

Title 58.
Chapter 29 (New)
Watershed
Protection
and Management
§§1-7
C.58:29-1
To 58:29-7
§8 Approp.

P.L. 1997, CHAPTER 261, *approved October 10, 1997*
Senate, No. 1776 (*Third Reprint*)

1 **AN ACT** concerning watershed preservation, protection and
2 management, ³[and]³ providing for the expenditure of monies
3 dedicated pursuant to Article VIII, Section II, paragraph 6,
4 subparagraph (a) of the New Jersey Constitution ³. and making an
5 appropriation³.

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

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

12
13 2. The Legislature finds and declares that, on November 5, 1996,
14 the voters overwhelmingly approved an amendment to the New Jersey
15 Constitution dedicating the equivalent of 4 percent of the revenues
16 annually generated by the Corporation Business Tax for financing the
17 costs of hazardous discharge site remediation, upgrading hazardous
18 underground storage tanks, and water quality ³point and nonpoint
19 source³ pollution monitoring, ³[watershed based] watershed-based³
20 water resource planning and management, and nonpoint source
21 pollution prevention projects; and that, of the 4 percent dedicated for
22 these purposes, a minimum of one-sixth, or a minimum of \$5,000,000,
23 whichever is less, is annually dedicated for the purposes of water
24 quality point and nonpoint source ³pollution³ monitoring, ³[watershed
25 based] watershed-based³ water resource planning and management and
26 nonpoint source pollution prevention projects.

27 The Legislature further finds and declares that the Department of
28 Environmental Protection currently administers the State's water
29 quality planning, monitoring, permitting and enforcement programs;

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SEN committee amendments adopted February 10, 1997.

² Senate SBA committee amendments adopted March 10, 1997.

³ Assembly AES committee amendments adopted May 1, 1997.

1 that the department has recently begun to change its long-standing,
2 permit-based approach to water resource protection and water
3 pollution control to that of a watershed-based planning approach; that
4 such an approach would greatly increase the overall efficiency and
5 precision with which pollution control measures could be applied; and
6 that the federal Clean Water Act establishes policy guidelines requiring
7 states to clean up polluted waters and protect waters that meet water
8 quality standards.

9 The Legislature further finds and declares that the ³[1997]³ Fiscal
10 Year ³1997³ funding levels must be increased in future years to enable
11 the department to meet the requirements of the ³[Federal] federal³
12 Clean Water Act; and that the constitutionally dedicated and
13 appropriated additional monies, when used to fund a watershed-based
14 approach to water resource management and pollution control, will
15 greatly assist the State in protecting waters that meet water quality
16 standards and in attaining and complying with federal water quality
17 standards.

18 The Legislature therefore determines that it is in the public interest
19 and consistent with the intent of Article VIII, Section II, paragraph 6,
20 subparagraph (a) of the New Jersey Constitution ³[,]³ to provide
21 statutory guidance to the department for the use of the dedicated
22 monies; that the dedicated monies should be used to support an
23 expansion of department efforts in the area of water resource
24 management; and that the State should adopt a watershed-based
25 approach to most effectively and efficiently comply with federal
26 guidelines.

27

28 3. As used in this act:

29 "Department" means the Department of Environmental Protection;

30 "Federal Act" means the federal "Clean Water Act" (33 U.S.C.
31 §1251 et seq.);

32 "Total maximum daily load" ¹[or "TMDL"]¹ means the sum of
33 individual point and nonpoint sources of pollution, other sources such
34 as tributaries or adjacent segments, and allocations to a reserve or
35 margin of safety for an individual pollutant ²or as defined in
36 subsequent ³rules and³ regulations of the department²;

37 "Watershed" means a geographic area within which water,
38 sediments, and dissolved materials drain to a particular receiving
39 waterbody;

40 "Watershed management activity" means activities or projects
41 undertaken by the department ¹, the Pinelands Commission ³[created]
42 established³ pursuant to section 4 of P.L.1979, c.111 ³[(C.13:18A-1
43 et seq.),¹] (C.13:18A-4),³ or a watershed management group to
44 improve the condition or prevent further degradation of a watershed,
45 and may include, but need not be limited to, public meetings to discuss
46 and exchange information on watershed issues, the establishment and

