

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, <sup>3</sup>[and]<sup>3</sup> providing for the expenditure of monies  
3 dedicated pursuant to Article VIII, Section II, paragraph 6,  
4 subparagraph (a) of the New Jersey Constitution <sup>3</sup>. and making an  
5 appropriation<sup>3</sup>.

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 <sup>3</sup>point and nonpoint  
19 source<sup>3</sup> pollution monitoring, <sup>3</sup>[watershed based] watershed-based<sup>3</sup>  
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 <sup>3</sup>pollution<sup>3</sup> monitoring, <sup>3</sup>[watershed  
25 based] watershed-based<sup>3</sup> 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:**

<sup>1</sup> Senate SEN committee amendments adopted February 10, 1997.

<sup>2</sup> Senate SBA committee amendments adopted March 10, 1997.

<sup>3</sup> 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 <sup>3</sup>[1997]<sup>3</sup> Fiscal  
10 Year <sup>3</sup>1997<sup>3</sup> funding levels must be increased in future years to enable  
11 the department to meet the requirements of the <sup>3</sup>[Federal] federal<sup>3</sup>  
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 <sup>3</sup>[,]<sup>3</sup> 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" <sup>1</sup>[or "TMDL"]<sup>1</sup> 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 <sup>2</sup>or as defined in  
36 subsequent <sup>3</sup>rules and<sup>3</sup> regulations of the department<sup>2</sup>;

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 <sup>1</sup>, the Pinelands Commission <sup>3</sup>[created]  
42 established<sup>3</sup> pursuant to section 4 of P.L.1979, c.111 <sup>3</sup>[(C.13:18A-1  
43 et seq.),<sup>1</sup>] (C.13:18A-4),<sup>3</sup> 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 <sup>3</sup>[the] <sup>3</sup>a 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 <sup>3</sup>[that represents]  
14 recognized by the department as the entity representing<sup>3</sup> the various  
15 interests within one or more watersheds located in a watershed  
16 management area <sup>2</sup>[that] <sup>3</sup>[, which group<sup>2</sup> is]<sup>3</sup> <sup>2</sup>[established]  
17 <sup>3</sup>[recognized<sup>2</sup> by the department <sup>2</sup>as an entity] and<sup>3</sup> whose purpose is<sup>2</sup>  
18 to improve the condition or prevent further degradation of a watershed  
19 or watersheds <sup>2</sup>[, and shall]. A watershed management group <sup>3</sup>[may<sup>2</sup>]  
20 shall<sup>3</sup> include <sup>3</sup>, but need not be limited to,<sup>3</sup> local and county  
21 government officials <sup>3</sup>[<sup>1</sup>, officials of regional planning agencies,<sup>1</sup> and  
22 representatives] , a representative of water purveyors, a representative  
23 of wastewater utilities or authorities, a representative<sup>3</sup> of the business  
24 <sup>3</sup>community, a representative of the development community,<sup>3</sup> and <sup>3</sup>a  
25 representative of the<sup>3</sup> environmental community <sup>3</sup>; 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 group<sup>3</sup> ; and

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

1 control <sup>3</sup>[non-point] nonpoint<sup>3</sup> sources of pollution<sup>1</sup>.

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 <sup>3</sup>[annually]<sup>3</sup> credited <sup>3</sup>annually<sup>3</sup> 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 <sup>1</sup>[development and]<sup>1</sup> delineation of watershed management  
19 areas <sup>1</sup>and stream segments<sup>1</sup>;

