WQMP rules will consider the presence of riparian zones when determining the delineation of sewer service area. In regard to the comment regarding authority to include riparian zones in this rulemaking, the Department cited the FHACA, N.J.S.A. 58:11A-50 et seq., in addition to other statutory authority.

414. COMMENT: The definition of "environmentally sensitive areas" should mirror the delineation criteria of the State Plan for Planning Area 5, the "Environmentally Sensitive Planning Area," which includes source water watersheds and aquifer recharge areas. This would provide greater consistency with existing planning documents and prevent a needless and potentially confusing redundancy of definitions. (76, 83)

RESPONSE: The list of environmentally sensitive areas used in the SDRP is highly specific and may be under-inclusive for the purpose of identifying potential areas to avoid sewer for planning purposes. While N.J.A.C. 7:15-4.4(e) specifies the four types of features that the Department will consider in determining whether an area is generally ineligible for sewer service as a result of the presence of these features, the rules allow WMP agencies to exclude other areas, including other types of environmentally sensitive areas, from designation for sewer service based upon

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many factors, including local and county master plans and local land use objectives. Areas excluded could specifically include areas falling within the criteria of the State Plan for Planning Area 5. N.J.A.C. 7:15-4.4(h)3 provides for consideration of local land use objectives in delineating areas eligible for sewer service, including natural areas and source water protection. The Department believes the definition and rules adequately describe the scope of environmentally sensitive areas under these rules.

415. COMMENT: The proposed definition for “Infill development” should be amended to eliminate the reference to generation of 8,000 gallons of wastewater per day. It is not necessary to include the gallonage threshold in the definition, particularly as it is inappropriate to consider the gallonage of wastewater flow in the delineation phase per the WQMP rules. Additionally, clarification is needed on whether the 8,000 gallons would be used for the entire infill area or for each development. (46, 101)

RESPONSE: A project that generates wastewater flows of less than 8,000 gpd does not require a TWA from the Department pursuant to N.J.A.C. 7:14A-22.3(a)2. The Department has determined that this is an appropriate regulatory threshold for providing the type of relief intended for infill development while ensuring larger development and cumulative impacts remain subject to wastewater management planning review.

With reference to the applicability of the threshold, the 8,000 gpd limitation applies to the entire infill area.

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416. COMMENT: The concept of infill development should strictly look at the pattern of existing development in and around the property in question. If the proposed infill area is surrounded by development and contiguous to existing development, it makes sense to consider the property infill for purposes of sewer service area mapping. Infill should also extend to all sites required to undergo remediation to allow for the redevelopment of these sites, thereby providing economic incentives for completion of appropriate remedial actions. (46)

RESPONSE: The same basis for added flexibility is not always applicable to remediation sites. While in many cases, remediation sites containing threatened or endangered species habitat will be able to qualify for potential inclusion in sewer service area under one of the three infill criteria, sites undergoing remediation may or may not be located in areas that are slated for growth. Additionally, the inclusion of remediation sites as infill without consideration of the location element could be significant in that there are over 10,000 active or pending sites subject to remediation. The Department does not agree that remediation sites should qualify as infill development without consideration of location factors intended to provide relief for infill circumstances. Oftentimes, remediation sites are already included in sewer service area and have been previously developed. While remediation sites do not automatically qualify as infill development, they may still qualify as infill if the infill criteria specified in the rules are met.

417. COMMENT: The proposed definition of “No net loss of habitat value” should be amended to include offsite mitigation as such mitigation is permissible under proposed N.J.A.C. 7:15-4.4(k)(3). (101, 213)

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RESPONSE: As indicated by the commenters, requirements applicable to mitigation required to meet the no net loss of habitat value standard are specified in N.J.A.C. 7:15-4.4(k). That subsection makes clear that, while mitigation must be as near as feasible to the impact and generally within the same municipality or county, it will not be required to be on the same site in all instances. The definition of “no net loss of habitat value” is intended to outline the general goals that any mitigation proposal would need to satisfy. The Department believes that the definition, when read in conjunction with N.J.A.C. 7:15-4.4(k), makes clear that offsite mitigation may be allowed.

418. COMMENT: The sewer service area delineations of a County WMP should not be divided into municipal chapters. (125)

RESPONSE: The Department is providing WMP agencies with the flexibility to prepare municipal WMP chapters in the event a WMP agency determines that this approach works best for that particular county. In the Department’s experience, WMP agencies have submitted municipal WMP chapters in various instances, such as the Highland Council preparing the WMP for a conforming municipality, in concert with the county and the Department. Or, where a wastewater treatment facility serves only a single municipality and it would be inappropriate to submit a plan reflecting a larger area that may not receive service. Planning at a municipal scale may be a practical and viable alternative for the WMP agency and should not be discouraged at this time.

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419. COMMENT: N.J.A.C. 7:15-4.1(b) should require that septic maintenance plans be developed only at the municipal level and subject to municipal action. WMP agencies cannot control the development and adoption of these plans. Municipal action should be in the form of a time schedule of tasks linked to the availability of funding for performing this work, which can be included as part of the WMP. (196)

RESPONSE: There are aspects of a septic maintenance plan that rest with the municipality. However, this does not impede Counties from developing a countywide WMP that includes a mandatory septic maintenance plan pursuant to N.J.A.C. 7:15-4.5(c)1vi. The Department has developed guidance in the CPP that identifies the measures that should be considered in developing a septic management plan. The basic measures should include creation of an inventory, description of the actions currently performed regarding septic maintenance and future actions planned. A timeframe is anticipated to be included for the “future plans” section of the septic maintenance plan.

420. COMMENT: The one-year timeframe for completion of WMPs is too short. The DEP should consider extending the one-year provision to two years. This will ensure enough time for DPAs/WMP agencies to work with municipalities to complete the Plan. (73, 90, 139, 159, 298)

RESPONSE: Given that there are only three countywide WMPs adopted under either the 2008 rules or P.L. 2011, C. 203 as amended and supplemented by P.L. 2013, c. 188, it is important to

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understand fundamental wastewater management issues such as the status of wastewater capacity and the identification of potential capacity deficits. The Department agrees with the comment and is changing N.J.A.C. 7:15-4.2(b) on adoption to reflect that a WMP shall be submitted no later than 18 months from the effective date of the rules, rather than the two years suggested by the commenters. The Department believes that WMPs can be completed within this timeframe given that these rules streamline the planning process and eliminate redundancies which delayed the adoption of WMPs under previous versions of the rule. With the streamlined analyses and more collaborative planning process provided by the rules, completion of WMPs within 18 months of the effective date of the rules is feasible.

Additionally, a WMP agency that cannot submit a WMP within 18 months may request a revised schedule pursuant to N.J.A.C 7:15-3.4. An alternative submission schedule will only be granted after demonstration by the WMP agency that significant progress has been made toward the development and adoption of the WMP. Generally, progress will be deemed “significant” if the WMP agency has made substantial progress toward completion of the WMP after the effective date of these rules. For example, if the applicant has been working closely with the Department to advance the WMP or its components, an extension will be considered.