1 operation of a stakeholders advisory group or groups dedicated to
2 preserving and protecting a watershed, the monitoring, water quality
3 modeling or assessment of the condition of a watershed, the
4 development of policy goals to reduce the amount of pollutants
5 discharged into a watershed, the development of projects designed to
6 enhance or restore a watershed, the development, in consultation with
7 the department, of a watershed management plan, or the reassessment
8 of a watershed to determine whether the policy goals or the objectives
9 of ³[the] ³a watershed management plan have been attained;

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

13 "Watershed management group" means a group ³[that represents]
14 recognized by the department as the entity representing³ the various
15 interests within one or more watersheds located in a watershed
16 management area ²[that] ³[, which group² is]³ ²[established]
17 ³[recognized² by the department ²as an entity] and³ whose purpose is²
18 to improve the condition or prevent further degradation of a watershed
19 or watersheds ²[, and shall]. A watershed management group ³[may²]
20 shall³ include ³, but need not be limited to,³ local and county
21 government officials ³[¹, officials of regional planning agencies,¹ and
22 representatives] , a representative of water purveyors, a representative
23 of wastewater utilities or authorities, a representative³ of the business
24 community, a representative of the development community,³ and ³a
25 representative of the³ environmental community ³; except that a
26 watershed management group need not include all such officials or
27 representatives if any such officials or representatives decline or are
28 unable to participate in the watershed management group as may be
29 determined by the department in accordance with guidelines or rules
30 and regulations adopted by the department. Where a regional planning
31 agency has been created for all or part of the watershed management
32 area to be represented by the watershed management group, an official
33 of that regional planning agency shall be included in the watershed
34 management group³ ; and

35 "Watershed management plan" means a plan developed by the
36 department ¹[or] ¹ ³[a watershed management group ¹, or the
37 Pinelands Commission¹ ,] or by the Pinelands Commission or a
38 watershed management group³ in consultation with the department,
39 designed to improve the condition or prevent further degradation of
40 a watershed or watersheds, and shall include ²consideration of
41 groundwater quality and quantity, ³consideration of³ water supply
42 quality and quantity,² a determination of the ³[²need for²]³ total
43 maximum daily load amount of pollutants that can be discharged into
44 the watershed or watersheds targeted by the plan, ¹[and]¹ the
45 implementation of water ³[quality based] quality-based³ effluent limits
46 ¹for point sources, and regulatory and best management practices to

1 control ³[non-point] nonpoint³ sources of pollution¹.

2

3 4. The "Watershed Management Fund," hereinafter referred to as
4 the "fund," is hereby established as a nonlapsing, revolving fund in the
5 Department of Environmental Protection. The fund shall be
6 ³[annually]³ credited ³annually³ with all monies appropriated pursuant
7 to the requirements of Article VIII, Section II, paragraph 6,
8 subparagraph (a) of the New Jersey Constitution. Any interest that
9 accrues on monies in the fund shall be credited to the fund.

10

11 5. Monies in the fund shall be used only for the following purposes:

12 a. The development and adoption of a priority list of water quality
13 limited waterbodies pursuant to the requirements of section
14 303(d)(1)(A) of the Federal Act (33 U.S.C. §1313);

15 b. The monitoring and assessment of all State waters pursuant to
16 the requirements of section 305(b) of the Federal Act (33 U.S.C.
17 §1315);

18 c. The ¹[development and]¹ delineation of watershed management
19 areas ¹and stream segments¹;

