

PUBLIC NOTICE

ENVIRONMENTAL PROTECTION

DIVISION OF COASTAL AND LAND USE PLANNING

**Adopted Amendment to the Atlantic County Water Quality Management Plan**

**Public Notice**

Take notice that on **NOV - 6 2013** pursuant to the provisions of the New Jersey Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules at N.J.A.C. 7:15-3.4, an amendment to the Atlantic County Water Quality Management (WQM) Plan was adopted by the Department of Environmental Protection (Department). This amendment, submitted on behalf of the Board of Chosen Freeholders of Atlantic County as the responsible wastewater management planning agency, adopts a future wastewater service area map (FWSA map) for Atlantic County. This map has been prepared pursuant to P.L. 2011, c. 203, enacted on January 17, 2012, which permits the wastewater management planning agency to prepare and submit to the Department at least that portion of a wastewater management plan designating sewer service area (SSA), which shall comply with the Department's regulatory criteria. This map, titled "Future Wastewater Service Areas (FWSA), Atlantic County New Jersey," will supersede all wastewater service area mapping currently contained in the WQM Plan for areas within Atlantic County, including that which was adopted into the WQM Plan as part of approved wastewater management plans (WMPs). The map identifies areas to be served by sewage treatment facilities/sewer systems as well as areas to be served by septic systems with design flows of equal to or less than 2,000 gallons per day. The map modifies the previously adopted SSA mapping to exclude waters and undeveloped lands considered environmentally sensitive areas (ESAs). Additionally, the map removes areas from sewer service based on local planning initiatives. This amendment only modifies the wastewater service area mapping portions of the above referenced WQM Plan.

Pursuant to P.L. 2011, c. 203, the Department, in consultation with the applicable wastewater management planning agency, may approve the inclusion of land within a SSA notwithstanding that existing treatment works may not currently have the assured capacity to treat wastewater from such land without infrastructure improvements or permit modification. Therefore, amendments to update a SSA may be approved if such actions are compliant with the applicable sections of the WQM Planning rules (N.J.A.C. 7:15) regardless of whether capacity has been fully assessed. Additional issues which may need to be addressed for any new or expanded wastewater treatment facility proposal include, but are not limited to, compliance with antidegradation, effluent limitations, water quality analysis, stormwater regulations, and exact locations and designs of future treatment works. Additionally, sewer service to any particular project is subject to contractual allocations between municipalities, authorities, and/or private parties, and is not guaranteed by this amendment. Finally, P.L. 2011, c. 203, expires on January 17, 2014, and the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the implementing regulations require that full county-wide WMP updates be completed pursuant to the requirements set forth in N.J.A.C. 7:15.

The Department and Atlantic County have held numerous meetings with the public, municipal officials, and affected agencies over the past four years. Further, in accordance with Administrative Order No. 2010-03 (AO #2010-3) signed by Commissioner Martin, a public meeting was held on March 23, 2011, to allow public review and comment on the then-current draft of Atlantic County SSA. As a result, the Department and the County have received continuous input from residents, municipal officials, and other affected agencies regarding mapping corrections and other issues.

In accordance with N.J.A.C. 7:15-5.24, ESAs have been assessed to determine what areas are appropriately included in the adopted SSAs. Pursuant to N.J.A.C. 7:15-5.24, ESAs are defined as contiguous areas of 25 acres or larger consisting of habitat for threatened and endangered wildlife species as identified on the Landscape Project Maps of Habitat for Endangered, Threatened or Other Priority Species, Natural Heritage Priority Sites, Category One special water resource protection areas, and wetlands, alone or in combination.

In accordance with N.J.A.C. 7:15-5.24(b)1, to determine areas designated as threatened or endangered species habitat, the Department utilized the Division of Fish and Wildlife's Landscape Project Maps of Habitat for Endangered, Threatened or Other Priority Species, versions 2.1 and 3.1, as applicable. Areas identified by the Landscape Project as being suitable habitat for threatened and endangered species are not included in the adopted SSAs except as provided under N.J.A.C. 7:15-5.24(e) through (h).

In accordance with N.J.A.C. 7:15-5.24(b)2, areas mapped as Natural Heritage Priority Sites are not included in the adopted SSA, except as provided under N.J.A.C. 7:15-5.24(e) through (h).

In accordance with N.J.A.C. 7:15-5.24(b)3, areas identified as special water resource protection areas along Category One waters and their tributaries are not included in the adopted SSAs, except as provided under N.J.A.C. 7:15-5.24(e) through (h). Pursuant to N.J.A.C. 7:8-5.5(h), a 300-foot buffer is applied to both sides of a stream measured from the top of bank of an intermittent or perennial stream, or centerline if the bank is not defined, and from the defined edge of a lake, pond, or reservoir at bank-full flow or level. Category One waters and their tributaries are afforded a 300-foot buffer. In addition, as required under N.J.A.C. 7:15-5.20(b)3, the adopted FWSA map text indicates that development in riparian zones, or designated river areas, may be subject to special regulation under Federal or State statutes or rules. Riparian zones or buffers are established along all surface waters, based on the surface water body's classification designated at N.J.A.C. 7:9B, under the following regulations: the Flood Hazard Area Control Act rules (N.J.A.C. 7:13), the Stormwater Management rules (N.J.A.C. 7:38), and the Water Quality Management Planning rules (N.J.A.C. 7:15). Most development within these riparian zones is regulated by these programs.