421. COMMENT: There is a need for additional manpower and funding in order to complete elements of the planning process under the new rules. There is no demonstration within the rule proposal to support the assertion that this is an approach that is feasible. (73, 90, 298)

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422. COMMENT: Past rules have provided information about funding for plan preparation.

The proposed rules are silent on funding. Please clarify how much funding will be available to counties for compliance with the new rules. (159)

RESPONSE TO COMMENTS 421 AND 422: The initiative to complete baseline WMPs for the entire State on a county basis is a priority for the Department, and, as such, the Department has planned accordingly for the additional resources to meet the demands imposed by these new rules. Specifically, the Department has added staff with expertise with GIS, and organized staff across functional lines. A specific unit has been created that is solely responsible for working with counties on the development and review of WMPs. A second unit has been created to review site-specific amendments and revisions. This structure will allow for a more focused approach to the Department's WQM planning work. Additionally, the development of these rules was a significant collaborative effort between the different divisions of the Department which are affected by these rules. Therefore, the Department will be well positioned to implement the obligations prompted by these new rules.

The Department recognizes that with this rule and the requirement to submit a WMP within a specific timeframe, there are varying needs for financial assistance and has offered three levels of grant funding to counties based on the WMP work yet to be completed. The Department is assessing those needs as well as all of the potential funding sources that could serve as grant funding to counties to complete their WMPs. The Department has already revised two prior Scopes of Work with EPA from past 604(b) grant awards to reflect that the portion that EPA allows the Department to "pass through" as grants will be re-purposed and obligated solely

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for grants to counties to conduct work needed to complete their WMPs. A third Scope of Work for 604(b) funding from EPA was developed more recently with the intent of funding County WMP efforts. The total funding from the 604(b) grants is nearly \$900,000 that will be provided as grants to fund WMP development. The Department has also identified discretionary State funds in the amount of one million dollars that will be an additional dedicated source of funding to assist WMP agencies in the development and update of WMPs.

423. COMMENT: N.J.A.C. 7:15-4.2(c) should be clarified. This provision appears to refer to the first WMP update cycle under the new rules. However, N.J.A.C. 7:15-4.2(e) also appears to address this requirement. (196)

RESPONSE: The Department agrees with the comment and is replacing N.J.A.C. 7:15-4.2(c) with the language of N.J.A.C. 7:15-4.2(e) on adoption, and is re-codifying proposed N.J.A.C. 7:15-4.2(f) to N.J.A.C. 7:15-4.2(e).

424. COMMENT: The proposed extension of the period for update of Wastewater Management Plans to ten years is supported. (220)

RESPONSE: The Department acknowledges the commenter's support.

425. COMMENT: The notion of a ten-year WMP schedule is opposed. It means that Department will get an influx of WMPs at long intervals, stressing staff capabilities. Also, it

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makes no distinction between counties with significant growth and sewer service area additions, and those with little potential for SSA and sewage flow change. Instead, there should be a trigger for a shorter schedule, such as when growth projections exceed a particular percentage of current county population. (73, 125, 298)

RESPONSE: As stated in the rule summary, the new WQMP rule continues to require periodic reevaluations of the WMP, but the time frame has been extended from six years to 10 years pursuant to N.J.A.C. 7:15-4.2(c). This change makes the reevaluation of WMPs consistent with the schedule for updating municipal master plans under the Municipal Land Use Law at N.J.S.A. 40:55D-89. A site-specific amendment over 100 acres or 20,000 gpd will be required to modify the buildout capacity analysis to reflect the project and wastewater treatment plants that exceed 80 percent of its permitted flow will be required to work with WMP agencies to evaluate the need for any action. Additionally, as new wastewater treatment plants are constructed, unassigned sewer service area will become designated as assigned sewer service area. A county can opt to update its WMP earlier than ten years as may be appropriate due to a change of circumstances. The Department does not anticipate that the 10-year term for WMPs will create a scenario where they are all expiring at the same time. The Department has already adopted WMPs for Mercer, Ocean and Sussex Counties, all of which have an individual expiration date. Additionally, while the due date for all pending WMPs is the same, it is anticipated that not all of them will be adopted on the same date. As a result, even at the conclusion of the initial 10-year period, the Department anticipates that there will be some variability in the scheduled due dates of the various WMPs with it anticipated that the variability in due dates will increase over time

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as some WMPs are submitted prior to expiration of the 10-year period and some WMP agencies request alternative schedules in accordance with N.J.A.C. 7:15-4.2(c).

426. COMMENT: The rule should include a definition for “designated private entity” as this term is used in the definition of “franchise area.” (125)

RESPONSE: As indicated in the definition of “franchise area,” such areas and the private entities which control them are designated by the Board of Public Utilities (BPU). As the term “private entity” is not used elsewhere in the rules and the private entity granted the right to control and provide wastewater treatment facilities is specifically identified through the BPU approval process, no further definition is necessary.

427. COMMENT: Proposed N.J.A.C. 7:15-4.3(c)3vi(1) states that the “assigned sewer service area” will be split into existing and future – its definition should reflect this point. (125)

RESPONSE: “Assigned sewer service area” is defined as “the eligible sewer service area from which sewage flows are conveyed to a specific DTW, or for the purposes of the wastewater capacity analysis, is reasonably expected by the WMP agency to generate sewage that will be conveyed to the DTW, or to an industrial treatment works that accepts sewage generated from areas other than the industrial facility.” As the definition includes both area generating current flows and the area that is “reasonably expected” to generate sewage in the future, no further amendment is necessary.

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428. COMMENT: The Department should clarify and clearly list all of the required components (maps, modeling, capacity analysis, tables, etc.) of the WMP that needs to be completed and approved prior to the adoption of any updated Wastewater Service Area maps.

(46)

RESPONSE: The WQMP rule at N.J.A.C. 7:15-4.3 provides a list of the required components to adopt a valid WMP.

429. COMMENT: The Department should include a requirement in N.J.A.C. 7:15-4.3 that all WMPs be structured in a similar fashion and have all pertinent information provided in an executive summary in the beginning of the report. The executive summary should include existing and proposed sewer service area maps, a table listing of all properties by municipality, block and lot within the planning area and whether they are in a sewer service area, a summary table for each sewerage treatment facility and current and projected capacity of the facility, and a table of site-specific amendments and revisions. (46)

RESPONSE: As noted above, N.J.A.C. 7:15-4.3 identifies all of the components that must be included in a WMP. Additionally, the rule provides that WMPs should be concise, using the minimum feasible narrative and mapping. The rules provide some flexibility to the WMP agencies with respect to the composition of the WMP document to allow them to develop the WMP document in a manner that is most effective for them. While all the components in

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N.J.A.C. 7:15-4.3 must be included in the WMP, the actual formatting is left to the discretion of the WMP agency.