20 d. The identification of potential causes of the use impairment or
21 water quality standard violations related to waterbodies on the priority
22 list required pursuant to sections 303(d)(1)(A) and 305(b) of the
23 Federal Act by means of assessment of reliable data, including, but not
24 necessarily limited to, ¹identification of ²[all]² ¹ point sources,
25 nonpoint sources, habitat degradation, and hydrologic changes. This
26 identification shall include a broad-based intensive survey monitoring
27 program that shall supplement the existing chemical, biological and
28 toxics-in-biota monitoring networks, and that shall intensively sample
29 watersheds or segments of watersheds on a periodic basis and establish
30 a detailed watershed-wide assessment process. The number of
31 monitoring sites within a watershed shall be determined by existing
32 water quality, land uses, known and potential pollution sources, and
33 the amount of available historical data. The supplemental survey
34 monitoring program, shall be designed to provide:

35 (1) a detailed profile of water quality over specified time periods;

36 (2) an identification and detailed profile of both point and nonpoint
37 pollution sources;

38 (3) a quantification of ¹pollutant loadings and¹ pollution impacts
39 on receiving waters from both point and nonpoint sources; and

40 (4) water quality modeling based upon amounts of point and
41 nonpoint sources of pollution and land use;

42 e. The development of total maximum daily loads and water
43 quality-based effluent limitations for water quality limited waterbodies,
44 as required pursuant to section 303(d)(1)(C) of the Federal Act, and
45 any ³rules or³ regulations adopted pursuant thereto;

46 f. The development and presentation of data on the department's

- 1 Geographic Information System (GIS);
- 2 g. The development and adoption of pollution prevention best
3 management practices to control point and nonpoint sources of
4 pollution;
- 5 h. The characterization of land use and land cover in each
6 watershed;
- 7 i. The development and adoption of a watershed management plan;
8 ¹[and]¹
- 9 j. ¹The development and planning by the department of a watershed
10 management program and the ²[intergration] integration of ²
11 the department's ³rules and ³regulations with ³[this] the ³program. ³and³
- 12 k.¹ The development and implementation of a ¹[local]¹ watershed
13 protection ²loan and² grant program, as described pursuant to section
14 6 of this act.
- 15
- 16 6. ²a. (1)² The department shall establish a ²loan and² grant
17 program to assist ¹[local]¹ watershed management groups ³in the
18 funding of watershed management activities³. A watershed
19 management group may apply to the department for a ²loan or² grant
20 pursuant to this ³[section] subsection³ on forms prescribed by the
21 department. The application shall state the objectives of the group,
22 including the watershed management activities proposed and for which
23 ²loan or² grant monies are requested.
- 24 ²(2) A ³watershed management group may, pursuant to guidance
25 provided or rules or regulations adopted by the department, distribute
26 all or part of the loan or grant to another person who is to perform a
27 watershed management activity for which the loan or grant was
28 provided. If the watershed management group distributes the loan or
29 grant to a³ person who has a NJPDES permit to discharge pollutants
30 into the waters of the State pursuant to P.L.1977, c.74 (C.58:10A-1
31 et seq.), ³[may receive a loan or grant as a watershed management
32 group as provided in this subsection only if that person provides at
33 least a 50 percent match to that loan or grant.] the distribution shall be
34 conditioned upon the permittee providing a match of one dollar for
35 every dollar provided by the loan or grant.³ The match may be made
36 either as a monetary payment or as an in-kind contribution. Any
37 person who has a NJPDES permit and who accepts a loan or grant
38 pursuant to this subsection shall agree not to use any of the loan or
39 grant monies for the purpose of complying with NJPDES permit
40 requirements.²
- 41 ³b.³ The department shall establish guidelines for the development
42 of ¹[a local]¹ watershed management ¹[plan] plans by watershed
43 management groups¹. The department shall provide guidance and
44 technical assistance to watershed management groups seeking
45 assistance in the development of a watershed management plan¹³[and]
46 or³ in the ³development and³ implementation of watershed

1 management activities¹.

2

3 7. a. Any monies appropriated to the department pursuant to
4 Article VIII, Section II, paragraph 6, subparagraph (a) of the New
5 Jersey Constitution, and deposited in the fund, shall be used to support
6 the purposes ¹[required pursuant to] ³[enumerated] set forth³ in¹
7 section 5 of this act to the extent that ³[such] those³ purposes
8 constitute activities in addition to those undertaken by the department
9 in ³[fiscal year] Fiscal Year³ 1997.

