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## **ENVIRONMENTAL PROTECTION**

### **ENVIRONMENTAL REGULATION**

#### **Division of Water Quality**

#### **Determination of Environmental Benefit of the Reuse of Further Treated Effluent in Industrial Facilities**

#### **Proposed Readoption without Amendments: N.J.A.C. 7:14D**

Authorized By: Lisa P. Jackson, Commissioner, Department of Environmental Protection

Authority: N.J.S.A. 54:10A-5.31 and 5.32; and N.J.S.A. 54:32B-8.36

Calendar Reference: See summary below for explanation of exception to calendar requirements.

DEP Docket Number: 33-07-12/658

Proposal Number:

Submit written comments by (60 days after publication) to:

Alice A. Previte, Esq.

Attn: DEP Docket Number 33-07-12/658

Office of Legal Affairs

Department of Environmental Protection

P.O. Box 402

401 East State Street, Fourth Floor

Trenton, New Jersey 08625-0402

The Department of Environmental Protection (Department) requests that commenters submit comments on disk or CD as well as on paper. Submission of a disk or CD is not a

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requirement. The Department prefers Microsoft Word 6.0 or above. Macintosh™ formats should not be used. Each comment should be identified by the applicable N.J.A.C. citation, with the commenter's name and affiliation following the comment.

This rule proposal can be viewed or downloaded from the Department's website at <http://www.state.nj.us/dep>.

The agency proposal follows:

### **Summary**

As the Department has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

N.J.A.C. 7:14D, Determination of Environmental Benefit of the Reuse of Further Treated Effluent in Industrial Facilities, was scheduled to expire on December 26, 2007, pursuant to the provisions of Executive Order No. 66 (1978). The expiration date was extended by 180 days to June 23, 2008, pursuant to N.J.S.A. 52:14B-5.1c, as a result of the timely filing of this proposal to readopt the rules without change.

The Department is proposing to readopt N.J.A.C. 7:14D, Determination of Environmental Benefit of the Reuse of Further Treated Effluent in Industrial Facilities, without change. These rules implement N.J.S.A. 54:10A-5.31 and N.J.S.A. 54:32B-8.36, to enable persons who purchase treatment equipment or conveyance equipment for purposes of conveying effluent from a wastewater treatment facility to treatment equipment that is or has been installed, treating the effluent, and then conveying the further treated effluent to an industrial facility for reuse in an industrial process to apply to the Department for a determination of environmental benefit (DEB). These rules specify the application requirements and review process for the

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DEBs. An applicant who receives a DEB can file with the Division of Taxation a claim for a corporate business tax credit and/or sales tax refund for qualifying equipment in accordance with N.J.S.A. 54:10A-5.31 and N.J.S.A. 54:32B-8.36.

Facilitating the reuse of further treated effluent for industrial water needs is intended to help New Jersey meet its water supply and wastewater management needs. To provide financial incentives to encourage the reuse of further treated effluent in industrial processes, the Legislature in 2001 enacted N.J.S.A. 54:10A-5.31 and 5.32 and N.J.S.A. 54:32B-8.36. These laws enable corporate taxpayers to obtain tax credits and/or sales tax refunds for qualifying treatment or conveyance equipment purchased and operated for the purpose of reusing further treated effluent in industrial processes in New Jersey, provided they first obtain a determination from the Department that the reuse will be environmentally beneficial.

The rules proposed for readoption establish the application requirements for applicants requesting a DEB. The Department will continue to provide guidance to DEB applicants on its website. The items required to be submitted are necessary to enable the Department to ensure that the treatment or conveyance equipment is or will be used exclusively for reuse in an industrial process and that the reuse project will have an environmentally beneficial impact. The rules proposed for readoption also contain a requirement for public notice and opportunity to comment on DEB applications.

