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Attn.: DEP Docket No. 04-23-11
Office of Legal Affairs
Department of Environmental Protection
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RE: COMMENTS ON NJDEP PROPOSED AMENDMENTS TO GROUND WATER QUALITY STANDARDS, REMEDIATION STANDARDS RULES – N.J.A.C. 7:9C, 7:26D (DEP DOCKET NO. 04-23-11, PROPOSAL NO. PRN 2024-006)

Dear Ms. Press:

Please accept these comments on behalf of the New Jersey Business & Industry Association. NJBIA is the state’s largest association representing the business community. Our mission is to support policies that lead to economic growth and allow our members to be competitive in the marketplace. We also strongly support environmental policies that are protective of human health because a clean and healthy environment is an essential component of a prosperous economy. Toward these ends, we are firm supporters of the state’s site remediation programs as it has developed throughout the years. As a result of these programs, thousands of previously contaminated sites have been remediated and put back into productive use.

While we are supportive of establishing groundwater quality standards (GWQS) that are protective of public health, we are cognizant of the Legislature’s requirements that such standards be based upon generally accepted and peer reviewed science and reasonable exposure scenarios and avoid the use of redundant conservative assumptions. We have concerns that these statutory strictures were not adequately followed in this proposal.

We fully support the comments submitted by the Chemistry Council of New Jersey and the Site Remediation Industry Network and incorporate their comments by reference. Those entities, whose membership overlaps with many NJBIA members, have thoroughly described the technical and substantive flaws in the current proposal and have offered recommendations for changes.

In general, we believe this proposal was the result of a flawed stakeholder process which did not engage the regulated community adequately and provided misleading

and partial information on the New Jersey Department of Environmental Protection (Department) intent. In fact, after documents were provided in 2019 that described the constituents being considered for change, numerous additional constituents were put into the proposed rule without any ability to discuss such significant changes. The process to develop this proposal did not allow for needed input from expert stakeholders and other members of the public. It was certainly not consistent with Governor Murphy's intent when he authored Executive Order 63.

We believe that the toxicity data used is inconsistent and questionable. Certain practical quantification limits are not attainable and/or are based on analytical methods for drinking water, not groundwater, and the Department has no certified laboratory's certified for the constituents. We are also concerned that the rules will result in absurd outcomes, such as when GWQS are set at levels that are below drinking water quality standards (DWQS). This is exactly the type of regulatory standards the Legislature proscribed the DEP from implementing.

This is not an insignificant undertaking. The impacts of these rules will be real and could be pervasive. Seventy-three constituents are being updated and seven are being changed by an order of magnitude. These changes, especially the order of magnitude changes, will negatively impact development and redevelopment. Such changes should not be made unless necessary. Unfortunately, the Department has not provided clear and unambiguous science with this proposal. While the enhanced protections that such order of magnitude changes will achieve will have minor enhancements to the protection of human health, they may be greatly outweighed by the burdens of reopening of numerous cases and the uncertainty that this will place on the marketplace.

New Jersey is already a difficult place in which to do business, given its high cost and high taxes. While we want protective standards in place, we must be aware of the impacts of these changes. It is hard to argue that the proposal uses the best available science and has taken the Legislature's mandates into account when GWQS are more stringent than a DWQS. How do we explain to the business community, for example, that watering a lawn may be a discharge as a result of these rules? This is exactly what the public objected to, and the Legislature attempted to fix, when it first reformed the site remediation programs under ISRA in 1993.

We recommend that the Department seriously consider the concerns raised by the regulated community and its experts. We recommend that this rule not be adopted in its currently proposed form and that extensive and collaborative stakeholdering be performed before an amended rule is subsequently adopted.

Thank you for your consideration.

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