In accordance with N.J.A.C. 7:15-5.24(b)4, areas mapped as wetland pursuant to N.J.S.A. 13:9A, the Wetlands Act of 1970 and 13:9B, the Freshwater Wetlands Protection Act, are not included in the adopted SSA, except as provided under N.J.A.C. 7:15-5.24(e) through (h).

Pursuant to N.J.A.C. 7:15-5.24(c), certain coastal planning areas must be excluded from a SSA. Specifically, lands within Coastal Fringe Planning Areas, Coastal Rural Planning Areas, or

Coastal Environmentally Sensitive Areas in the Atlantic WMP planning area, unless already developed and connected to existing sewage collection and treatment systems, have been removed from the adopted FWSA.

In accordance with N.J.A.C. 7:15-5.24(d)1, areas with Federal 201 grant limitations that prohibit the extension of sewers are excluded from the adopted SSA either where local mapped information exists delineating these areas, or through a narrative description where mapping does not exist, except as provided under N.J.A.C. 7:15-5.24(f)1. Where a narrative approach has been used, it is noted as text on the adopted FWSA map. Pre-existing grant conditions and requirements (from Federal and State grants or loans for sewerage facilities), which provide for restriction of sewer service to ESAs, are unaffected by adoption of this amendment and compliance remains required.

In addition to ESAs and other areas with Federal 201 grant limitations that prohibit the extension of sewers identified under N.J.A.C. 7:15-5.24(d)1, there are other special restricted areas which must also be excluded from SSA pursuant to N.J.A.C. 7:15-5.24(d)(2) through (4). Specifically, these areas are beaches, coastal high hazard areas, or dunes and these lands, unless already developed and connected to existing sewage collection and treatment systems, have been removed from the adopted FWSA.

As provided under N.J.A.C. 7:15-5.24(e) through (h), limited ESAs have been included within some SSAs, as appropriate. Where applicable, Department issued Coastal, Flood Hazard, Wetland and State Open Water Permits or Jurisdictional Determinations have been utilized to determine the extent of the SSA on individual lots.

In recognition of the nature and scope of the New Jersey Pinelands Commission's (Commission) regulation and oversight of land use and development within the Pinelands Area, and for purposes of implementing the Department's WQM Planning rules at N.J.A.C. 7:15, a Memorandum of Understanding (MOU) between the Department and the Commission has been executed in which the Department recognizes the management area designations and boundaries established by the Commission within the Pinelands Area. The MOU provides that all lands

located within a Pinelands Village, Pinelands Town, Regional Growth Area, substantially developed portions of a Military and Federal Installation Area, and any other area designated by the Commission for the development of centralized waste water treatment and collection facilities pursuant to either N.J.A.C. 7:50-6.84(a)2 to address a public health problem or a memorandum of agreement pursuant to N.J.A.C. 7:50-4.52(c) of the Comprehensive Master Plan (CMP), as specified in geographic information system (GIS) coverage provided by the Pinelands Commission, shall be deemed to be within a SSA. Such areas included in SSA pursuant to the MOU may include ESAs as described in N.J.A.C. 7:15-5.24(b). Pursuant to the MOU, the Department has not excluded ESAs delineated at N.J.A.C. 7:15-5.24(b) within a Pinelands Village, Pinelands Town, Regional Growth Area, or substantially developed portions of a Military and Federal Installation Area, from SSA on the adopted map.

As a result of the Department soliciting comments, in accordance with N.J.A.C. 7:15-3.7, from the Commission on the proposed amendment pertaining to the Pinelands Area to ensure that the amendment is consistent with the intent and programs of the Pinelands Protection Act, N.J.S.A. 13:18A-1 et seq., and section 502 of the National Parks and Recreation Act of 1978, 16 U.S.C. § 471i, in addition to the MOU, the Commission has identified areas in the Atlantic County FWSA map that should have been included in SSA pursuant to the MOU. Because the Commission has commented that other counties that include Pinelands Areas also have mapping discrepancies, the Department intends to propose an amendment that will comprehensively correct all Pinelands Areas mapping for consistency as required by N.J.A.C. 7:15-3.7 and in accordance with the MOU. Therefore, a correction to include these particular areas on the FWSA mapping will be included in the forthcoming proposed amendment.

Notice of this amendment proposal was published on January 7, 2013, in the New Jersey Register, at 45 N.J.R. 62(a). A public hearing on the proposed amendment was conducted on Thursday, February 7, 2013, at the Anthony 'Tony' Canale Training Center, in Egg Harbor Township, New Jersey, The Department and the Atlantic County Department of Planning received comments during the comment period. Comments which are not relevant to the proposed amendment are not addressed in the following section of this notice.

