

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 2662 and 2564

STATE OF NEW JERSEY

ADOPTED MAY 1, 1997

Sponsored by Assemblymen CORODEMUS, BLEE, and
LeFEVRE

1 AN ACT concerning watershed preservation, protection and
2 management, providing for the expenditure of monies dedicated
3 pursuant to Article VIII, Section II, paragraph 6, subparagraph (a)
4 of the New Jersey Constitution, and making an appropriation.

5
6 **BE IT ENACTED** by the Senate and General Assembly of the State
7 of New Jersey:

8
9 1. This act shall be known and may be cited as the "Watershed
10 Protection and Management Act of 1997."

11
12 2. The Legislature finds and declares that, on November 5, 1996,
13 the voters overwhelmingly approved an amendment to the New Jersey
14 Constitution dedicating the equivalent of 4 percent of the revenues
15 annually generated by the Corporation Business Tax for financing the
16 costs of hazardous discharge site remediation, upgrading hazardous
17 underground storage tanks, and water quality point and nonpoint
18 source pollution monitoring, watershed-based water resource planning
19 and management, and nonpoint source pollution prevention projects;
20 and that, of the 4 percent dedicated for these purposes, a minimum of
21 one-sixth, or a minimum of \$5,000,000, whichever is less, is annually
22 dedicated for the purposes of water quality point and nonpoint source
23 pollution monitoring, watershed-based water resource planning and
24 management and nonpoint source pollution prevention projects.

25 The Legislature further finds and declares that the Department of
26 Environmental Protection currently administers the State's water
27 quality planning, monitoring, permitting and enforcement programs;
28 that the department has recently begun to change its long-standing,
29 permit-based approach to water resource protection and water
30 pollution control to that of a watershed-based planning approach; that
31 such an approach would greatly increase the overall efficiency and
32 precision with which pollution control measures could be applied; and
33 that the federal Clean Water Act establishes policy guidelines requiring
34 states to clean up polluted waters and protect waters that meet water

1 quality standards.

2 The Legislature further finds and declares that the Fiscal Year
3 1997 funding levels must be increased in future years to enable the
4 department to meet the requirements of the federal Clean Water Act;
5 and that the constitutionally dedicated and appropriated additional
6 monies, when used to fund a watershed-based approach to water
7 resource management and pollution control, will greatly assist the
8 State in protecting waters that meet water quality standards and in
9 attaining and complying with federal water quality standards.

10 The Legislature therefore determines that it is in the public interest
11 and consistent with the intent of Article VIII, Section II, paragraph 6,
12 subparagraph (a) of the New Jersey Constitution to provide statutory
13 guidance to the department for the use of the dedicated monies; that
14 the dedicated monies should be used to support an expansion of
15 department efforts in the area of water resource management; and that
16 the State should adopt a watershed-based approach to most effectively
17 and efficiently comply with federal guidelines.

18

19 3. As used in this act:

20 "Department" means the Department of Environmental Protection;

21 "Federal Act" means the federal "Clean Water Act" (33 U.S.C.
22 §1251 et seq.);

23 "Total maximum daily load" means the sum of individual point and
24 nonpoint sources of pollution, other sources such as tributaries or
25 adjacent segments, and allocations to a reserve or margin of safety for
26 an individual pollutant or as defined in subsequent rules and
27 regulations of the department;

28 "Watershed" means a geographic area within which water,
29 sediments, and dissolved materials drain to a particular receiving
30 waterbody;

31 "Watershed management activity" means activities or projects
32 undertaken by the department, the Pinelands Commission established
33 pursuant to section 4 of P.L.1979, c.111 (C.13:18A-4), or a watershed
34 management group to improve the condition or prevent further
35 degradation of a watershed, and may include, but need not be limited
36 to, public meetings to discuss and exchange information on watershed
37 issues, the establishment and operation of a stakeholders advisory
38 group or groups dedicated to preserving and protecting a watershed,
39 the monitoring, water quality modeling or assessment of the condition
40 of a watershed, the development of policy goals to reduce the amount
41 of pollutants discharged into a watershed, the development of projects
42 designed to enhance or restore a watershed, the development, in
43 consultation with the department, of a watershed management plan, or
44 the reassessment of a watershed to determine whether the policy goals
45 or the objectives of a watershed management plan have been attained;

1 "Watershed management area" means a geographic area in the
2 State, as designated by the department, within which may be found one
3 or more watersheds;