10 b. Monies shall be appropriated to the department pursuant to
11 Article VIII, Section II, paragraph 6, subparagraph (a) of the New
12 Jersey Constitution, deposited in the fund ^{3,3} and allocated for the
13 following purposes:

14 (1) ²[For the first three years immediately following the effective
15 date of this act,] From the monies appropriated in ³[fiscal year] Fiscal
16 Year³ 1997 pursuant to section 8 of this act,² 100 percent of the
17 monies shall be used ¹[to support the costs of watershed management
18 program development and planning, regulatory integration, and]
19 ³[for¹] by the department to support³ the purposes established in
20 subsections a. through ¹[i.] j.¹ of section 5 of this act; ²[and]²

21 (2) ²[Commencing three years from the effective date of this act,
22 50] From the monies appropriated in ³[fiscal year] Fiscal Year³ 1998,
23 not more than 35² percent of the monies ²[shall] may² be used to
24 support the purposes identified in subsection ¹[j.] k.¹ of section 5 of
25 this act and ²[50 percent] the remainder² of the monies shall be used
26 ³by the department³ to support the purposes established in subsections
27 a. through ³[i.] j.³ of section 5 of this act ²; and

28 (3) From the monies appropriated in ³[fiscal year] Fiscal Year³
29 1999 and every year thereafter, not more than 50 percent of the
30 monies may be used to support the purposes identified in subsection
31 k. of section 5 of this act and the remainder of the monies shall be used
32 ³by the department³ to support the purposes established in subsections
33 a. through ³[i.] j.³ of section 5 of this act.

34 c. The department may not expend any monies that ³[is] are³ or
35 may be appropriated by the Legislature for the purposes identified in
36 subsection k. of section 5 of this act until the department submits a list
37 of proposed loan or grant recipients to the Legislature, and the
38 Legislature, by the passage of a concurrent resolution, approves that
39 list. The Legislature may approve all or part of that list and only those
40 persons listed in the ³approved³ concurrent resolution may receive a
41 watershed protection loan or grant from the department. The
42 concurrent resolution may limit or specify the amount of any loan or
43 grant and may establish any other condition of receiving the loan or
44 grant. The list of proposed recipients submitted to the Legislature by
45 the department shall specify the name of the proposed recipient, the
46 amount of the loan or grant to be awarded, the intended purpose of the

1 loan or grant, the watershed or watersheds involved, and any other
 2 information relevant to the award of the loan or grant.

3 d. The department may not expend any monies in ³[fiscal year]
 4 Fiscal Year³ 1999 and thereafter [.]³ that [is³] are or may be
 5 appropriated by the Legislature for the purposes identified in
 6 subsection k. of section 5 of this act ³[.]³ until the department has
 7 adopted rules and regulations, pursuant to the "Administrative
 8 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), ³[governing]
 9 concerning the development and implementation of watershed
 10 management activities by watershed management groups and³ the
 11 submission and review of loan and grant applications.

12 e. Any transfer of ³appropriated³ funds ³between purposes³
 13 authorized by this section shall require the approval of the Joint
 14 Budget Oversight Committee or its successor^{2 3}. No such transfer of
 15 funds shall be approved by the committee or its successor if the
 16 transfer would cause exceedance of the funding percentage allocation
 17 limitations set forth in subsection b. of this section. Any transfer of
 18 funds from an approved loan or grant recipient to another approved
 19 loan or grant recipient shall also require the approval of the committee
 20 or its successor.³

21
 22 8. There is appropriated ²[to the Watershed Management Fund]²
 23 from the General Fund, pursuant to the requirements of Article VIII,
 24 Section II, paragraph 6, subparagraph (a) of the New Jersey
 25 Constitution, ²to the Department of Environmental Protection,² the
 26 sum of ²[\$2,500,000] \$4,900,000 for deposit into the Watershed
 27 Management Fund ³[created] established³ pursuant to section 4 of this
 28 act².

29
 30 9. This act shall take effect immediately.

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