The following individuals provided comments on this amendment during the public comment period:

List of Commenters

**Number-- Name, Affiliation**

1. Sue Barber, Mayor of Buena Vista Township
2. Tiffany Civiello, Planner representing Galloway Township
3. Vince Polistina, P.E., representing Egg Harbor Township, Folsom Borough, and Estell Manor City
4. Joe Venezia, Mayor of Estell Manor City
5. Fred Akers, Administrator of the Great Egg Harbor River Council
6. Mark Demitroff, Pinelands Geographer
7. Dan Kwapinski, P.E., representing City of Northfield
8. Theresa Lettman, representing the Pineland Preservation Alliance
9. Elizabeth George-Cheniara, Esq., Director of Environmental Affairs, New Jersey Builders Association
10. Robert Vettese, P.E., representing Town of Hammonton

As noted below in response to specific comments requesting modification to the FWSA map, the Department is adopting the proposed amendment with minor changes pursuant to N.J.A.C. 7:15-3.4(g)9ii. These minor changes do not effectively destroy the value of the public notice of the proposed amendments and are technical/administrative corrections or modifications. Comments requesting to include or exclude a property within a SSA, which was not reflected in the proposed amendment and was found to be a substantial change, are not adopted herein. Substantial changes include those changes to the proposed amendment which the Department has determined would enlarge or curtail who and what will be affected by the proposed amendment, change what is being prescribed, proscribed, or otherwise mandated by the proposed amendment, or enlarge or curtail the scope of the proposed amendment and its burden on those affected by it. Thus, changes which would enlarge or curtail which properties would be affected by the adopted FWSA map and/or the way in which properties would be affected by the adopted FWSA map would be considered substantial. Making such substantial changes on adoption would effectively

destroy the value of the public notice and, thus, a new notice and public comment period are required prior to consideration of such changes pursuant to the process set forth in N.J.A.C. 7:15-3.4.

Any party may submit an application to the Department for a site specific amendment or revision, as applicable, to a WQM plan to include or exclude additional areas and/or facilities in accordance with N.J.A.C. 7:15 and P.L. 2011, c. 203, as applicable.

A summary of the comments and the Department's responses follows. The number(s) in parentheses after each comment identifies the respective commenter listed above.

**1. Comment:** The commenters oppose the inclusion of Pinelands Villages in SSA. Specifically, commenters claim that the MOU between the Pinelands Commission and the Department does not provide a lawful basis to add Pinelands Villages to SSA; that there is no legal requirement that Pinelands Villages be in SSA; that Pinelands Villages lack infrastructure to support development and that such extension of infrastructure is not permitted; and that the inclusion of Pinelands Villages in SSA conflicts with certified zoning. The commenters also state that the Department does not have the authority to adopt maps that include ESAs in SSA. (1, 4, 5, 6, 8)

**Response:** The Department and the Pinelands Commission entered into an MOU to effectuate coordination between the agencies regarding SSA delineation in the "Pinelands Area" as defined by N.J.S.A. 13:18A-11. As part of the Continuing Planning Process ("CPP") required by the Water Quality Planning Act, N.J.S.A. 58:11A-7, the Department is required to integrate and unify the statewide and areawide water quality management planning processes and is required to coordinate and integrate the CPP with related Federal, State, regional and local comprehensive, functional and other relevant planning activities, programs and policies. The Pinelands Commission is the planning entity authorized in Section 502 of the "National Parks and Recreation Act of 1979," and is an independent political subdivision of the State of New Jersey created pursuant to Section 4 of the Pinelands Protection Act, N.J.S.A 13:18A-1 et seq. ("PPA"), charged with implementing the requirements of the PPA, which include establishing minimum standards for the development and the use of land in the Pinelands Area. The Department is authorized pursuant to N.J.S.A. 13:1D-9(q) to contract with any other public

agency. The Commission is authorized by N.J.S.A. 13:18A-6g to enter into agreements or contracts.

The Commission regulates land use and development intensity and exercises development review authority over all development to be located within the Pinelands Area. In accordance with the PPA, N.J.S.A. 13:18A-8 and the Federal Act, 16 U.S.C. 471i(f), the Commission developed a comprehensive statement of policies for planning and managing development and land use in the Pinelands Area known as the Pinelands Comprehensive Management Plan (CMP), which includes land use and development intensity standards for various management areas, as well as site specific development standards.

The Commission is charged under the PPA to determine the amount of human development and activity certain ecosystems within the Pinelands Area can sustain, while still maintaining overall ecological values thereof, with special reference to ground and surface water quality and endangered, unique and unusual plant and animals and biotic communities. N.J.S.A. 13:18A-8(a)(1). Further, the PPA requires the CMP to include a land use capability map and statements of policies for planning and managing development and land use which must consider a variety of land and water protection and management techniques, and regulate the use of land and water resources, among other things. The Commission distinguishes between nine management areas, eight established by N.J.A.C. 7:50-5.11 to 5.19, with Pinelands Villages and Towns treated as two separate management areas and displayed that way on the Pinelands Land Capability Map. Each management area is subject to different minimum standards for land use distribution and densities. N.J.A.C. 7:50-5.21 to 5.36. As such, the Commission has determined that certain areas are more compatible with growth and development than others.

