

## Developers Take Heed - DEP Announces Proposal for Higher Water Quality Standards

By Donna T. Urban, Esq.

On April 23, 2007 — the heels of the 37th anniversary of Earth Day — the DEP issued a press release announcing two major water quality regulatory proposals that, if and when passed, will vastly impact current and future development in New Jersey. The official versions of the rule proposals were published in the May 21st edition of the New Jersey Register.

**Public hearings concerning the Water Quality Management Planning rules proposal will be held on June 8, 11, and 15; a public hearing concerning the Category One proposal will be held on June 28. The written public comment period for both proposals ends on July 20, 2007.**

### Water Quality Management Planning Rules Proposal

The DEP is proposing to readopt, with substantial amendments, the Water Quality Management Planning Rules (N.J.A.C. 7:15), repeal some rule text and implement new rules. The existing rules are set to expire on October 28, 2007.

The proposed amendments, among other things, establish new evaluation criteria, policies and procedures for wastewater management plans and amendments, reassign wastewater management planning responsibility to the County Boards of Chosen Freeholders, establish new standards for delineating sewer service areas to protect environmentally sensitive areas, and establish environmentally protective standards for the review of Water Quality Management plan amendments (including standards to address wastewater, water supply, nonpoint source pollution, and habitat of threatened and endangered species).

Of particular significance, the proposal includes the withdrawal and redesignation of wastewater service area designations (N.J.A.C. 7:15-8.1) for those areas with non-compliant Wastewater Management Plans (WMPs). The current Water Quality Management Planning regulations provide that each wastewater management planning agency must periodically prepare and submit WMPs. Following the initial submission, updated WMPs are to be submitted to the NJDEP every six years. According to the NJDEP, there is widespread non-compliance with this requirement — 141 municipalities do not have plans and 298 municipalities have outdated plans.

The DEP issued a similar proposal back in October 2005, but ultimately withdrew it in March 2006 after receiving much objection to the immediate withdrawal of sewer service. The DEP is now proposing a phased approach to the withdrawal of sewer

service areas for failure to comply with the WMP mandatory update schedule. Briefly stated, the new rules would give counties a nine-month grace period to submit an application to update their WMP or face withdrawal of their sewer service area designation. Of course, without the sewer service area designation, developers cannot obtain hookups needed for new development.

There are proposed exemptions to the withdrawal (such as projects that have received a local preliminary or final site plan approval, and a TWA or NJPDES permit, if one is required; and projects that have received a site specific WMP amendment or revision adopted prior to the effective date of the new rules for a period of six years from the date of the amendment or revision).

Further, the proposed rule will require all new development associated with wastewater discharges of greater than 2,000 gpd, including residential developments with six or more dwelling units and expansions to existing facilities that have not previously assessed environmental impacts, to assess the impacts associated with that development through an amendment to the area-wide Water Quality Management Plan. Thus, under the proposal, if the total project has wastewater design capacity of 2,000 gpd or more, an amendment to the area-wide WQM plan will be required. This change will significantly impact projects involving construction of six or more houses, as those projects as a whole would generate discharges greater than 2,000 gpd.

### Category One Proposal

The DEP has proposed amendments to the Surface Water Quality Standards ("SWQS") (N.J.A.C. 7:9B) that will revise the definition of "category one waters" (together with the terms contained within the existing and amended definition of "category one waters") and, more significantly, expand the list of Category One waters.

The DEP has touted this proposal as its "largest ever," recommending upgraded Category One protection for over 900 miles of waterways and 1300 acres of reservoirs in 11 counties, including: Walkkill River, Sussex County; Musconetcong River and Pequest River, Warren County; Stony Brook, Mercer County; Pompeston Creek, Burlington County; Salem River and Oldmans Creek, Salem County; Toms River, Ocean County; Rockaway River and Split Rock Reservoir, Morris County; Swimming River Reservoir Tributaries, Monmouth County; Oak Ridge Reservoir and Wanaque Reservoir Tributaries, Passaic County; Lamington River, Somerset County; and Ramapo River, Bergen County.

*continued on page 2*

*continued from page 1*

The SWQS currently require Category One waters to be protected from measurable changes in water quality characteristics because of their clarity, color, scenic setting, other characteristics of aesthetic value, exceptional ecological significance, exceptional recreational significance, exceptional water supply significance, or exceptional fisheries resources. The proposal seeks to add “ecological integrity” as another purpose for designating waters as Category One. The DEP is also proposing new definitions for “exceptional ecological significance,” “exceptional water supply significance” and “exceptional fisheries resources” to “better define” the types of waters the DEP considers qualify for Category One Protection.