430. COMMENT: A major question implicit in the Department's proposed revisions is what level of comprehensiveness is appropriate for WMPs. The more comprehensive the WMP, the more predictable and defensible the results should be. It will also cost more and raise more issues that need to be resolved prior to NJDEP adoption. The Department seems focused on reducing the comprehensiveness of WMPs, placing more of the analysis within the permit programs, which seems to be predominantly driven by an overriding policy emphasis on reducing State regulatory review timelines and minimizing what is pejoratively termed as "red tape." (73, 298)

RESPONSE: N.J.A.C. 7:15-4.3 identifies the requirements for a WMP; these are the minimum requirements. N.J.A.C. 7:15-4.3(a) provides that WMPs should be concise, using the minimum feasible narrative and mapping. The rules seek to focus on development of information necessary for comprehensive wastewater management planning, while recognizing that more detailed analysis of particular projects is more appropriately addressed at the permitting stage when more specific information – allowing more complete analysis of potential impacts – is available. While the rules seek to result in the development of concise WMPs that clearly present all information regarding current and projected future wastewater management needs, the rules at N.J.A.C. 7:15-4.3 detail the specific components that must be part of the plan, including buildout, wastewater treatment capacity and nitrate dilution analyses.

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These rules will result in comprehensive WMPs that will allow for strategic decision-making in the future, such as whether new wastewater treatment facilities should be contemplated, whether zoning in an area with inadequate sewer service should be evaluated or whether a treatment plant expansion should be considered.

431. COMMENT: N.J.A.C. 7:15-4.3(a)7 should read “The name of the receiving surface water body (using the National Hydrologic Dataset of the U.S. Geological Survey, available from <http://nhd.usgs.gov>) or aquifer (using a formal designation by the New Jersey Geological and Water Survey or the United State Geological Survey)” for clarity and to avoid the use of local place names. (125)

RESPONSE: The Department believes the commenter intended to reference N.J.A.C. 7:15-4.3(b)7, as there is no N.J.A.C. 7:15-4.3(a)7 in the rule. The waterbodies and aquifers identified in the SWQS and GWQS are identified by name consistent with the name of the waterbody/aquifer that appears in the NJGS and USGS materials cited by the commenter.

432. COMMENT: N.J.A.C. 7:15-4.3(b)9 should read “The discharge location (latitude and longitude or State Plane Coordinates) for each existing or pending NJPDES-regulated wastewater treatment facility, or a narrative description of the anticipated location for a future facility” because pending NJPDES facilities are in the permit process and so a specific discharge location should be known, while for a future DTW an approximate location should be available. (125)

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RESPONSE: N.J.A.C. 7:15-4.3(b) requires facility information for each existing and anticipated wastewater treatment facility. To clarify this requirement in N.J.A.C 7:15-4.3(b)9, the Department will revise the language to “the discharge location (latitude and longitude or State Plane Coordinates) or planned discharge location (if known) for each existing NJPDES-regulated wastewater treatment facility and each wastewater treatment facility for which a NJPDES permit application is pending.”

433. COMMENT: In N.J.A.C. 7:15-4.3(b)10, the term “permitted flow” should be used, as that term was previously defined. (125)

RESPONSE: While the commenter is correct that the term “permitted flow” could be used, the context of the provision clearly specifies the requirement.

434. COMMENT: N.J.A.C. 7:15-4.3(b) should specify whether wastewater facility tables are to be prepared for facilities with design flows of 20,000 GPD or less. If the Department decides not to have assigned sewer service areas for T1 facilities with design or permitted flows of less than 20,000 GPD shown on the wastewater service area map (Map 3), the associated tables should be excluded from the plan. (196)

RESPONSE: As part of WMP development, the WMP agency must identify all existing and anticipated wastewater treatment facilities in wastewater treatment facility tables, pursuant to

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N.J.A.C. 7:15-4.3(b). “Wastewater treatment facility” is defined at N.J.A.C. 7:15-1.5 to include any device or system that is or will be utilized for treatment of wastewater that requires a NJPDES permit. Accordingly, facilities tables are required for all NJDPES regulated facilities with discharges greater than 2,000 gallons per day. As T1 facilities are connected to assigned sewer service areas, T1 facilities are required to be displayed on the associated facilities table and shown on Map 3.

435. COMMENT: In reference to N.J.A.C. 7:15-4.3(b), officials from the Department have assured County WMP agencies that the data necessary for completing all but future flow calculations for treatment plants will be provided so that the tables can be prepared in a timely and efficient manner. However, the CPP does not currently include internet-based links or guidance on this matter and should be modified accordingly and provided in a timely manner.
(196)

RESPONSE: Flow data is currently available from the Department’s internet archive of discharge monitoring report (DMR) data at http://datamine2.state.nj.us/DEP_OPRA/OpraMain/categories?category=NJPDES%20Permitting. Additionally, the Department is developing a separate report associated with the flow data report that will allow anyone to generate flow information from DMRs.

436. COMMENT: N.J.A.C. 7:15-4.3(c) provides requirements for WMP map number 1 showing WMP and WQM planning boundaries. As the county is not the organization

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responsible for determining the boundaries of the WMP and areawide WQM planning areas, the Department or the appropriate sewerage authorities need to provide this information for accurate mapping determinations. Municipal boundaries and the CAFRA boundary are available for mapping purposes through the NJOGIS and NJDEP. (139)

RESPONSE: N.J.A.C. 7:15-2.6(a)3 outlines as one part of the WMP agency's role, the duty to coordinate its WMP activities with regional planning entities and other WMP agencies at the county or local level. Therefore, the WMP agency should be coordinating with affected entities to obtain any information they may have that is needed for the WMP preparation. The Department will also assist by providing any information it has, including boundary information for the areawide WQM planning areas, and will assist WMP agencies in obtaining other necessary information from other entities, such as sewerage authorities.

437. COMMENT: Map 3 at N.J.A.C. 7:15-4.3(c)3 should delineate sewer service areas, differentiating between assigned, unassigned and non-sewer service areas. Appropriate criteria for delineating unassigned sewer service areas pursuant to N.J.A.C. 7:15-4.3(b)3vi is needed. Clarification must be provided that non-sewer service areas may contain areas eligible for sewer service for which the use of individual on-site septic systems is preferred, or where no form of sewer service is needed consistent with county and municipal master plans and zoning. (196)

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RESPONSE: Pursuant to N.J.A.C. 7:15-4.3(b)3vi and vii, Map 3 requires the identification of sewer service area and non-sewer service area. As to clarification regarding identification of non-sewer service areas, please see Response to Comment 353 above.