Notably, the PPA also specifically requires the CMP to include: "in conjunction with existing State programs and planning processes, a plan to implement the provisions of the 'Clean Water Act' (P.L. 95-217) and the 'Safe Drinking Water Act' (P.L. 93-523) which pertain to the surface and ground water quality of the Pinelands National Reserve." N.J.S.A. 13:18A-8(j). The water quality portions of the CMP, N.J.A.C. 7:50-6.81 – 6.8, are "intended to protect and preserve surface and ground waters of the Pinelands and to ensure that random and uncontrolled growth



and development will not degrade the Pinelands environment.” N.J.A.C. 7:50-6.81. N.J.A.C. 7:15-3.7 of the WQM Planning Rules specifically requires the Department to coordinate with the Commission and requires the Department to obtain Commission comment in order to ensure WQM Plan amendments are consistent with the intent and programs of the Pinelands Protection Act. N.J.S.A. 13:18A-8 of the PPA also requires coordination and consistency with local, State, and Federal programs and policies in order to promote the goals and policies of the management plan.

The CMP is “designed to promote orderly development of the Pinelands so as to preserve and protect the significant and unique natural, ecological, agricultural, archaeological, historical, scenic, cultural, and recreational resources of the Pinelands.” N.J.A.C. 7:50-1.3. See also N.J.S.A. 13:18A-9.

Further, N.J.S.A. 13:18A-27 provides that in the event of any conflict or inconsistency between the provisions of the Pinelands Protection Act and any rules and regulations promulgated under the PPA, which includes the CMP, the provisions of the PPA and CMP shall be enforced and the conflicting or inconsistent provisions shall have no force and effect. See also N.J.S.A. 13:18A-10(c) (prohibiting any State approval, certificate, license, consent, permit or financial assistance authorizing development unless it conforms to the CMP).

In light of the above, and in recognition of the nature and scope of the Commission’s planning, regulation and oversight of land use and development in the Pinelands Area and for purposes of implementing the WQM Planning Rules, N.J.A.C. 7:15, a MOU between the Department and the Commission was executed in April 2012 in which the Department recognizes the management area designations and boundaries established by the Commission within the Pinelands Area for purposes of delineating SSA. The MOU provides that all lands located within a Pinelands Village, Pinelands Town, Regional Growth Area, substantially developed portions of a Military and Federal Installation Area, and any other area designated by the Commission for the development of centralized waste water treatment and collection facilities pursuant to either N.J.A.C. 7:50-6.84(a)2 to address a public health problem or a memorandum of agreement

pursuant to N.J.A.C. 7:50-4.52(c) of the CMP, as specified in GIS coverage provided by the Commission, shall be deemed to be within a SSA.

The MOU is an agreement between two State agencies, the Department and the Commission, intended to facilitate procedural aspects between the two agencies for WQM planning purposes. The CMP allows for the installation of sewers in Pinelands Villages, but does not require it. See N.J.A.C. 7:50-5.27. Consistent with the CMP, the Department is adopting a FWSA in accordance with the MOU, which identifies Pinelands Villages in Atlantic County as within SSA. Like the CMP, the designation of the Pinelands Villages as within SSA provides the opportunity for sewers, but does not require or guarantee that sewers or a sewage collection system will be developed. The CMP identifies Pinelands Villages and Towns as "appropriate for infill, residential, commercial and industrial development that is compatible with their existing character." N.J.A.C. 7:50-5.13(f). The decision to provide public sanitary sewer service to Pinelands Villages lies within the discretion and authority of each Pinelands municipality that has a Pinelands Village, subject to compliance with the CMP. The designation of SSA in the Pinelands Villages enables those municipalities to explore the option of constructing sewerage infrastructure and/or a sewage collection system, including package treatment plant.

The Department defers to the Pinelands Commission concerning the administration of the CMP and its substantive regulations with regard to the extension of sewage collection infrastructure, but notes that any new discharge of treated wastewater to ground or surface water cannot occur until a demonstration of compliance with the Department's New Jersey Pollutant Discharge Elimination System (NJPDES) and Treatment Works regulations has been made and all necessary and applicable permits are issued. The designation of SSA does not guarantee the provision of sanitary sewer service to an area as any new or expanded wastewater treatment facility proposal must demonstrate compliance with State ground or surface water quality antidegradation effluent limitations, stormwater regulations, and the site specific design and function of any proposed wastewater treatment works.

Additionally, any proposed development of wastewater treatment works in the Pinelands is subject to the review and approval of the Pinelands Commission in accordance with the

provisions of the CMP. And, should a municipality wish to increase permitted residential densities or the permitted intensity of non-residential development in their Pinelands Village zoning districts, such changes would require Commission review and approval to ensure that the zoning plan in the Pinelands Village is consistent with the CMP. The Department recognizes that pursuant to the CMP, a Pinelands Village zoning plan may not provide for an additional increment of development which is greater than the number of principal structures which existed in the Village in 1979. N.J.A.C. 7:50-5.16. The designation of Pinelands Villages within a FWSA enables municipalities to exercise the option of seeking to provide sewerage infrastructure, authorized by a CMP-consistent zoning change if necessary, or choosing to maintain the existing Commission certified zoning districts within their Pinelands Villages that would not necessitate the provision of the sewer service.

