



C&P Client Advisory

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DEP formally proposed the readoption and amendment of the NJPDES Regulations on March 17, 2008 in a 543 page document. A copy of the proposal can be found on the DEP Web Site (www.state.nj.us/dep). **The public comment period on these regulations will close on May 16, 2008.** C&P has reviewed this proposal, and has attended a briefing session at DEP headquarters on April 18, 2008 and the first DEP Public Hearing at Rutgers - New Brunswick on April 21, 2008.

Discussion of Significant Proposed Amendments

Many of the amendments to the regulations are for purposes of updating obsolete or changed information, clarification, accuracy, codification of existing DEP policy or practice, and conformance and consistency with applicable EPA regulations. Other amendments are to incorporate the pertinent provisions of the 90 day rule into the NJPDES regulations. The most substantive changes to the regulations are in the areas of Reclaimed Water for Beneficial Reuse (Sub-Chapter 2), the Industrial Pretreatment Program (Sub-Chapters 19 & 21) and Residuals Use & Disposal (Sub-Chapter 20). Following is a summary of some significant issues of interest regarding these proposed revisions.

Many definitions were added, revised or expanded. The acronym "DMR" (Discharge Monitoring Reports) is being replaced with the more all-inclusive term "MRF" (Monitoring Report Forms) so that it refers to all forms required to be submitted by permittees. The acronym "DSAM" (Department Sanctioned Analytical Methods) and the term "Exceptional Quality" (with reference to residuals) are defined in detail such that their use in the regulations can serve to shorten and simplify the pertinent sections. The term "disposal" has been redefined to make it clear that application of residuals deeper than the root zone (greater than one foot deep) in soil is not soil enhancement or fertilization but disposal, which is prohibited unless it is a facility permitted under the Solid Waste Management Act for such disposal. Also of significance are revised and expanded definitions of "property" and "common plan of development and sale" which impact applicability determinations for DGW (Discharge to Ground Water) permits.

Two fee related changes are proposed. The DGW permit fee calculation has been significantly changed to focus more on potential for environmental harm than flow; various types of facilities are assigned factors in the revised formula. (For example, the discharge of well treated domestic wastewaters will have a lower factor than industrial wastewaters, which would in turn have a lower factor than landfills, which, similarly, would have a lower factor than hazardous waste facilities, etc.) NJDEP claims that the new formula will produce less variability and greater predictability for permittees while having a minimal impact on the overall

range of fees (lowest to highest) and total amount of permit fees. Also, the fee for the Construction General Permit (issued by the Soil Conservation Districts) was revised to a two tiered system based on project size and raised from \$300 to \$450 (<5 acres) and \$650 (\geq 5 acres) to reflect actual program costs borne by DEP, the Dept. of Agriculture and the SCDs.

Revised signatory requirements for MRSFs (Monitoring Report Submittal Forms) have been proposed. For non-local (industrial/commercial) facilities, the language was revised to mirror USEPA's regulations. For local agencies, the highest ranking Licensed Operator (LO) who has day to day managerial and operational responsibilities must sign; if the LO does not have capital expenditure and staff hiring authority, the MRSF must also be signed by an official of the local agency who does. If the local agency has contracted with another entity to operate the treatment works, the highest ranking LO of the operating entity (not the local agency) must sign the MRSF; similarly, if the LO employed by the operating entity does not have capital expenditure and staff hiring authority, an official of the operating entity or local agency who does must also sign the MRSF.

In Subchapter 2, DEP proposes to require that all studies performed under Subchapter 14A (NJPDES Regulations) must be conducted in accordance with a DEP approved Work/Quality Assurance Project Plan, and sets out basic requirements for such plans. This would apply to all ambient water quality studies, local limit development, headworks analyses and similar studies.