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, <sup>1</sup>identification of <sup>2</sup>[all]<sup>2</sup> <sup>1</sup> 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 <sup>1</sup>pollutant loadings and<sup>1</sup> 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 <sup>3</sup>rules or<sup>3</sup> 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 <sup>1</sup>[and]<sup>1</sup>
- 9 j. <sup>1</sup>The development and planning by the department of a watershed  
10 management program and the <sup>2</sup>[intergration] integration of <sup>2</sup>  
11 the department's <sup>3</sup>rules and <sup>3</sup>regulations with <sup>3</sup>[this] the <sup>3</sup>program; <sup>3</sup>and<sup>3</sup>
- 12 k.<sup>1</sup> The development and implementation of a <sup>1</sup>[local]<sup>1</sup> watershed  
13 protection <sup>2</sup>loan and<sup>2</sup> grant program, as described pursuant to section  
14 6 of this act.
- 15
- 16 6. <sup>2</sup>a. (1)<sup>2</sup> The department shall establish a <sup>2</sup>loan and<sup>2</sup> grant  
17 program to assist <sup>1</sup>[local]<sup>1</sup> watershed management groups <sup>3</sup>in the  
18 funding of watershed management activities<sup>3</sup>. A watershed  
19 management group may apply to the department for a <sup>2</sup>loan or<sup>2</sup> grant  
20 pursuant to this <sup>3</sup>[section] subsection<sup>3</sup> 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 <sup>2</sup>loan or<sup>2</sup> grant monies are requested.
- 24 <sup>2</sup>(2) A <sup>3</sup>watershed 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 a<sup>3</sup> 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.), <sup>3</sup>[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.<sup>3</sup> 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.<sup>2</sup>
- 41 <sup>3</sup>b.<sup>3</sup> The department shall establish guidelines for the development  
42 of <sup>1</sup>[a local]<sup>1</sup> watershed management <sup>1</sup>[plan] plans by watershed  
43 management groups<sup>1</sup>. The department shall provide guidance and  
44 technical assistance to watershed management groups seeking  
45 assistance in the development of a watershed management plan<sup>1</sup> <sup>3</sup>[and]  
46 or<sup>3</sup> in the <sup>3</sup>development and<sup>3</sup> implementation of watershed

1 management activities<sup>1</sup>.

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 <sup>1</sup>[required pursuant to] <sup>3</sup>[enumerated] set forth<sup>3</sup> in<sup>1</sup>  
7 section 5 of this act to the extent that <sup>3</sup>[such] those<sup>3</sup> purposes  
8 constitute activities in addition to those undertaken by the department  
9 in <sup>3</sup>[fiscal year] Fiscal Year<sup>3</sup> 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 <sup>3,3</sup> and allocated for the  
13 following purposes:

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

21 (2) <sup>2</sup>[Commencing three years from the effective date of this act,  
22 50] From the monies appropriated in <sup>3</sup>[fiscal year] Fiscal Year<sup>3</sup> 1998,  
23 not more than 35<sup>2</sup> percent of the monies <sup>2</sup>[shall] may<sup>2</sup> be used to  
24 support the purposes identified in subsection <sup>1</sup>[j.] k.<sup>1</sup> of section 5 of  
25 this act and <sup>2</sup>[50 percent] the remainder<sup>2</sup> of the monies shall be used  
26 <sup>3</sup>by the department<sup>3</sup> to support the purposes established in subsections  
27 a. through <sup>3</sup>[i.] j.<sup>3</sup> of section 5 of this act <sup>2</sup>; and

28 (3) From the monies appropriated in <sup>3</sup>[fiscal year] Fiscal Year<sup>3</sup>  
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 <sup>3</sup>by the department<sup>3</sup> to support the purposes established in subsections  
33 a. through <sup>3</sup>[i.] j.<sup>3</sup> of section 5 of this act.

34 c. The department may not expend any monies that <sup>3</sup>[is] are<sup>3</sup> 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 <sup>3</sup>approved<sup>3</sup> 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 <sup>3</sup>[fiscal year]  
 4 Fiscal Year<sup>3</sup> 1999 and thereafter [.]<sup>3</sup> that [is<sup>3</sup>] are or may be  
 5 appropriated by the Legislature for the purposes identified in  
 6 subsection k. of section 5 of this act <sup>3</sup>[.]<sup>3</sup> 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.), <sup>3</sup>[governing]  
 9 concerning the development and implementation of watershed  
 10 management activities by watershed management groups and<sup>3</sup> the  
 11 submission and review of loan and grant applications.

12 e. Any transfer of <sup>3</sup>appropriated<sup>3</sup> funds <sup>3</sup>between purposes<sup>3</sup>  
 13 authorized by this section shall require the approval of the Joint  
 14 Budget Oversight Committee or its successor<sup>2 3</sup>. 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.<sup>3</sup>

21  
 22 8. There is appropriated <sup>2</sup>[to the Watershed Management Fund]<sup>2</sup>  
 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, <sup>2</sup>to the Department of Environmental Protection,<sup>2</sup> the  
 26 sum of <sup>2</sup>[\$2,500,000] \$4,900,000 for deposit into the Watershed  
 27 Management Fund <sup>3</sup>[created] established<sup>3</sup> pursuant to section 4 of this  
 28 act<sup>2</sup>.

29  
 30 9. This act shall take effect immediately.

31

32

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34

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.