Per the terms of the MOU, and, again, in recognition of the nature and scope of the Commission's planning, regulation and oversight of land use and development within the Pinelands Area, the Department has not removed ESAs, N.J.A.C. 7:15-5.24(b), from Regional Growth Area, Pinelands Town, Pinelands Village, substantially developed portions of a Military and Federal Installation Area or any other area where the Commission has permitted the development of centralized wastewater treatment and collection facilities in accordance with N.J.A.C. 7:50-6.84(a)2 to address a public health problem or pursuant to a Memorandum of Agreement executed by the Commission in accordance with N.J.A.C. 7:50-4.52(c).

ESAs, as described at N.J.A.C. 7:15-5.24(b), are contiguous areas of 25 acres or larger consisting of areas of wetlands, threatened and endangered wildlife species habitat, Special Water Resource Protection Area buffers around designated Category 1 streams and/or Natural Heritage Priority Sites. There are no designated Category 1 streams in the Pinelands Area and therefore no Special Water Resource Protection Area buffers within the Pinelands. Thus, this type of ESA is not present in the Pinelands.

Each of the remaining types of ESAs described at N.J.A.C. 7:15-5.24(b) occur within some portion of the lands located within a Pinelands Village, Pinelands Town, or Regional Growth Area. However, where an ESA may occur within a Pinelands Area SSA, the regulatory

provisions of the CMP ensure such areas are adequately protected. Natural Heritage Priority Sites identify areas with populations of threatened and endangered flora and fauna. Within the Pinelands Area, Threatened and Endangered flora and fauna populations are specifically afforded regulatory protection. N.J.A.C. 7:50-6.33 provides that "No development shall be carried out unless it is designed to avoid irreversible adverse impacts on habitats that are critical to the survival of any local populations of those threatened or endangered animal species designated by the Department of Environmental Protection pursuant to N.J.S.A. 23:2A-1 et seq. N.J.A.C. 7:50-6.27 provides that "No development shall be carried out by any person unless it is designed to avoid irreversible adverse impacts on the survival of any local populations of those plants designated by the Department of Environmental Protection as endangered plant species pursuant to N.J.A.C. 7:5C-5.1 as well as the following plants, (see listing at N.J.A.C. 7:50-6.27) which are hereby found and declared to be threatened or endangered plants of the Pinelands." The Commission's regulatory jurisdiction over the protection of Threatened and Endangered flora and fauna habitats applies to the development of any new sewage producing structure and would provide protection of the threatened and endangered species.

Wetlands are a vital component of the Pinelands ecosystem, and transition areas to protect them have been in place since the CMP was adopted in 1980. The regulatory protections afforded to wetlands and transition areas adjacent to wetlands are specified at N.J.A.C. 7:50-6.1 to 6.14. The CMP notes at N.J.A.C. 7:50-6.6 that "development shall be prohibited in all wetlands and wetlands transition areas established pursuant to N.J.A.C. 7:50-6.14 in the Pinelands except as specifically authorized in this Part." In addition, the CMP provides at N.J.A.C. 7:50-6.14 that "No development, except for those uses which are specifically authorized in this subchapter, shall be carried out within 300 feet of any wetland, unless the applicant has demonstrated that the proposed development will not result in a significant adverse impact on the wetland, as set forth in N.J.A.C. 7:50-6.7."

Together, the aforementioned provisions of the CMP ensure that ESAs within a Pinelands Regional Growth Area, Pinelands Town, Pinelands Village, substantially developed portions of a Military and Federal Installation Area or any other area where the Commission has permitted the development of centralized wastewater treatment and collection facilities in accordance with

N.J.A.C. 7:50-6.84(a)2 to address a public health problem will be subject to site specific review, evaluation and protection.

**2. Comment:** The WQM Planning rules require municipal agreement to expand SSA into Pinelands Villages, and several such municipalities have not given such consent. (4, 5, 6)

