

## CHAPTER 261

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

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

C.58:29-1 Short title.

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

C.58:29-2 Findings, declarations relative to watershed protection and management.

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

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

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

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

C.58:29-3 Definitions relative to watershed protection and management.

3. As used in this act:

"Department" means the Department of Environmental Protection;

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

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

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

"Watershed management activity" means activities or projects undertaken by the department, the Pinelands Commission established pursuant to section 4 of P.L.1979, c.111 (C.13:18A-4), or a watershed management group to improve the condition or prevent further degradation of a watershed, and may include, but need not be limited to, public meetings to discuss and exchange information on watershed issues, the establishment and operation of a stakeholders

advisory group or groups dedicated to preserving and protecting a watershed, the monitoring, water quality modeling or assessment of the condition of a watershed, the development of policy goals to reduce the amount of pollutants discharged into a watershed, the development of projects designed to enhance or restore a watershed, the development, in consultation with the department, of a watershed management plan, or the reassessment of a watershed to determine whether the policy goals or the objectives of a watershed management plan have been attained;

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

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

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

C.58:29-4 "Watershed Management Fund," established.

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

C.58:29-5 Purposes of fund.

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

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

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

c. The delineation of watershed management areas and stream segments;

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

survey monitoring program, shall be designed to provide:

- (1) a detailed profile of water quality over specified time periods;
  - (2) an identification and detailed profile of both point and nonpoint pollution sources;
  - (3) a quantification of pollutant loadings and pollution impacts on receiving waters from both point and nonpoint sources; and
  - (4) water quality modeling based upon amounts of point and nonpoint sources of pollution and land use;
- e. The development of total maximum daily loads and water quality-based effluent limitations for water quality limited waterbodies, as required pursuant to section 303(d)(1)(C) of the Federal Act, and any rules or regulations adopted pursuant thereto;
  - f. The development and presentation of data on the department's Geographic Information System (GIS);
  - g. The development and adoption of pollution prevention best management practices to control point and nonpoint sources of pollution;
  - h. The characterization of land use and land cover in each watershed;
  - i. The development and adoption of a watershed management plan;
  - j. The development and planning by the department of a watershed management program and the integration of the department's rules and regulations with the program; and
  - k. The development and implementation of a watershed protection loan and grant program, as described pursuant to section 6 of this act.

C.58:29-6 Loan and grant program.

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

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

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

C.58:29-7 Use of appropriated funds.

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

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

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

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

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

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

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

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

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

9. This act shall take effect immediately.

Approved October 10, 1997.