This client alert highlights just some of the key points of the DEP’s proposals. For a full understanding of the proposals and their possible effect on your planned and future projects, I suggest you review the proposals in their entirety. Copies of the rule proposals are available for review on the DEP’s website at <http://www.state.nj.us/dep/rules>. Please contact me should you have any questions about the proposals

*Donna T. Urban, Esq., a shareholder at Flaster/Greenberg P.C. in Cherry Hill, concentrates her practice in environmental regulation and litigation. She can be reached at 856-661-2285 or at [donna.urban@flastergreenberg.com](mailto:donna.urban@flastergreenberg.com).*

## **Environmental Law and Litigation Practice Group Members**

Albert M. Belmont / Attorney  
856-382-2214  
[albert.belmont@flastergreenberg.com](mailto:albert.belmont@flastergreenberg.com)

Carl S. Bisgaier / Shareholder  
856-661-2269  
[carl.bisgaier@flastergreenberg.com](mailto:carl.bisgaier@flastergreenberg.com)

Jeffrey A. Cohen / Shareholder  
856-382-2240  
[jeff.cohen@flastergreenberg.com](mailto:jeff.cohen@flastergreenberg.com)

Peter M. Dolinger / Of Counsel  
856-661-1900  
[p.dolinger@verizon.net](mailto:p.dolinger@verizon.net)

Mitchell H. Kizner / Shareholder  
856-382-2247  
[mitchell.kizner@flastergreenberg.com](mailto:mitchell.kizner@flastergreenberg.com)

John G. Koch / Attorney  
856-661-2278  
[john.koch@flastergreenberg.com](mailto:john.koch@flastergreenberg.com)

Janet S. Kole / Shareholder  
856-382-2230  
[janet.kole@flastergreenberg.com](mailto:janet.kole@flastergreenberg.com)

James A. Kozachek / Shareholder  
856-382-2243  
[james.kozachek@flastergreenberg.com](mailto:james.kozachek@flastergreenberg.com)

David R. Oberlander / Shareholder  
856-661-2283  
[david.oberlander@flastergreenberg.com](mailto:david.oberlander@flastergreenberg.com)

Franklin J. Riesenburger / Shareholder  
856-382-2244  
[frank.riesenburger@flastergreenberg.com](mailto:frank.riesenburger@flastergreenberg.com)

Donna T. Urban / Shareholder  
856-661-2285  
[donna.urban@flastergreenberg.com](mailto:donna.urban@flastergreenberg.com)

Robert M. Washburn / Of Counsel  
856-382-2254  
[robert.washburn@flastergreenberg.com](mailto:robert.washburn@flastergreenberg.com)

Kelly A. Williams / Attorney  
856-382-2209  
[kelly.williams@flastergreenberg.com](mailto:kelly.williams@flastergreenberg.com)

Frank H. Wisniewski / Shareholder  
856-661-2289  
[frank.wisniewski@flastergreenberg.com](mailto:frank.wisniewski@flastergreenberg.com)

## **About Flaster/Greenberg P.C.**

Flaster/Greenberg P.C. ([www.flastergreenberg.com](http://www.flastergreenberg.com)) is a multi-disciplinary business law firm of 70 attorneys with offices in Pennsylvania, New Jersey and Delaware, practicing in 22 areas of law, including:

**Alternative Dispute Resolution**  
**Business & Corporate Services**  
**Closely-Held and Family Businesses**  
**Commercial Litigation**  
**Commercial Real Estate**  
**Construction Law**  
**Employee Benefits & Executive Compensation**

**Employment & Labor Law**  
**Environmental Law**  
**Estate Planning & Administration**  
**Family Law and Adoption**  
**Financial Restructuring & Bankruptcy**  
**Health Care**  
**Intellectual Property**  
**Land Use & Zoning**

**Mergers & Acquisitions**  
**Pensions & Retirement Plans**  
**Redevelopment**  
**Risk Management**  
**Securities Regulation**  
**Taxation**  
**Technology and Emerging Businesses**

1810 Chapel Avenue West  
Cherry Hill, NJ 08002-4609

ATTORNEYS AT LAW ♦ A PROFESSIONAL CORPORATION