**Response:** Department procedures for amendment of a WQM Plan are established at N.J.A.C. 7:15-3.4(g) and include, at N.J.A.C. 7:15-3.4(g)4i through iv and N.J.A.C. 7:15-3.4(d)3, requirements concerning written statements of consent. See also N.J.A.C. 7:15-5.22. After the Department identifies a list of parties, generally governing bodies, sewerage agencies, and sewer and water utilities, that may be affected by, or otherwise have a substantial interest in, approval of the proposed amendment, the applicant is required to request, within 15 days, such affected parties to issue a written statement of consent for the proposed amendment within sixty days of receiving the request. N.J.A.C. 7:15-3.4(g)4i; N.J.A.C. 7:15-5.22(b). An affected party may issue a written statement of consent, which includes a statement that the party concurs with, or does not object to, the proposed amendment. N.J.A.C. 7:15-3.4(g)4ii. Tentative, preliminary, or conditional statements are not considered to be statements of consent. *Id.* The party may also object in writing to a proposed amendment and shall state all reasons for objection in writing. *Id.* If a party denies a request for written consent or does not issue a written statement of consent, if the reasons are known on the basis of reasonably reliable information, same shall be considered in decision making on the proposed amendment pursuant to N.J.A.C. 7:15-3.4(g)8 and (g)9. Pursuant to N.J.A.C. 7:15-3.4(g)8, the Department may decide whether to reopen or extend the public comment period, disapprove the proposed amendment, return the proposed amendment, or prepare a new proposed plan amendment, if any data, information or arguments submitted during the public comment or in response to a written statement of consent appear to raise substantial new questions. N.J.A.C. 7:15-3.4(g)4iv. Or, the Department may, pursuant to N.J.A.C. 7:15-3.4(g)9, adopt the amendment as proposed, adopt the amendment with minor changes, or disapprove the amendment. These procedures make it clear that though there is an obligation on the applicant to seek written statements of consent, the Department has the authority to proceed to final action without written statements of consent from each entity from which consent was

requested once all information provided during the public comment and consent period has been considered by the Department.

The WQM Planning rules' requirements concerning written statements of consent were never intended to preclude an amendment from being adopted on the basis that not all affected entities, including municipalities, had provided a written statement of consent. In 1989, the Department explained the requirement that applicants request what were then called "endorsements" by affected parties. It was specifically noted that WQM Plan amendments could proceed even when requested endorsements, or, as they are called now, written statements of consent, were not obtained. See 21 N.J.R. 3099(a) (Oct. 2, 1989) at 3123-24 (cmts. 106 to 108) and at 3159-61 (N.J.A.C. 7:15-3.4(g)). See also 24 N.J.R. 344(b) (Feb. 3, 1992) at 345, 349, and 372-73; 25 N.J.R. 547(a) (Feb. 1, 1993) at 578 (change from endorsement to consent). In the Department's most recent adoption of the WQM Planning rules, the Department explains again that, while the Department must consider the responses to written statements of consent including objections, the Department retains final decision making authority on amendments. See 40 N.J.R. 4000(a) (July 7, 2008) (cmts. 51, 347, 362-363, 454, and 653).

**3. Comment:** The commenter believes that the map under consideration provides insufficient information to evaluate or justify approval. The WQM Planning Rules require that WMPs, including SSA maps, provide substantial information to justify each plan. The Department proposes to approve revised sewer service areas in isolation from any such information. This lack of information makes it impossible for the public to evaluate the maps. (8)

**Response:** The Atlantic County FWSA map was prepared and submitted pursuant to P.L. 2011, c. 203, enacted January 17, 2012, which permits the wastewater management planning agency to prepare and submit to the Department at least that portion of a WMP designating SSA, which shall comply with the Department's regulatory criteria. P.L. 2011, c. 203, likewise authorizes the Department to adopt an entire plan or a portion thereof. Pursuant to P.L. 2011, c. 203, the Department implemented a phased approach to comprehensive WMP planning. The Atlantic County FWSA Map is "that portion of a WMP designating SSA" pursuant to P.L. 2011, c. 203. As described in the proposal, the FWSA map was prepared in accordance with N.J.A.C. 7:15-

5.24, which governs the delineation of SSAs. The FWSA map is only one element of a WMP; it is not a complete WMP. As such, the FWSA map was not subject to the complete comprehensive planning set forth in N.J.A.C. 7:15. The development and adoption of the FWSA map is the first phase of comprehensive wastewater management planning. N.J.A.C. 7:15 requires Atlantic County to ultimately complete and submit a comprehensive WMP.

**4. Comment:** The commenter represents the Town of Hammonton and requests that the following areas in the Town be included within a SSA and depicted upon the FWSA map: Eighth Street, Seventh Street, Chew Road, Fourteenth Street, Oak Road, and the Atlantic City Expressway Maintenance Yard at Block 463, Lot 10, the Hammonton Airport, and the Oakwood Drive subdivision. The Oakwood Drive subdivision consists of 25 existing homes on small lots using private wells and onsite septic systems. The Town believes that connecting this subdivision to the sewer system would be in the best interests of the residents of the Oakwood Drive subdivision. (10)

**Response:** The commenter requests five locations identified by the name of nearby streets to be included in SSA. These areas lie across the street from the edge of the Hammonton Pinelands Town boundary and mapped SSA. These areas are excluded from SSA because they lie outside of the Pinelands Town and are not within a Pinelands Management Area District that is a Pinelands Regional Growth Area, Pinelands Town, Pinelands Village, substantially developed portions of a Military and Federal Installation Area or any other area where the Commission has permitted the development of centralized wastewater treatment and collection facilities in accordance with N.J.A.C. 7:50-6.84(a)2 to address a public health problem. The request, therefore, cannot be accommodated.