4 "Watershed management group" means a group recognized by the
5 department as the entity representing the various interests within one
6 or more watersheds located in a watershed management area and
7 whose purpose is to improve the condition or prevent further
8 degradation of a watershed or watersheds. A watershed management
9 group shall include, but need not be limited to, local and county
10 government officials, a representative of water purveyors, a
11 representative of wastewater utilities or authorities, a representative
12 of the business community, a representative of the development
13 community, and a representative of the environmental community;
14 except that a watershed management group need not include all such
15 officials or representatives if any such officials or representatives
16 decline or are unable to participate in the watershed management
17 group as may be determined by the department in accordance with
18 guidelines or rules and regulations adopted by the department. Where
19 a regional planning agency has been created for all or part of the
20 watershed management area to be represented by the watershed
21 management group, an official of that regional planning agency shall
22 be included in the watershed management group; and

23 "Watershed management plan" means a plan developed by the
24 department, or by the Pinelands Commission or a watershed
25 management group in consultation with the department, designed to
26 improve the condition or prevent further degradation of a watershed
27 or watersheds, and shall include consideration of groundwater quality
28 and quantity, consideration of water supply quality and quantity, a
29 determination of the total maximum daily load amount of pollutants
30 that can be discharged into the watershed or watersheds targeted by
31 the plan, the implementation of water quality-based effluent limits for
32 point sources, and regulatory and best management practices to
33 control nonpoint sources of pollution.

34
35 4. The "Watershed Management Fund," hereinafter referred to as
36 the "fund," is hereby established as a nonlapsing, revolving fund in the
37 Department of Environmental Protection. The fund shall be credited
38 annually with all monies appropriated pursuant to the requirements of
39 Article VIII, Section II, paragraph 6, subparagraph (a) of the New
40 Jersey Constitution. Any interest that accrues on monies in the fund
41 shall be credited to the fund.

42
43 5. Monies in the fund shall be used only for the following
44 purposes:

45 a. The development and adoption of a priority list of water quality

- 1 limited waterbodies pursuant to the requirements of section
- 2 303(d)(1)(A) of the Federal Act (33 U.S.C. §1313);
- 3 b. The monitoring and assessment of all State waters pursuant to
- 4 the requirements of section 305(b) of the Federal Act (33 U.S.C.
- 5 §1315);
- 6 c. The delineation of watershed management areas and stream
- 7 segments;
- 8 d. The identification of potential causes of the use impairment or
- 9 water quality standard violations related to waterbodies on the priority
- 10 list required pursuant to sections 303(d)(1)(A) and 305(b) of the
- 11 Federal Act by means of assessment of reliable data, including, but not
- 12 necessarily limited to, identification of point sources, nonpoint
- 13 sources, habitat degradation, and hydrologic changes. This
- 14 identification shall include a broad-based intensive survey monitoring
- 15 program that shall supplement the existing chemical, biological and
- 16 toxics-in-biota monitoring networks, and that shall intensively sample
- 17 watersheds or segments of watersheds on a periodic basis and establish
- 18 a detailed watershed-wide assessment process. The number of
- 19 monitoring sites within a watershed shall be determined by existing
- 20 water quality, land uses, known and potential pollution sources, and
- 21 the amount of available historical data. The supplemental survey
- 22 monitoring program, shall be designed to provide:
 - 23 (1) a detailed profile of water quality over specified time periods;
 - 24 (2) an identification and detailed profile of both point and nonpoint
 - 25 pollution sources;
 - 26 (3) a quantification of pollutant loadings and pollution impacts on
 - 27 receiving waters from both point and nonpoint sources; and
 - 28 (4) water quality modeling based upon amounts of point and
 - 29 nonpoint sources of pollution and land use;
- 30 e. The development of total maximum daily loads and water
- 31 quality-based effluent limitations for water quality limited waterbodies,
- 32 as required pursuant to section 303(d)(1)(C) of the Federal Act, and
- 33 any rules or regulations adopted pursuant thereto;
- 34 f. The development and presentation of data on the department's
- 35 Geographic Information System (GIS);
- 36 g. The development and adoption of pollution prevention best
- 37 management practices to control point and nonpoint sources of
- 38 pollution;
- 39 h. The characterization of land use and land cover in each
- 40 watershed;
- 41 i. The development and adoption of a watershed management
- 42 plan;
- 43 j. The development and planning by the department of a watershed
- 44 management program and the integration of the department's rules and
- 45 regulations with the program; and

1 k. The development and implementation of a watershed protection
2 loan and grant program, as described pursuant to section 6 of this act.

3
4 6. a. (1) The department shall establish a loan and grant program
5 to assist watershed management groups in the funding of watershed
6 management activities. A watershed management group may apply to
7 the department for a loan or grant pursuant to this subsection on forms
8 prescribed by the department. The application shall state the
9 objectives of the group, including the watershed management activities
10 proposed and for which loan or grant monies are requested.