In order for treatment equipment to qualify for a DEB, an applicant must demonstrate that the treatment equipment is or will be used exclusively to treat effluent from a wastewater treatment facility, which effluent would otherwise have been legally discharged into waters of the State, for purposes of reuse in an industrial process. In order for conveyance equipment to qualify for a DEB, an applicant must demonstrate that the conveyance equipment is or will be

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used exclusively to transport effluent to the facility in which treatment equipment has been or is to be installed or that the conveyance equipment is used exclusively to transport further treated effluent to an industrial facility for reuse in an industrial process. The Department will decide whether some or all of the equipment components included in the application satisfy the criteria. In addition, the Department will consider whether the reuse project will be environmentally beneficial.

A reuse project will normally be environmentally beneficial simply because the reuse will reduce the demand on more conventional sources of water supply, thus helping New Jersey to meet its water supply needs. A reuse project would not be environmentally beneficial if adverse environmental impacts outweigh environmental benefit. Therefore, the Department considers four factors in determining whether the reuse project will be environmentally beneficial. The first factor is that the reuse project will not cause a violation of any applicable minimum passing flow restrictions if effluent is treated and reused rather than discharged into a waterbody. The second factor is that, if the reuse project will result in a discharge of wastewater to a watershed other than the one to which the effluent would have been legally discharged, the transfer will not adversely affect the water resources of either watershed. The third factor is that the reuse project will not increase pollutant loading to a receiving waterbody as a result of reusing the further treated effluent in an industrial process rather than legally discharging the effluent in accordance with a NJPDES permit. The last factor is that water resources will be conserved overall as a result of the reuse project.

The Department will issue an approval only for equipment that meets the standards for the DEB. Partial approvals of applications may, therefore, be issued if not all of the conveyance or treatment equipment included in the application meets the standards.

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The rules proposed for readoption specify the procedure under which a person, subject to limitation of third party hearing rights specified in N.J.S.A. 52:14B-3.1 through 3.3, may request an adjudicatory hearing on the Department's approval or denial of the application for a DEB.

### **Social Impact**

If the regulated community makes use of the rules proposed for readoption without change, the rules will continue to have an indirect positive social impact. An applicant who receives a DEB can apply to the Division of Taxation for a corporate business tax credit and/or sales tax refund. These incentives are intended to encourage the reuse of further treated effluent in industrial processes that will result in conservation of New Jersey's stressed water resources. Conserving and protecting water supplies provides social benefits by maintaining recreational opportunities, increasing aesthetics, and protecting public health.

### **Economic Impact**

The implementation of the rules proposed for readoption without change results in a positive economic impact for the facilities (applicants) that purchase and operate treatment or conveyance equipment for the purpose of reusing further treated effluent in an industrial process found to be environmentally beneficial.

DEB recipients who subsequently obtain a corporate tax credit or sales tax refund will benefit financially in two ways. They will benefit from the tax credit and/or refund, which may provide a reduction in taxes of up to 50 percent. This is a substantial saving on a large investment. Also, because they will be reusing further treated effluent instead of purchasing potable water for their industrial processes, they will expend less to purchase water.

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These rules are intended to encourage the reuse of further treated effluent in industrial processes. Therefore, the wastewater treatment facility owners who supply the effluent to industries so it can be further treated and then reused in their industrial processes indirectly benefit economically from these rules. These wastewater treatment facility owners may be able to reduce the pollutant load discharged to surface water, which may result in a reduction in their NJPDES fee. In addition, there is a potential for wastewater treatment facility owners to assess fees for supplying effluent to industrial facilities so it can be further treated and then reused in their industrial processes.

As the demand for water continues to grow along with New Jersey's population, water purveyors are forced to spend funds to locate and develop adequate water supplies to meet the demand. These rules are intended to increase the amount of further treated effluent reused in industrial processes, which indirectly benefits water purveyors by allowing for postponement of costly investment for development of new water sources and supplies. There is a financial incentive to improve existing water treatment plants in order to improve the quality of drinking water. However, there is some possibility that water purveyors will lose revenue because they will sell less water for non-potable uses in industrial processes. Because only one entity, has applied for and received a DEB during the time that the DEB program has been in effect, the Department is unable to determine the actual impact of these rules on water purveyors.