The Department has determined that it can accommodate the commenter's request that the Atlantic City Expressway Maintenance Yard be included in SSA. Sewer service currently exists at the Atlantic City Expressway Maintenance Yard, but the yard was inadvertently not included within a SSA on the proposed FWSA map. This mapping inaccuracy has been corrected upon adoption of the FWSA map to reflect the existing provision of sewer service to the site.

The Hammonton Airport lies outside of the Pinelands Town boundary and is not within an area where the Commission has permitted the development of centralized wastewater treatment and collection facilities in accordance with N.J.A.C. 7:50-6.84(a)2 to address a public health problem. Therefore, the FWSA map has not been altered to include this area at this time.

The Oakwood Drive subdivision lies outside of the Pinelands Town boundary and is not in a location where the Commission has permitted the development of centralized wastewater treatment and collection facilities in accordance with N.J.A.C. 7:50-6.84(a)2 to address a public health problem and as a result. Therefore, the FWSA map has not be altered to include this area at this time

**5. Comment:** The commenters represent Galloway Township, Egg Harbor Township, Folsom Borough, Estell Manor City, and the City of Northfield. Each provides a list of sites, as discussed further below, which identify parcels or projects which they feel should be included in SSA within the proposed FWSA map. (2, 3, 7)

**Response:** After considering each site, the Department has determined that the certain sites requested by the commenters to be included in SSA were excluded from SSA on the proposed map and must remain excluded from SSA pursuant to the provisions at N.J.A.C. 7:15-5.24, as discussed in further detail in the list below.

- The following parcels have been excluded from SSA on the adopted FWSA map pursuant to both N.J.A.C. 7:15-5.24(b) and (c): In Galloway Township, Block 988.12, lots 35, 36, Block 992, lots 1, 2, and Block 998.01, lots 17, 38, 40; in Egg Harbor Township, Block 4403, lot 27; and in the City of Northfield, Block 173, lot 12 and Block 158, lots 9 to 16, 62.
- The following parcels have been excluded from SSA in the adopted FWSA pursuant to N.J.A.C. 7:15-5.24(b): In Galloway Township, Block 984, lot 10.01; in Egg Harbor Township, Block 6601, lot 46, Block 5505, lot 31, and Block 3705, lots 2 and 2.01; and



in the City of Northfield, Block 173, lot 10, Block 157, lot 83, and Block 16.01 lots 40, 42, 43, 58, and 61.

- The following parcels have been excluded from SSA on the adopted FWSA map pursuant to N.J.A.C. 7:15-5.24(c): In Galloway Township, Block 1263, lots 1.01 to 1.2 and 2.01 to 2.04 and parcels on US Route 9 currently not connected to a sewage collection and treatment system; and in Egg Harbor Township, Blocks 5113 to 5117 and 5205 to 5210, all lots inclusive, and Blocks 6001 and 6004, all lots inclusive.
- The undeveloped portions of a parcel in Galloway Township known as Block 988.13, lot 37 have been excluded from SSA on the adopted FWSA map pursuant to both N.J.A.C. 7:15-5.24(b) and (c).
- The undeveloped portions of the following parcels have been excluded from SSA on the adopted FWSA map pursuant to N.J.A.C. 7:15-5.24(b): In Galloway Township, Block 988.01, lots 28.01 to 28.10, 13.09 and 13.10, Block 984, lots 9.04, 10.07, 10.08, Block 988.01, lot 10.09 and 10.1, Block 1178.01, lot 4.01, Block 1170, lot 19, and Block 1179.01 lots 30.01 to 30.04 and lots 31, 32.01 to 32.03; in Egg Harbor Township, Block 6601, lot 37; in the City of Northfield, Block 1, lot 9, and Block 16.01, lots 8, 44, 46.01, 46.02, 57, and 60.
- The undeveloped portions of the following parcels have been excluded from SSA on the adopted FWSA map pursuant N.J.A.C. 7:15-5.24(c): In Galloway Township, Block 952.01, lots 5.44, 5.45, 5.46, and Block 988.01, lot 19.01.

The Department has determined that the following parcels or developed sewage producing portions thereof can be appropriately included in SSA upon adoption of the FWSA map as they are already connected to sewer service: In Galloway Township, Block 952.01, lots 5.44, 5.45 and 5.46, Block 988.12, lots 33 and 34, Block 988.13, lot 37, Block 990, lot 1, Block 988.01, lots 10.09, 10.10, 19.01, 41, Block 984, lots 9.04, 10.06, 10.07, and 10.08, Block 1178.01, lot 4.01,

Block 1170, lot 19, and Block 1179.01, lots 30.01 to 30.04, 31, 32.01 to 32.03; and in the City of Northfield, Block 1, lot 9, Block 16.01, lots 8, 44, 46.01, 46.02, 57 and 60, and Block 157, lot 6. The Department has also determined that the following parcels or portions thereof were removed from the proposed FWSA inadvertently and contain sewage producing structures. These lands or portions thereof which contain sewage producing structures are being added back into the Atlantic County FWSA upon the adoption of this map. In Egg Harbor Township, Block 7401, lot 14, Block 7101, lot 135, Block 5505, lots 32.01 to 32.011, and Block 9701, lot 8 (marina facility and existing land based collection system only).