11 (2) A watershed management group may, pursuant to guidance
12 provided or rules or regulations adopted by the department, distribute
13 all or part of the loan or grant to another person who is to perform a
14 watershed management activity for which the loan or grant was
15 provided. If the watershed management group distributes the loan or
16 grant to a person who has a NJPDES permit to discharge pollutants
17 into the waters of the State pursuant to P.L.1977, c.74 (C.58:10A-1
18 et seq.), the distribution shall be conditioned upon the permittee
19 providing a match of one dollar for every dollar provided by the loan
20 or grant. The match may be made either as a monetary payment or as
21 an in-kind contribution. Any person who has a NJPDES permit and
22 who accepts a loan or grant pursuant to this subsection shall agree not
23 to use any of the loan or grant monies for the purpose of complying
24 with NJPDES permit requirements.

25 b. The department shall establish guidelines for the development
26 of watershed management plans by watershed management groups.
27 The department shall provide guidance and technical assistance to
28 watershed management groups seeking assistance in the development
29 of a watershed management plan or in the development and
30 implementation of watershed management activities.

31
32 7. a. Any monies appropriated to the department pursuant to
33 Article VIII, Section II, paragraph 6, subparagraph (a) of the New
34 Jersey Constitution, and deposited in the fund, shall be used to support
35 the purposes set forth in section 5 of this act to the extent that those
36 purposes constitute activities in addition to those undertaken by the
37 department in Fiscal Year 1997.

38 b. Monies shall be appropriated to the department pursuant to
39 Article VIII, Section II, paragraph 6, subparagraph (a) of the New
40 Jersey Constitution, deposited in the fund, and allocated for the
41 following purposes:

42 (1) From the monies appropriated in Fiscal Year 1997 pursuant to
43 section 8 of this act, 100 percent of the monies shall be used by the
44 department to support the purposes established in subsections a.
45 through j. of section 5 of this act;

1 (2) From the monies appropriated in Fiscal Year 1998, not more
2 than 35 percent of the monies may be used to support the purposes
3 identified in subsection k. of section 5 of this act and the remainder of
4 the monies shall be used by the department to support the purposes
5 established in subsections a. through j. of section 5 of this act; and

6 (3) From the monies appropriated in Fiscal Year 1999 and every
7 year thereafter, not more than 50 percent of the monies may be used
8 to support the purposes identified in subsection k. of section 5 of this
9 act and the remainder of the monies shall be used by the department
10 to support the purposes established in subsections a. through j. of
11 section 5 of this act.

12 c. The department may not expend any monies that are or may be
13 appropriated by the Legislature for the purposes identified in
14 subsection k. of section 5 of this act until the department submits a list
15 of proposed loan or grant recipients to the Legislature, and the
16 Legislature, by the passage of a concurrent resolution, approves that
17 list. The Legislature may approve all or part of that list and only those
18 persons listed in the approved concurrent resolution may receive a
19 watershed protection loan or grant from the department. The
20 concurrent resolution may limit or specify the amount of any loan or
21 grant and may establish any other condition of receiving the loan or
22 grant. The list of proposed recipients submitted to the Legislature by
23 the department shall specify the name of the proposed recipient, the
24 amount of the loan or grant to be awarded, the intended purpose of the
25 loan or grant, the watershed or watersheds involved, and any other
26 information relevant to the award of the loan or grant.

27 d. The department may not expend any monies in Fiscal Year 1999
28 and thereafter that are or may be appropriated by the Legislature for
29 the purposes identified in subsection k. of section 5 of this act until the
30 department has adopted rules and regulations, pursuant to the
31 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
32 seq.), concerning the development and implementation of watershed
33 management activities by watershed management groups and the
34 submission and review of loan and grant applications.

35 e. Any transfer of appropriated funds between purposes
36 authorized by this section shall require the approval of the Joint
37 Budget Oversight Committee or its successor. No such transfer of
38 funds shall be approved by the committee or its successor if the
39 transfer would cause exceedance of the funding percentage allocation
40 limitations set forth in subsection b. of this section. Any transfer of
41 funds from an approved loan or grant recipient to another approved
42 loan or grant recipient shall also require the approval of the committee
43 or its successor.

1 8. There is appropriated from the General Fund, pursuant to the
2 requirements of Article VIII, Section II, paragraph 6, subparagraph (a)
3 of the New Jersey Constitution, to the Department of Environmental
4 Protection, the sum of \$4,900,000 for deposit into the Watershed
5 Management Fund established pursuant to section 4 of this act.

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7 9. This act shall take effect immediately.

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13 The "Watershed Protection and Management Act of 1997";
14 appropriates \$4.9 million in constitutionally dedicated Corporation
Business Tax revenues for that purpose.