438. COMMENT: N.J.A.C. 7:15-4.3(c) provides requirements for WMP map number 2 showing environmentally sensitive areas. Provided NJOGIS, NJDEP or other appropriate authority supplies the data needed for N.J.A.C. 7:15-4.3(c) in an updated and timely manner, the data can be downloaded and added to the indicated map. The proposed language can also be added to map number 1. The County GIS office does not currently have a map of this depiction on file and is unaware if one currently exists. (139)

RESPONSE: Map 2 is a composite map of selected environmental features, based upon the most current Department GIS coverage that corresponds to environmentally sensitive areas that the Department has identified as inappropriate for sewer service at N.J.A.C. 7:15-4.4(f). It is acceptable to use the current form of the GIS data that is available at the time the WMP is being developed. Map 1 is the WMP Area map and reflects boundaries for WMP area, WQMP area, municipalities, Pinelands and Highlands. These are also available as GIS layers for download, in accordance with N.J.A.C. 7:15-2.4(a)10 through which the Department commits to maintain a current wastewater service area map for the entire State on the Department's website. Therefore, the Department would be the proper source to obtain the appropriate data to identify environmentally sensitive areas in a GIS layer. The information required for Maps 1 and 2 can be submitted separately, or may be combined into one map.

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In either case, the Department can provide baseline, countywide maps for those counties developing their Wastewater Service Area Maps. This is the continuation of a practice the Department started in 2011 when much of the State initiated the comprehensive mapping of existing and future sewer service areas.

439. COMMENT: N.J.A.C. 7:15-4.3(c) provides requirements for WMP map number 3 showing wastewater service areas. Does this map reflect the Future Wastewater Service Area Maps already adopted? This section also requires features that are not applicable to certain counties, such as the Pinelands and Highlands boundaries. Additionally, DEP or other appropriate authorities must supply the data to the WMP agency for many of the required features of the map, such as district and franchise boundaries for sewerage authority districts and municipal utility authority districts the location/coordinates of domestic and industrial wastewater treatment facilities, the facility name and NJDPES permit number, sewer service areas, the areas which those facilities served by treatment facilities and any outstanding unassigned or non-sewer service areas. (139)

RESPONSE: Map 3 represents what has commonly been referred to in the past as Future Wastewater Service Area (FWSA) maps. The Department acts as a resource for DPAs and WMP agencies to facilitate their role in accomplishing the water quality objectives by providing data, information, and tools. The Department recognizes that much of the data for generating the Wastewater Service Area Map (Map No. 3) will come from either GIS data or other sources maintained by the Department. Much of this information has been previously provided by the

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Department to the counties in the adoption of their Future Wastewater Service Area Map. Any information that the Department maintains that is necessary to meet the requirements of any aspect of these rules will be shared with the counties. Additionally, to the extent the WMP agency needs assistance with obtaining information from other entities, such as treatment plant owners/operators, the Department will assist the counties in any difficulties realized in trying to obtain the information.

440. COMMENT: N.J.A.C. 7:15-4.3(c) provides requirements for WMP map number 4 showing municipal zoning. Since zoning falls under municipal jurisdiction, a comprehensive approach to updating all municipal zoning data as well as the creation of composite zone categories will have to be performed. Counties cannot be held responsible for missing or inaccurate zoning information made available by the municipalities. (139)

RESPONSE: A county WMP agency must rely on data from other entities, including municipalities, and ensure that the data is accurate. N.J.A.C. 7:15-2.6(a)3 outlines the WMP agencies' role to coordinate its WMP activities with regional planning entities and other WMP agencies at the county or local level. As indicated in Response to Comment 439 above, the Department will also assist in providing any information it has and will assist WMP agencies in obtaining other necessary information from other entities, such as sewerage authorities where they experience difficulties in obtaining it themselves.

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441. COMMENT: N.J.A.C. 7:15-4.3(c) provides requirements for WMP map number 5 showing “other” data. All other applicable mapping may be completed upon vetting requested mapping detail and availability of GIS data. (139)

RESPONSE: N.J.A.C. 7:15-4.3 establishes the structure and describes the components of the WMP, including all required maps: Map 1, depicting the political and selected jurisdiction and natural boundaries of the WMP area; Map 2, depicting selected environmentally sensitive features; and Map 3, depicting the sewer service and non-sewer service areas. The WMP should also include a Map 4, which depicts current composite or municipal zoning, if that is used as the basis for the build-out analysis under N.J.A.C. 7:15-4.5(b)1ii(2). Map 5 is referenced at N.J.A.C. 7:15-4.3(c)5 to provide for additional information which depicts factors considered in delineating sewer service areas not otherwise depicted in Maps 1 through 4. There is no intention for Map 5 to include information already supplied on the other maps.

442. COMMENT: The mapping of pumping stations, trunk lines, and sewage collection systems is not required for effective WMPs. However, a WMP should identify where specific large collection lines (interceptors) are known to have no remaining design capacity (i.e., not related to clogging), and the area they serve should be generally identified. (73, 298)

RESPONSE: The identification of interceptor lines and capacity deficiencies are handled during the permitting process through the Department’s treatment works approval (TWA) program. Therefore, the Department is not requiring that information to be mapped in these rules.

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Subchapter 5. 303(d) Water Quality Limited Water Lists and Total Maximum Daily Loads

443. COMMENT: The word “nonpoint” in the definition for the term “load allocation” should be changed to “point,” or the definition should be expanded. (196)

RESPONSE: The definition for load allocation is consistent with EPA’s definition of a total maximum daily load (TMDL) and is explained in N.J.A.C.7:15-5.3. A TMDL quantifies the amount of a pollutant a waterbody can assimilate without violating the State’s water quality standards, allocates that load capacity to known point and nonpoint sources, and is expressed as the sum of wasteload allocations for point sources, load allocations for nonpoint sources, a required margin of safety, and an optional reserve capacity. Therefore, there is no need to edit the language in the definition of “load allocation” upon adoption.

444. COMMENT: The “point sources” of pollution definition includes “concentrated animal feeding operations” which are regulated by the NJ Agricultural Waste rules as nonpoint pollution. This should be deleted from the definition. (17, 266)

RESPONSE: This definition is based on and is consistent with the NJPDES regulations at N.J.A.C. 7:14A-1.2; the Water Pollution Control Act, at N.J.S.A. 58:10A-3, and the Clean Water Act, 33 U.S.C. 1362(14).

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445. COMMENT: N.J.A.C. 7:15-5.1 should be expanded to stress the importance of monitoring changes in water quality over time at the sub-watershed level, to serve as a basis for identifying and implementing appropriate geographic-specific policies and programs aimed at improving water quality. (196)

RESPONSE: The details of monitoring and results are addressed in the Department's biennial New Jersey Integrated Water Quality Monitoring and Assessment Report (Integrated Report) to EPA, which are intended to provide effective tools for maintaining high quality waters and improving the quality of waters that do not attain their designated uses. Specifically, New Jersey's Integrated List identifies the use assessment results for all waters of the State, grouped into subwatershed or other hydrologically-based assessment units. These reports may be found on the Department's website at <http://www.nj.gov/dep/wms/bears/generalinfo.htm> and describe the status of the State's waters in terms of overall water quality and support of designated uses, as well as strategies to maintain and improve water quality.

