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VIA ELECTRONIC MAIL

rulemakingcomments@dep.nj.gov

Gary.Brower@dep.nj.gov

Gary J. Brower, Esq.

ATTN: DEP Docket No. 03-18-10

Office of Legal Affairs

Department of Environmental Protection

401 East State Street, 7th Floor

Mail Code 401-04L, P.O. Box 402

Trenton, NJ 08625-0402

RE: COMMENTS ON NJDEP PROPOSED AMENDMENTS TO WATER QUALITY RULES (DEP DOCKET NO. 03-18-10, PROPOSAL NO. PRN 2018-111)

Dear Mr. Brower:

On behalf of our members, the Chemistry Council of New Jersey (CCNJ) appreciates the opportunity to provide the following comments to the New Jersey Department of Environmental Protection (NJDEP, the Department) on the proposed amendments to the Water Quality rules published in the New Jersey Register on December 3, 2018.

N.J.A.C. 7:8-1.2: The proposed definition for “Disturbance” appears to be too inclusive. The exclusion for repaving should not be limited to milling and repaving but should include any maintenance that does not increase impervious motor vehicle surface area, including reconstruction in kind if necessary of an existing impervious surface (e.g., concrete paving). Similarly, “cutting or removing of vegetation” is too general for inclusion as a disturbance as it could be construed to include mowing, resodding and generally any maintenance of existing landscaping, including possibly pervious road surfaces. Maintenance of grades where the impermeability is not increased should also be specifically excluded if erosion is to be addressed at existing facilities without potentially triggering rule requirements.

N.J.A.C. 7:8-1.2: The proposed definition for “Green infrastructure” includes “2. Treating stormwater runoff through filtration by vegetation or soil”. We request that the green infrastructure definition also include the use of stone for filtration, even if the stone serves to provide another purpose as well (e.g., erosion control).

N.J.A.C. 7:8-1.2: The proposed definition for “Green infrastructure” includes “3. Storing stormwater runoff for reuse”. We request that the green infrastructure definition be expanded to “storing stormwater runoff for reuse or evaporation” to take into account locations where water collects and ponds due to surface or subsurface conditions (e.g., clayey subsoil), and may evaporate whatever does not infiltrate.

N.J.A.C. 7:8-1.2: The proposed definition for “Major development” includes an individual development as well as multiple developments that individually or collectively trigger one of the criteria over time starting as of February 2, 2004 or the rulemaking effective date, as applicable. The major development definition further states that this “includes all developments that are part of a common plan of development”. We request the Department to clarify the applicability of this definition for existing industrial sites which do not have known or phased development plans for a site but where parts of the site may have to undergo redevelopment in the future at different points in time as business conditions change (e.g., to meet new rules or product requirements). We believe that developments over time at an existing industrial site that are unrelated to each other (i.e., driven by different factors at different times and not known or planned earlier) should continue to be treated as separate projects for planning purposes so that stormwater management requirements do not otherwise trigger retroactive requirements and further redevelopment of a prior project area unrelated to a potential future development. The open-ended nature of this proposed definition could otherwise potentially trigger difficult upgrades that may make small projects uneconomical and eventually lead to the shutdown of some businesses.

N.J.A.C. 7:8-1.2: The proposed definition for “Motor vehicle” specifically excludes certain motorized equipment. We suggest that the list of excluded equipment should also include riding mowers and tractors and other service vehicles whose primary purpose is not transport on a “Motor vehicle surface”.

N.J.A.C. 7:8-1.2: The proposed definition for “Motor vehicle surface” appears too general and could be improperly applied to unintended facilities if not amended. For example, industrial facilities include accessways into process areas and tank storage areas that allow use by “motor vehicles” and can be exposed to precipitation. These accessways should not be considered “motor vehicle surface(s)” for purposes of this rule if they are part of a surface where the primary purpose is not transport (e.g., accessways within secondary containment for a storage tank or tankfield). We also request that the Department confirm whether temporary roads constructed as part of a major development will be treated as motor vehicle surfaces for rule implementation if the temporary road is to be restored to its original condition as part of the project. Permanent TSS removal facilities should not be required for temporary facilities needed for the construction phase of a project only. We agree with the Department’s statement that “it is the overall use of the area that is taken into account” when determining whether an area is considered a motor vehicle surface for purposes of rule applicability.