An applicant who receives a DEB can apply to the Division of Taxation for a corporate business tax credit and/or sales tax refund. Therefore, the implementation of these rules may indirectly result in the loss of State revenues. The decrease in tax revenues will be dependent on the number of taxpayers who decide to take advantage of the tax credits or refunds in any given year.

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Since 2002, when the rules were first adopted, only one applicant has applied for and been granted a DEB. Accordingly, the Department anticipates that the economic impact on State revenues will be limited.

### **Environmental Impact**

If the regulated community makes use of the rules proposed for re-adoption without change, the rules will result in an indirect positive environmental impact since these rules are intended to encourage the reuse of further treated effluent in industrial processes. Reuse of further treated effluent can be environmentally beneficial in several ways. These benefits include reduction of the demand for potable water and subsequent deferral of costly development of new water sources and supplies as well as reduction of pollutant loadings to surface waters. Since there is a finite supply of fresh, clean water, reuse of further treated effluent for industrial purposes is especially beneficial as industries often use large quantities of water, such as for cooling purposes at power utilities. The Department's determination under these rules that the treatment and/or conveyance equipment for which tax credits and/or tax exemptions are sought will be beneficial to the State's water resources will further ensure the environmentally positive impact of the rules.

### **Federal Standards Analysis**

Executive Order No. 27(1994) and N.J.S.A. 52:14B-1 et seq. (P.L. 1995, c.65) require State agencies that adopt, re-adopt or amend State regulations that exceed any Federal standards or requirements to include in the rulemaking document a Federal Standards Analysis. N.J.A.C. 7:14D is not promulgated under the authority of, or in order to implement, comply with or

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participate in any program established under Federal law or under a State statute that incorporates or refers to Federal law, Federal standards or Federal requirements. Accordingly, Executive Order No. 27(1994) and N.J.S.A. 52:14B-1 et seq. do not require a Federal Standards Analysis.

### **Job Impact**

The implementation of the rules proposed for re adoption without change is expected to have no impact on employment and jobs in New Jersey, including the generation or loss of jobs.

### **Agricultural Industry Impact**

The rules proposed for re adoption without change are expected to have a positive impact on any agricultural industry that could use further treated effluent in its processes. The impact would be similar to those described above in the Economic Impact statement.

### **Regulatory Flexibility Analysis**

The Department anticipates that few, if any, small businesses as defined in the Regulatory Flexibility Act (N.J.S.A. 52:14B et seq.) will seek corporate business tax credit and/or sales tax refund for treatment or conveyance equipment purchased for the exclusive purpose of reusing further treated effluent in industrial processes. However, the rules proposed for re adoption without change do not impose reporting, recordkeeping or other compliance requirements other than application requirements. These rules do not require an application review fee, and the application can be completed by the applicant without need for the services



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of professional engineers or other consultants. Accordingly, the Department has determined that an exemption or reduction in the application requirements for small businesses is not necessary.

### **Smart Growth Impact**

If the regulated community makes use of the rules proposed for readoption without change, the rules are expected to have an indirect positive impact on smart growth and implementation of the State's Development and Redevelopment Plan, particularly in the area of preserving water resources. As described above in the Environmental Impact statement, the rules will aid in promoting conservation of the State's limited supply of water as industries will be using further treated effluent in their industrial processes rather than other water sources. Therefore, there could be a reduction in the need to develop new water sources and supply facilities. For any proposed new facilities, growth issues will have already been considered under the water quality management planning process (N.J.A.C. 7:15) and the New Jersey Pollutant Discharge Elimination System (NJPDES) permitting process (N.J.A.C. 7:14A).

**Full text** of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 7:14D.