446. COMMENT: In reference to N.J.A.C.7:15-5.2, a new section should be added which requires the use of the data included in the periodically updated 303(d), 305(b) and 314 reports and "Integrated Water Quality Monitoring and Assessment Methods document" to identify trends over time in water quality limited waters, and use GIS mapping techniques to illustrate sub-watershed areas where water quality is improving versus declining as part of these reports. A statewide interactive map illustrating key data for 303(d) listed waters and associated sub-watersheds should be included on the Department's website that allows the public to readily

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obtain geographic-specific information from these reports in order to see where water quality limitations are occurring and their causes. This section should promote the implementation of appropriate voluntary mitigation actions by both the public and private sectors aimed at improving and protecting water quality. (196)

RESPONSE: The suggestions raised by the commenter are addressed by the Department through various mechanisms outside of the WQMP rules.

As referenced by the commenter, the Department biennially publishes a draft *Integrated Water Quality Monitoring and Assessment Methods Document* (Methods Document) which includes a description of the data quality requirements and the methods to be used by the Department to evaluate surface water quality data and assess compliance with surface water quality standards and support of designated uses, as well as the rationale for the placement of assessment units on the 303(d) List of Impaired Waters and identification of the pollutant(s) for which the assessment unit is impaired. The Methods Document is prepared in accordance with the Water Quality Management Planning rules to satisfy New Jersey's requirement to provide a description of the methodology used to develop a statewide List of Water Quality Limited Waters pursuant to Section 303(d) of the Federal Clean Water Act (33 U.S.C. 1313(d)). After review and consideration of comments received on the draft Methods Document, the Department publishes the final Methods Document, which is then used to develop the draft 303(d) List and other elements of the Integrated Water Quality Monitoring and Assessment Report (Integrated Report). A water quality trends section is a component of the biennial Integrated Report prepared by the Department, including the 2012 Integrated Report and draft 2014 Integrated

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Report. The Department typically creates a GIS coverage after the adoption of the 303(d) list indicating what assessment units do not meet specific designated uses. The 303(d) list identifies the monitoring stations that supported placing the assessment unit/pollutant combination on the 303(d) List. Interested persons can use the final 303(d) List to identify the listing station and then use the Water Quality Data Portal (available on the National Water Monitoring Council's Web site at <http://www.waterqualitydata.us/>) to review the monitoring results.

Interested persons wishing to identify where water quality limitations occur, their causes and appropriate mitigation actions may refer to the Department's GIS coverages which are developed for every approved TMDL available on the Department's website at <http://www.nj.gov/dep/gis/newdata.html>. Adopted TMDL documents are also posted on the Departments website at <http://www.state.nj.us/dep/wms/bears/tmdls.html>.

The objective of a TMDL is to determine the loading capacity of the waterbody and to allocate that load across different pollutant sources. Moreover, the TMDL process is important for improving water quality because it serves as a link in the chain between water quality standards and implementation of control actions designed to attain those standards so that the appropriate control actions can be taken and water quality standards achieved.

The commenter's suggestion that voluntary implementation of mitigation actions by the public and private sector aimed at improving and protecting water quality be promoted is addressed in the Nonpoint Point Source Management Program Plan and Continuing Planning Process. The Nonpoint Source Management Program Plan (2015-2019) highlights the key actions that New Jersey with its partners will use to address water quality issues caused by nonpoint source pollution to achieve water quality objectives. The section in the NPS Plan on

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Working Partnerships emphasizes that the success of the NPS mitigation depends on maintaining existing and forging new partnerships with State, interstate, tribal, regional and local entities; private sector groups; citizens' groups; and Federal agencies.

447. COMMENT: Today, the majority of the waters of New Jersey are classified as failing to meet at least one of their designated uses. This rule proposal will perpetuate that condition. (73, 273, 298)

RESPONSE: While the 2012 Integrated Water Quality Monitoring and Assessment Report (Integrated Report) found that only a small percentage of New Jersey's 952 assessments units (AUs) fully support all applicable designated uses, the 2012 Integrated Report shows that many AUs have insufficient information to assess designated use support, especially fish consumption and recreation uses. In 2012, 62 percent of all 952 AUs had insufficient information to assess the fish consumption use and 36 percent had insufficient information to assess the recreation use. This is significant because, even if all other applicable designated uses were fully supported, if insufficient information existed to assess one applicable designated use, the AU was not counted as fully supporting all applicable designated uses. Accordingly, focus on such a statistic is misleading and does not provide an accurate assessment of the condition of the State's waters or compliance with any applicable regulatory or statutory mandate.

The use assessment portion of the Integrated Reports are prepared in accordance with Federal Clean Water Act Section 305(b), which requires states to assess overall water quality and support of designated uses of all principal waters of the State. These reports are also intended to

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establish program priorities and funding for restoring, maintaining, enhancing, and protecting waters of the State and the uses and benefits (public health, environmental, and economic) they provide. The designated use assessments do not provide a mechanism for evaluating site-specific impacts from land use activities on receiving water quality. Based on water quality trends, overall water quality has remained stable over time or has shown improvement with the most frequent cause of water quality impairment being the result of pathogens, which include E. Coli, enterococcus, fecal coliform and total coliform.

448. COMMENT: The WQMP process is an integral and essential part of New Jersey's ability to meet its obligations under the CWA and several other Federal and State mandates. The CWA expressly prohibits backsliding from effluent limitations contained in previously issued permits. Under the CWA, the Department is barred from allowing permit holders to "backslide" or from weakening limits contained in discharge permits except under very limited circumstances. Thus, permits issued with these types of limitations may not be reissued, renewed, or modified to contain less stringent effluent limitations than the previous permit unless the proposed new limitations comply with the CWA's antidegradation rule, or the permit falls into one of the statutory exceptions to this ban on backsliding. However, with this rule proposal the Department proposes to rollback protections for C-1 streams and steep slopes, and to loosen controls on nonpoint source pollution. Moreover, this rule proposal abandons planning, which is an abandonment of the Department's obligation under the CWA to engage in continuous planning.

(21, 235)

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RESPONSE: The commenter is correct that Sections 402(o) and 303(d)(4) of the Clean Water Act, 33 U.S.C. §§ 1342(o) and 1313(d)4, and 40 CFR 122.44(l) of the NPDES rules prohibit backsliding in NPDES permits. These anti-backsliding provisions require effluent limitations or standards in a reissued permit to be as stringent as those in the previous permit, with some exceptions. The State implements this requirement through the NJPDES rules at N.J.A.C. 7:14A-13.19. These rules do not violate the antibacksliding requirement.

The WQMP rules are planning rules which do not include permitting functions. Under the Surface Water Quality Standards (SWQS) at N.J.A.C. 7:9B, C1 designated waters are provided additional protection from measurable changes in water quality. The NJPDES Rules at N.J.A.C. 7:14A require that new or expanded wastewater discharges must maintain the existing water quality of the receiving C1 streams. If the discharger is located above a C1 segment the applicant must meet “no measurable change” at the C1 boundary. The changes to this rule will not contravene the implementation of Category 1 waters protection afforded through the NJPDES Rule or the Flood Hazard Area Control Act Rules at N.J.A.C. 7:13 which require 300-foot riparian zones to all C1 waters and their upstream tributaries within the same subwatershed.