N.J.A.C. 7:8-1.2: The proposed definition for “Regulated impervious surface” appears too general and could be improperly applied to unintended facilities if not amended. For example, it includes “2. The total area of impervious surface collected by a new stormwater conveyance system” without specifying that the stormwater conveyance be part of a direct discharge to a regulated water body. Stormwater conveyance is not defined and can thus be interpreted to be any ditch or pipe that carries stormwater. At industrial facilities, stormwater conveyances may discharge to a wastewater treatment plant because of the potential for exposure to industrial sources, and thus can also be considered to be a wastewater conveyance.

N.J.A.C. 7:8-1.2: The proposed definition for “Regulated impervious surface” appears confusing and could be improperly applied to unintended facilities if not clarified. Part 4 appears to state that “the total area of impervious surface collected by an existing stormwater conveyance system” becomes a “regulated impervious surface” if “the capacity of that conveyance system is increased” by any amount. This should be clarified that the regulations only apply if the increased impervious surface of the stormwater conveyance system (and not the total impervious surface) meets one of the rule criteria.

N.J.A.C. 7:8-1.2: The proposed definition for “Regulated motor vehicle surface” includes “2. The total area of motor vehicle surface that is currently receiving water quality treatment by ...treatment at a wastewater treatment plant, where the water quality treatment will be modified or removed”. The term “modified” should be revised to specifically be limited to modifications that will remove or lessen treatment. Wastewater treatment plants are routinely modified with treatment capacity generally maintained or improved. A wastewater treatment plant modification that maintains or improves treatment capacity should not result in rule application to motor vehicle surfaces that contribute inflow to the wastewater treatment plant. The Department’s explanation specifically refers to the example of “elimination of...existing treatment measures” and not modification. The proposed rule should be reworded consistent with the Department’s intent.

N.J.A.C. 7:8-1.7 (existing 1.6): We request that the Department clarify how the rule would be applied to redevelopment of an existing site where the amount of motor vehicle surface and/or impervious area would be proposed to be reduced. In other words, can rule applicability be avoided by including in the project design an overall reduction of regulated areas (e.g., by removal or reduction in size of parking areas exposed to precipitation), and if not, which parts of the rule would still be applicable?

N.J.A.C. 7:8-5.2(f) cites the tables to be used to meet green infrastructure BMPs. We request that the Department clarify whether existing green infrastructure facilities that comply with the proposed tables, whether natural or manmade, can be relied upon to meet the requirements for a new major development. For example, can existing vegetative filter strips that will remain in place downstream of a new major development be relied upon to meet

green infrastructure requirements by routing overland runoff from the new major development into and through the existing vegetative strip?

N.J.A.C. 7:8-5.2(m) requires a deed notice containing the stormwater management measure and that the deed notice be filed prior to commencement of construction. We believe that it is improper to require a deed notice to be filed prior to commencement of construction and that a deed notice should not be required to be filed until construction is completed to ensure that the deed notice represents actual construction. It is possible for a project that has received permit approvals to then not progress because of conditions that develop during or after project approval.

N.J.A.C. 7:8-5.5(c) states that the requirement to reduce TSS does not apply to discharges regulated under a NJPDES permit with a numeric TSS effluent limit. We support this requirement and request that the Department further clarify whether this also applies to NJPDES permits with a TSS numeric design criterion.

N.J.A.C. 7:8-5.5(f) requires post-construction nutrient loads from the developed site to achieve maximum feasible nutrient reduction. We request that the Department verify that this requirement is met if the developed site will not use any fertilizers, as is common for many industrial facility developments.

N.J.A.C. 7:8-5.5(i) requires 95 percent TSS removal for discharges within a 300 foot riparian zone. We request that the Department confirm that this requirement does not apply to discharges with a NJPDES TSS numeric permit limit exempted from TSS reduction requirements per N.J.A.C. 7:8-5.5(c).

We would like the record to reflect our support of any comments submitted by core members of CCNJ.

Thank you for your consideration of our comments on this very important issue. We look forward to continuing to work with the NJDEP on this and other matters of critical importance to CCNJ members. If I can be of further assistance, please let me know.

Sincerely,



Dennis Hart
Executive Director