**6. Comment:** The commenter indicates that the proposed inclusion of the entire extent of the Estell Manor Pinelands Village within a SSA is not supported by the governing body of Estell Manor City and appears contrary to the City's zoning and the requirements of the Pinelands CMP. The commenter also requests the name of anyone who might have represented the City at any previous meeting where support for the inclusion of the Village within a SSA was alleged to have occurred. (4)

**Response:** With regard to inclusion of Estell Manor Pinelands Village within a SSA, please see the response to Comment 1 concerning the MOU between the Department and the Pinelands Commission. The Department is unaware of the person or persons who may have opined support for the inclusion of the Pinelands Village in a SSA during the course of the review of the FWSA map proposal and has no record of any correspondence on behalf of the City expressing support for the SSA mapping.

**7. Comment:** The commenter notes that the provision of sewer service to the Pinelands Villages could not be accomplished by infrastructure extension because of the restrictions on such projects by the requirements of the Pinelands CMP and would of necessity be limited to the development of new groundwater wastewater discharges. The commenter further notes, by way of example, that the conditions of soils within the Pinelands area of Atlantic County have been shown by the USGS to be unsuitable for large scale groundwater discharges and that this determination has been accepted by the Pinelands Commission. (5)

**Response:** The Department defers to the Pinelands Commission concerning the administration of Pinelands Comprehensive Management and its substantive regulations with regard to the extension of sewage collection infrastructure, but notes that any new discharge of treated wastewater to ground or surface water cannot occur until a demonstration of compliance with the Department's NJPDES and Treatment Works regulations has been made and all appropriate permits issued.

**8. Comment:** The commenter expresses concerns that site specific information was not included on the Atlantic County FWSA map that would enable property owners to understand the basis for whether or not their parcel was included, partially included, or excluded from the proposed SSA depicted on the Atlantic County FWSA map. In addition the commenter is concerned that the maps displayed by Atlantic County on its website did not contain the specific general notes required to be placed upon the adopted map that stipulate the limitations of the mapping. (9)

**Response:** The Department and Atlantic County have pursued an open and extensive public review process which has included meeting with the public, municipal officials, and affected agencies over the past four years. In accordance with AO #2010-3 signed by Commissioner Martin, a public meeting was held on March 23, 2011, to allow public review and comment on the then-current draft Atlantic County FWSA map, the notice of which was provided to each of the 23 municipalities covered by the County map and published in The Press of Atlantic City and The Asbury Park Press 30 days prior to the meeting.

To further assist the public, notice of this amendment was published in the New Jersey Register and The Press of Atlantic City beginning a 45 day public comment period, which included a public hearing, held on February 7, 2013. The Department notes that every individual property impacted by this amendment is not required by the implementing rules to be provided with site specific notice, but every effort has been made to respond to queries from the public as to why a site or portion thereof was included or excluded from the proposed FWSA mapping. As a result, the Department and the County have received continuous input from property owners and local governments regarding mapping corrections and other issues. In addition, please be advised that any party may submit an application to the Department for a site specific amendment or revision,

as applicable, to the WQM Plan to include or exclude additional areas and/or facilities in accordance with N.J.A.C. 7:15 and P.L. 2011, c. 203, as applicable.

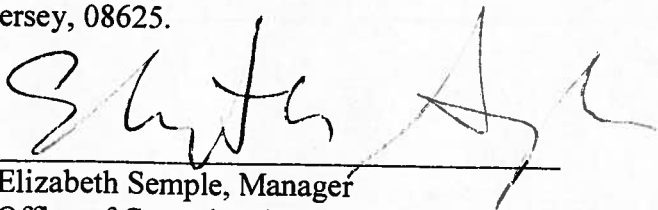
The Department will ensure that any FWSA map adopted for Atlantic County will also include all standard notes relating to mapping limitations and data use disclaimers.

**9. Comment:** The commenter expresses concern that the Department and County will be “inundated with applications for site-specific amendments and revisions following adoption of the FWSA map”. Additionally, the commenter notes that the review process has been “very costly, resource intensive and time delayed.” Further, the commenter urges the Department and County to abide by the timeframes and review process set forth in Section 6-8 of the 2012 water quality management planning law. (9)

**Response:** The Department fully intends to adhere to the specific review timeframes as required by law and to date has not experienced an increase in submissions seeking to amend or revise adopted FWSA maps.

Adoption of this amendment does not eliminate the need for any permits, approvals, or certifications required by any Federal, State, county, or municipal review agency with jurisdiction over any project/activity. Approval of this amendment does not provide any implied approval for any other aspects of any project or needed permits and approvals. Further, the Water Quality Planning Act and implementing regulations require that full county-wide WMP updates be completed pursuant to the requirements set forth in N.J.A.C. 7:15.

The adopted map is available at the Department, Division of Coastal and Land Use Planning, 401 East State Street, Trenton, New Jersey, 08625.

  
Elizabeth Semple, Manager  
Office of Coastal and Land Use Planning  
Department of Environmental Protection

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11/6/13  
Date