Steep slope protections are developed, in part, to prevent nonpoint pollution discharges caused by erosion. The risks associated with steep slopes, including measures focused on prevention of the nonpoint source pollution discharges associated with steep slopes - exist throughout the State, including the Coastal Zone Management Rules at N.J.A.C. 7:7, the Soil Erosion and Sediment Control Act of 1975 as implemented through the State Soil Conservation

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Committee rules at N.J.A.C. 2:90, the Residential Site Improvement Standards at N.J.A.C. 5:21, and local ordinances.

With respect to other nonpoint source pollution requirements eliminated in these rules, the Nonpoint Point Source Management Program Plan and Continuing Planning Process (CPP) articulate clear and decisive planning goals and strategies to achieve water quality. The WQMP rules focus on procedures for adopting new or amended areawide WQM plans, including WMPs; lists of water quality limited (impaired) waters; and TMDLs for impaired waters. The Department has always implemented the continuing planning process required by the Clean Water Act. This planning process was recently compiled into a user-friendly online resource and renamed the CPP, as provided in the proposal summary. The CPP describes how Department programs integrate and unify water quality management planning processes, establish and assess attainment of water quality goals and standards, and implement control measures necessary to maintain, improve, and protect water quality throughout the State. While the Federal Clean Water Act (CWA), and New Jersey's Water Quality Planning Act (WQPA) and Water Pollution Control Act (WPCA) provide the foundation for the environmental programs that protect New Jersey's water resources through water quality standards, monitoring, and assessment, the Nonpoint Source Management Program Plan outlines the Department's strategies for meeting its obligations with respect to nonpoint source pollution control.

449. COMMENT: TMDLs can only solve part of the problems highlighted in the rule because TMDLs do not address nonpoint pollution. WQM plans at the municipal level that were

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previously required could help implement those TMDLs, but the DEP is removing those obligations. (213)

RESPONSE: TMDLs address nonpoint pollution through load allocations pursuant to N.J.A.C. 7:15-5.3(b)5. Please see Response to Comment 446 above regarding the implementation of TMDLs and the Department's Nonpoint Source Pollution Management Program.

Subchapter 6. Watershed Management Grants

450. COMMENT: Many of the plants in New Jersey that received Federal grants in the 1980s have Federal grant restrictions that prohibit the extension of sewers into environmentally sensitive areas. This rule violates those grant restrictions because the Department can keep adopting amendments without doing the proper analyses. (273)

RESPONSE: At N.J.A.C. 7:15-4.4(g), environmentally sensitive areas in which 201 Facilities Plan grant limitations prohibit the extension of sewer service shall not be included in areas designated as eligible for sewer service area, unless documentation is provided demonstrating that a mapping revision or waiver has been obtained from EPA.

451. COMMENT: Grant allocations should be prioritized based on their consistency with County and Municipal Master Plans, Countywide WMPs, and county and municipal stormwater management plans and other applicable local and regional policies and programs, in addition to

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watershed and sub-watershed management plans, the Integrated Water Quality Monitoring and Assessment Report or other NJDEP-approved assessments. (196)

RESPONSE: The Department will evaluate whether to include these planning aspects into the priority system for considering grant awards.

452. COMMENT: “Watershed associations” should be replaced with “watershed management groups,” given that this is the term defined previously. (125)

RESPONSE: The Department has carried forward this terminology from the 2008 WQMP rule. The term “watershed association” does not have the same meaning in N.J.A.C. 7:15-6.2(c) as “watershed management group.” The latter is the group recognized by the Department as the entity representing the various interests within one or more watersheds located in a watershed management area and whose purpose is to improve the condition or to prevent the further degradation of a watershed. Pursuant to N.J.A.C. 7:15-6.3(b)2ii, one of the roles of a watershed management group is to establish or operate a stakeholder’s advisory group or watershed association dedicated to preserving and protecting a watershed.

453. COMMENT: The acronym “PAC” should be spelled-out once in N.J.A.C. 7:15-6.3. Additional information about the establishment of PACs, their membership, purpose and role should be added to this section. (196)

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RESPONSE: The definition of “public advisory committee” or “PAC” is provided within N.J.A.C. 7:15-1.5. Because “PAC” is spelled out in its definition, it is unnecessary to do so again at N.J.A.C. 7:15-6.3.

454. COMMENT: Watershed management groups (WSGs) should be required to include representatives of county and municipal government entities within the watershed or sub watershed management area. N.J.A.C. 7:15-6.3 specifies that county and municipal government officials are to be “invited” to participate in WSGs. Since these government entities play an instrumental role in regional and local land use and investment decisions, their involvement is vital to the establishment of successful collaborative partnerships, leveraging resources and advancing the coordination of planning and implementation initiatives. As such, the rules should be refined such that WSG projects for which grant applications are proposed should be reviewed for consistency with applicable regional plans, areawide WMPs, County and Municipal Master Plans, zoning ordinances, stormwater management plans and other pertinent regional, county and local policies and programs and endorsed in writing by affected regional, county and local governing bodies; and such written endorsement should be required component of each grant application. (196)

RESPONSE: The Department supports the inclusion of local and county government officials within the WSG, although participation is not mandatory.

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455. COMMENT: The term “fiscal agent” should be included within the provisions of N.J.A.C. 7:15-6 to make clear that while the watershed management group is taking actions, the fiscal agent is actually responsible for the grant agreement and contracts. (125)

RESPONSE: The grant agreement represents an agreement between the watershed management group and the Department. The regulations do not prohibit the watershed management group from contractually binding a fiscal agent for certain fiscal responsibilities. However, all grant commitments are the responsibility of the grant recipient.

Federal Standards Statement

Executive Order No. 27(1994) and P.L. 1995, c. 65 (N.J.S.A. 52:14B-22 through 24) require State agencies that adopt, readopt, or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a comparison with Federal law. Rules that exceed Federal standards must include an analysis that explains the reasons for imposing such standards.

Section 208 of the Federal Clean Water Act (33 U.S.C. §§ 1251 et seq.) requires the governor of each state to identify those areas of their state that have substantial water quality control problems and to develop plans, or designate the appropriate entity to develop a plan, to do the following:

- Identify treatment works necessary to meet the wastewater treatment needs of each area;

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- Establish the construction priorities for such treatment works;
- Establish a regulatory program to implement those treatment works;
- Regulate the location and construction of any facility having a discharge;
- Describe a process for the identification and control of nonpoint sources of pollution from agriculture and silviculture;
- Develop a process to identify and control construction related sources of pollution; and
- Develop a process to identify and control salt water intrusion into rivers lakes and estuaries resulting from the reduction of freshwater flow from any cause.

Section 303(e) of the Federal Clean Water Act requires each state to establish a continuing planning process (CPP) approved by USEPA. The CPP must incorporate all elements of applicable areawide WQM plans and basin plans pursuant to the Clean Water Act, and include adequate implementation to achieve Federal and state water quality standards, authority for intergovernmental cooperation, controls over disposition of residual waste from any water treatment processing, and priority ranking for construction of waste treatment works.