For DSW (Discharge To Surface Water) Permits, additional parameters were added to the list required to be sampled for effluent characterizations to reflect their adoption in the Surface Water Quality Standards. For those permittees required to implement PCB Pollution Minimization Plans, the regulations were revised to require annual progress reports. Most permittees with acute WET (Whole Effluent Toxicity) limits of $LC50 \geq 50\%$ in their permits will either have the effluent limit converted to an "action level" or removed entirely during the next permit cycle, since most will be regulated by Water Quality Based Effluent Limits (usually chronic tox). DEP proposes to convert bacterial quality permit controls from Fecal Coliform to either E. Coli (FW2 waters) or Enterococci (SE1 & SC waters) in permits. In the interim period, Fecal Coliform would remain the effluent limit, but monitoring for E.Coli or Enterococci would also be required (with no limit until the next permit cycle, at which point Fecal Coliform monitoring would be dropped).

For TWAs (Treatment Works Approvals), DEP proposes to include additional design flow criteria for age-restricted residential dwellings, assisted living and skilled nursing facilities and swim clubs. DEP also proposes to no longer routinely provide hard copies of the DEP Bulletin. It will be available primarily on the web site, and hard copy will only be available by specific, written request. The regulations would also be revised to require a Highlands Preservation Area approval as part of a TWA submittal, if the project is in the preservation area.

DEP proposes to codify its Reclaimed Water for Beneficial Reuse (RWBR) requirements in Subchapter 2. All major facilities in coastal areas and Critical Water Supply areas established pursuant to the Water Supply Management Act would be required to perform and submit a Reuse Feasibility Study to DEP. (There are no proposed requirements to actually implement reuse, just to conduct and submit the study; these requirements would only impact major permittees in Central and Southern New Jersey.) The proposed regulations detail the levels of treatment required, the contractual obligations required, and specify that there will be no flow or loading "credit" or rerating modification of the NJPDES permit to account for the

reclaimed water.

DEP proposed numerous changes to the Industrial Pretreatment Program (IPP) Requirements in Subchapters 19 and 21, which impact DLAs (Delegated Local Authorities), non-DLAs and Indirect Users. Many originated from the Federal "Streamlining" Changes in 40 CFR Part 403. DEP included all of the required EPA changes (Slug Control Plan, new Serious and SNC {Significant Non-Compliance} definitions, and other items), and some of the optional changes based on input from the IPP Task Force. Some significant changes proposed by DEP (not EPA) were including the option of reduced sampling (influent/effluent/sludge) in lieu of a complete headworks analysis for non-DLAs, and the requirement that DLAs adopt regulations for the issuance, public notice and appeal of permits they issue to indirect users which are consistent with those for NJPDES permits. Indirect users were also subject to proposed changes mandated by EPA such as BMP (Best Management Practices) documentation, revised grab and composite sampling requirements, resampling requirements after violations, net/gross calculations, and new notification requirements.

DEP proposed numerous changes and additions regarding the management of residuals in Subchapter 20. It codified its existing Letters of Land Application Management Approval (LLAMA) program for the application of residuals on non-regulated properties. New surface disposal sites are prohibited; existing surface disposal sites must submit a closure plan within 6 months, must cease discharge within 1 year and must maintain a groundwater monitoring program for a minimum of 5 years. Residuals cannot be tilled or otherwise mixed into the soil any deeper than one foot or it will constitute disposal. Residuals cannot be stored on site for more than six months before being utilized. For Residual Blending and Distribution Sites, a permit is required for sites storing ≥ 2500 cubic yards of blended or >100 cubic yards of unblended residuals; there are additional requirements for sites storing $\geq 10,000$ cubic yards of blended residuals. (There is an exemption for these facilities if ALL operations {including storage of raw and final products} are conducted within an enclosed building.) Both the residuals and the material it is being blended with must be sampled, and the parameter list was expanded to include Radium and Water Extractable Phosphorus. Various proofs of marketability must also be provided to DEP. DEP also proposes to prohibit the blending and bagging of non-exceptional quality residuals. DEP also proposed a new section for the operation and management of Phragmites Reed Beds for the treatment of residuals. Further, new or expanded requirements for the importation of out of state residuals and the disposal of residuals out of state were proposed.

Should you desire C&P's assistance in assessing what impacts these proposed regulatory changes might have on your facility or help in formulating public comments to DEP on behalf of your organization, please feel free to contact Joseph M. Mikulka, Senior Project Manager.