



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL
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Office of the
Secretary

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Secretary's Order No. 2008-W-0022

Re: Withdrawal of Proposed "Regulations of the Pollution Control Strategy for the Indian River, Indian River Bay, Rehoboth Bay and Little Assawoman Bay Watersheds, Delaware," as Published in the May 2007 *Delaware Register of Regulations*

Date of Issuance: May 20, 2008

Effective Date: May 20, 2008

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") under 29 *Del. C.* §§8001 et seq., 29 *Del. C.* §§10111 *et seq.* and 7 *Del. C.* §6010 (a), the following findings, reasons and conclusions are entered as an Order of the Secretary in the above-referenced rulemaking proceeding:

On February 13, 2006, the Department opened a proposed rulemaking proceeding in Start Action Notice ("SAN") 2002-006 to promulgate a regulation to control non-point sources of nutrient pollutants from entering the waters of the Inland Bays, which consist of the Indian River, Indian River Bay, Rehoboth Bay and Little Assawoman Bay and their tributaries. The proposed regulation would have established nutrient removal requirements for stormwater management and on-site waste water treatment and disposal system standards within the watersheds. The Inland Bays are vitally important to Delaware's economy and to overall environment within the Inland Bays and the public health based upon the recreational uses of the Inland Bays. The Department determined

in a series of studies and total maximum daily load (“TMDL”) regulations that the Inland Bays have impaired water quality based upon their classification and under the Federal Water Pollution Control Act, or Clean Water Act.

The Department conducted numerous meetings and workshops during the development of the proposed regulation, which was published May 2007 in the Delaware Register of Regulations. The Department held two public hearings on June 13, 2007 and June 14, 2007 and the public comment period was open for written comments from May 1, 2007 through June 29, 2007. As a result of the public comments the Department received, the Department decided to significantly revise the proposed regulation and publish the revised proposed regulation in the June 2008 *Delaware Register of Regulations*. In order to not have two proposed regulations pending consideration for adoption as a final regulation, the Department will move forward with the revised proposed regulation to be published in the June 2008 *Delaware Register of Regulations* and withdraw the proposed regulation that was published in the May 2007 *Delaware Register of Regulations*.

In conclusion, the following findings and conclusions are entered:

1. The Department, acting through this Order of the Secretary and 29 *Del C. §10118(d)*, hereby withdraws the proposed regulation published in the *Delaware Register of Regulations* on May 1, 2007; and

2. The Department will allow its proposed rulemaking commenced with Start Action Notice No.2002-06 to continue with a new, revised proposed regulation to be published in the June 2008 *Delaware Register of Regulations*, and the Department may rely on the portions of the administrative record already developed to the extent that

the Department determines that they are relevant to the proposed regulation to be published in the June 2008 *Delaware Register of Regulations*. The Department shall have this Order published in the *Delaware Register of Regulations* and in newspapers in the same manner as the notice of the proposed regulation.

s/John A. Hughes

John A. Hughes

Secretary