Section 319 of the Federal Clean Water Act (33 U.S.C. §§ 1251 et seq.) and Section 6217 of the Federal Coastal Zone Management Act Reauthorization and Amendments (16 U.S.C. §§ 1451 et seq.) require that states develop effective nonpoint source pollution control strategies. These Federal programs are not prescriptive in their approach, and consequently the specific requirements of these programs are left to the states. The Department accomplishes many of these Federal programs through the Water Quality Management Planning rules. These rules continue this practice.

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The adopted new rules provide an ongoing means to implement the Continuing Planning Process required under Section 208 of the Federal Clean Water Act (33 U.S.C. §§ 1251 et seq.) through the areawide Water Quality Management Planning process. As part of this process, the current areawide WQM plans will be amended through updated WMPs to ensure that WQM plans are based on and integrate the most current land use and water resource planning.

Section 303(d) of the Federal Clean Water Act (33 U.S.C. §§ 1251 et seq.) requires each state to identify those waters within its boundaries for which effluent limitations are not stringent enough to implement any water quality standards applicable to such waters. In addition, the State shall:

- Establish a priority ranking for such waters, taking into account the severity of the pollution and the uses to be made of such waters;
- Identify those waters or parts thereof within its boundaries for which controls on thermal discharges are not stringent enough to assure protection and propagation of a balanced indigenous population of shellfish, fish, and wildlife;
- Establish for the waters identified, in accordance with the priority ranking, the total maximum daily load for those pollutants which are identified as suitable for such calculation; and
- Estimate for the waters identified the total maximum daily thermal load required to assure protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife.

Subchapter 5 of the adopted new rules contains provisions related to development and adoption of the list of impaired waterbodies and TMDLs for impaired waterbodies required

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under Section 303(d) of the Federal Clean Water Act and relevant regulations of the USEPA at 40 CFR 130.7. The adopted rules incorporate these Federal requirements by reference to ensure that the Department's process remains in step with the Federal requirements. The adopted rules provide at N.J.A.C. 7:15-5.4 that the Department shall propose TMDLs as amendments to areawide WQM plans, and include the procedures for the establishment of 303(d) Lists.

The Federal Clean Water Act requires that the states identify programs, both regulatory and non-regulatory, necessary to achieve implementation of best management practices for controlling nonpoint sources of pollution, such that waters of the state will meet the national clean water goals. Similarly, the Federal Coastal Zone Management Act Reauthorization and Amendments requires coastal states to identify their coastal zone and develop a program to implement coastal land use management measures to control nonpoint source pollution. By virtue of the fact that the entire State of New Jersey lies within close proximity to the coast, there is increased likelihood that water pollution in any part of the State could contribute to coastal water quality deterioration. As noted in "State of New Jersey Coastal Nonpoint Pollution Control Program - Environmental Assessment," dated January 1997 and prepared by the U. S. Department of Commerce, National Atmospheric Administration, National Ocean Service, the Department has defined the entire geographic area of the State as part of its "coastal zone," for the purposes of implementing nonpoint pollution control. In 2010, EPA and NOAA approved New Jersey's Coastal Nonpoint Pollution Control Program. EPA and NOAA found that New Jersey met its septic management requirement by applying its TMDL development and implementation process to ensure that nitrogen loads from both existing and new septic systems are reduced as needed to attain State water quality standards.

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These Federal programs are not prescriptive in their approach, and consequently the specific requirements of these programs are left to the states. The Department accomplishes several of these required elements through the Water Quality Management Planning rules. The adopted new rules continue this practice, specifically by providing the means to regularly update WQM plans, establishing the List of Water Quality Limited Waters and TMDLs.

In summary, the Department believes that the adopted new rules are no more or less stringent than applicable Federal standards, provide the greatest flexibility reasonable to reduce compliance costs, and are appropriate based on scientific merit. Furthermore, implementation of the adopted rules will result in improved water quality, which better protects the public's health and all uses of the State's waters. Accordingly, Executive Order No. 27(1994) and N.J.S.A. 52:14B-1 et seq. do not require any further analysis.

The agency adoption follows:

Full text of the adopted new rules and amendments follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*):

CHAPTER 7:15

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WATER QUALITY MANAGEMENT PLANNING

SUBCHAPTER 1. GENERAL PROVISIONS AND PLANNING REQUIREMENTS

7:15-1.3 Validity of previously adopted or submitted water quality management plan revisions and amendments

(a) (No change.)

(b) Wastewater service area designations in areawide WQM plans adopted prior to (the effective date of these rules) shall be redesignated on (the effective date of these rules) as follows:

1. – 2. (No change.)

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3. All general service area designations for wastewater facilities with planning flows of 2,000 gallons per day or less and which discharge to ground water*,* and areas designated as non-discharge areas*,* are designated as non-sewer service area.

(c) (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.

...

“Purveyor” or “water purveyor” means any person who owns or operates a public water supply* **system as defined in N.J.A.C. 7:10***.

...

“Sewerage agency” means the Passaic Valley Sewerage Commissioners, a sewerage authority, a municipal authority,***a municipal utility,*** or a joint meeting

...

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“Urbanized municipalities” means those where 90 percent of the municipality’s land area appears as “Urban Lands,” as designated in the New Jersey Department of Environmental Protection’s most recent Land Use/Land Cover geographical information systems database as amended and updated, available as a digital data download from the Department at www.state.nj.us/dep/gis, based on Level I of the Anderson Classification System (Anderson et al, 1976, modified by the New Jersey Department of Environmental Protection, 1999).

Urbanized municipalities also include those municipalities identified as “Urban Aid” municipalities pursuant to the New Jersey Redevelopment Act, N.J.S.A. § 55:19-20 et seq.; as an Urban Enterprise Zone pursuant to the New Jersey Urban Enterprise Zones Act, N.J.S.A. 52:27H-60 et seq.; as a “Garden State Growth Zone” municipality pursuant to the New Jersey Economic Opportunity Act of 2013, N.J.S.A. 52:27D-489p et seq.; and as Transit Villages approved by the New Jersey Department of Transportation and NJ Transit.

...

“Wastewater-related jurisdictions” means a public sewerage authority district, as defined in N.J.S.A. 40:14A-3(6); municipal authority, as defined in N.J.S.A. 40:14B-3(5); joint meeting, as defined at N.J.S.A. 40:63-69; county utilities authority created pursuant to N.J.S.A. 40:14B-4.a; the Passaic Valley Sewerage District defined under N.J.S.A. 58:14-1 et seq.; ***a municipal utility,*** or franchise areas for private sewer utilities regulated by the Board of Public Utilities.

...

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SUBCHAPTER 2. PLANS, PLANNING ENTITIES AND PLANNING RESPONSIBILITIES

7:15-2.7 Roles of County Boards of Chosen Freeholders, sewerage authorities and municipal authorities, and municipalities

(a) A County Board of Chosen Freeholders ***or a County Executive, where applicable,*** shall have wastewater management planning responsibility for a WMP area consisting of its entire county unless alternative assignments of wastewater management planning responsibility are established under N.J.A.C. 7:15-2.8.

(b) – (d) (No change.)

SUBCHAPTER 4. WASTEWATER MANAGEMENT PLANS

7:15-4.2 Development and submittal schedule

(a) (No change.)

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(b) A WMP meeting the requirements of this chapter shall be submitted no later than *[(one year from the effective date of these rules)]* ***(eighteen months from the effective date of these rules)***, unless the WMP agency requests and is granted an alternative submission schedule in accordance with N.J.A.C. 7:15-3.4. A WMP prepared and adopted in accordance with the rules in effect as of July 7, 2008 will satisfy this submission requirement. A WMP component prepared and adopted in accordance with the 2008 rules, or P.L. 2011, c. 203 as amended and supplemented by P.L. 2013, c. 188 will be accepted as the comparable component for a WMP required pursuant to this chapter.

(c) *[Each WMP agency shall submit a WMP 11 years after (the effective date of these rules) and every 10 years thereafter, unless an alternative submission schedule is established in accordance with N.J.A.C. 7:15-3.4.]* ***Each WMP agency shall submit an updated WMP at least once every 10 years after the WMP submitted in accordance with (b) above. The WMP agency may submit an updated WMP prior to expiration for the 10-year period from the prior WMP. However, approval of an alternative submission schedule must be obtained from the Department in accordance with N.J.A.C. 7:15-3.4 to submit an updated WMP more than 10 years after the previously submitted WMP.***

(d) (No change.)

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[(e) Each WMP agency shall submit an updated WMP at least once every 10 years after the WMP submitted in accordance with (b) above. The WMP agency may submit an updated WMP prior to expiration for the 10-year period from the prior WMP. However, approval of an alternative submission schedule must be obtained from the Department in accordance with N.J.A.C. 7:15-3.4 to submit an updated WMP more than 10 years after the previously submitted WMP.]

[(f)] *e* (No change from proposal)

7:15-4.3 Structure and content of wastewater management plans

(a) (No change.)

(b) Wastewater treatment facility tables shall be prepared for each existing and anticipated wastewater treatment facility, and shall include the information listed below:

1 – 8. (No change.)

9. The discharge location (latitude and longitude or State Plan Coordinates) ***or planned discharge location (if known)*** for each existing NJPDES-regulated wastewater treatment facility ***and each wastewater treatment facility for which a NJPDES permit application is pending***;

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(c) Each WMP shall include the following maps:

1. – 2. (No change.)

3. Wastewater Service Area Map (Map No. 3). Where applicable, the following regional planning area boundaries, wastewater-related jurisdictions, facilities, and wastewater service areas shall be identified on this map:

i. – ii. (No change.)

iii. District boundaries of sewerage authority districts, as defined in N.J.S.A. 40:14A-3(b), districts of a municipal authority, as defined in N.J.S.A. 40:14B-3(5) and municipal utility authority districts*, **as defined in N.J.S.A. 40:62-1 et seq.*** For the purposes of this section, district shall also mean the Passaic Valley Sewerage District defined under N.J.S.A. 58:14-1 et seq.;

iv. – vii. (No change.)

4. – 5. (No change.)

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7:15-4.4 Delineation of sewer service areas

(a) (No change.)

(b) In the Pinelands Area, areas eligible for sewer service are delineated as follows:

1. The management area designations and boundaries established within the Pinelands Comprehensive Management Plan (CMP), N.J.A.C. 7:50, as Regional Growth Areas, Pinelands Towns, [and] Pinelands Villages*, **and substantially developed portions of a Military and Federal Installation Area,*** shall constitute the areas eligible for sewer service areas; and

2. (No change.)

(c) – (j) (No change.)

(k) Areas designated as environmentally sensitive based on the Landscape Maps may be included in the sewer service area provided the Department determines, based upon a review of data provided by the applicant as part of a Habitat Impact Assessment prepared in accordance with N.J.A.C. 7:15-4.7 that the proposed project or activity:

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1. -2. (No change.)

3. To the extent that the impacts to endangered and threatened wildlife species habitat cannot be avoided, except as provided in (k)4 below, the proposed project or activity includes implementation of conservation measures that will minimize to the maximum extent practicable all adverse modification of suitable habitat and will mitigate for any such adverse modification in a manner that provides for no net loss of habitat value to endangered or threatened species including the local population of that species. Mitigation includes the initiation of new activities benefiting the endangered or threatened species and may include, but is not limited to the creation, enhancement, restoration, management, maintenance and/or the acquisition of unprotected habitat or any combination thereof as near as feasible to the project or activity that is adversely modifying habitat for *[agriculturally dependent]* ***the*** species and generally within the local municipality or county where the project or activity is located. Mitigation measures shall be memorialized in an enforceable document approved by the Department, such as a conservation restriction to be filed in accordance with the New Jersey Recording Act, N.J.S.A. 46:15-1.1 et seq. Where a conservation restriction is required, any plan amendment shall not be effective until receipt by the Department of a “file stamped” copy of the conservation restriction; or

4. (No change.)

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(l) – (m) (No change.)

7:15-4.5 Wastewater capacity analyses

(a) (No change.)

(b) The existing and future wastewater management needs of each sewer service area of a DTW, or industrial wastewater facility that receives wastewater from outside the industrial facility boundaries, shall be identified and evaluated in a wastewater treatment capacity analysis prepared in conformance with the following:

1. – 5. (No change.)

6. If the average flow for a facility over 12 consecutive months reaches or exceeds *[100 percent of the permitted flow for any wastewater treatment facility]* ***the threshold established at N.J.A.C. 7:14A-22.16***, the entity responsible for the wastewater treatment facility shall conduct a capacity analysis in accordance with *[N.J.A.C. 7:14A-22.16]* **that section***.

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7. (No change.)

8. For each proposed new or expanded domestic or industrial treatment works with discharge to surface water, the permit applicant shall perform an antidegradation analysis in accordance with the antidegradation policies in the Surface Water Quality Standards at N.J.A.C. 7:9B-1.5(d). The applicant shall evaluate a wastewater treatment and disposal alternative consistent with the following hierarchy:

i-ii. (No change.)

iii. Where a new or expanded domestic or industrial treatment works discharging to Category Two waters will result in a measurable change in receiving water quality based on the ambient water study in (b)8ii above, the applicant shall make the demonstrations at N.J.A.C. 7:9B-1.*[9]**5* to justify the proposed lowering of existing water quality.

(c) (No change.)

7:15-4.7 Habitat Impact Assessment

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(a) – (d) (No change.)

(e) Based on the available information the Department will:

1. – 2. (No change.)

3. Issue a written finding with respect to N.J.A.C. 7:15-4.4(i)*[4]****2*** that the proposed project or activity will or will not adversely impact an area critical to the survival of a local population of endangered or threatened wildlife species.

(f) (No change.)