

**PUBLIC NOTICE**

**ENVIRONMENTAL PROTECTION**

**DIVISION OF COASTAL AND LAND USE PLANNING**

**Adopted Amendment to the Lower Raritan / Middlesex County Water Quality Management Plan**

**Public Notice**

Take notice that on **MAR - 5 2013**, pursuant to the provisions of the New Jersey Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., the Water Quality Management (WQM) Planning rules, N.J.A.C. 7:15, and P.L. 2011, c. 203, the Department of Environmental Protection (Department) adopted an amendment to the Lower Raritan / Middlesex County WQM Plan. This amendment adopts the Future Wastewater Service Area (FWSA) map for that portion of Somerset County within the Lower Raritan / Middlesex County WQM planning area only, which includes the municipalities of Franklin Township, Bound Brook Borough, South Bound Brook Borough, Green Brook Township, North Plainfield Borough, a portion of Bridgewater Township in the vicinity of U.S. Route 22 and County Route 527, and only the southern portion of Watchung Borough served by the Middlesex County Utility Authority Sanitary Treatment Plant. The northern area of Watchung Borough within the Berkeley Heights Wastewater Pollution Control Plant service area is not addressed by this amendment.

Notice of the Somerset County FWSA map amending the Lower Raritan/Middlesex County WQM Plan was published in the New Jersey Register on November 19, 2012, at 44 N.J.R. 2966(c), and appeared in The Home News

Tribune and The Courier News on the same date. In accordance with the Lower Raritan / Middlesex County WQM Plan adopted amendment procedures, a public hearing was held on Friday, December 21, 2012, by the Middlesex County Board of Chosen Freeholders, as the designated WQM Planning Agency for the Lower Raritan / Middlesex County WQM Plan, for the portions of the FWSA map for Somerset County that are within the Lower Raritan / Middlesex County WQM Plan. The public comment period for the amendment to the Lower Raritan/Middlesex County WQM Plan closed fifteen days following the December 21, 2012, public hearing. In accordance with the Lower Raritan / Middlesex County WQM Plan amendment procedures, on February 7, 2013, the Middlesex County Board of Chosen Freeholders approved the proposed amendment for formal adoption by the Department. The adoption of this amendment addresses the FWSA map for only that portion of Somerset County within the Lower Raritan/Middlesex WQM Plan.

A separate public hearing and comment period for related proposed amendments pertaining to portions of a FWSA map for Somerset County that are within the Upper Raritan and Northeast WQM Plans (all of Somerset County with the exception of the area covered by this amendment) was held on June 20, 2012. Notice of those proposed amendments, public hearing, and comment period appeared in the New Jersey Register on May 21, 2012, at 44 N.J.R. 1664(a), and was published in The Star Ledger, The Home News Tribune, and The Courier News on the same date. These amendments were formally adopted by the Department on January 24, 2013. A map of the boundary locations of the WQM planning areas and the respective municipalities is available for review on the Department website under "What's New" at <http://www.nj.gov/dep/wqmp/wmpnotices.html>.

This adopted amendment was submitted on behalf of the Board of Chosen Freeholders of Somerset County as the responsible Wastewater Management Planning Agency. The proposed amendment was submitted to the Department

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 (WMP) designating sewer service area (SSA), which shall comply with the Department's regulatory criteria. The adopted map, titled "Future Wastewater Service Areas, Somerset County, NJ Amending the Lower Raritan / Middlesex County Areawide Water Quality Management Plan," supersedes all wastewater service area mapping currently contained in the Lower Raritan / Middlesex County WQM Plan for areas within Somerset County, including that which was adopted into the WQM Plan as part of an adopted WMP.

The adopted FWSA 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 (gpd). The map modifies the previously approved SSAs to eliminate environmentally sensitive areas that are not currently connected to sewer systems. Additionally, the map removes areas from sewer service based on local planning initiatives, and also includes areas previously excluded from SSA based on local planning objectives. 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 stormwater regulations,

antidegradation, effluent limitations, water quality analysis, 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 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 Somerset 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 January 20, 2011, to allow public review and comment on the then-current draft of Somerset 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, environmentally sensitive areas have been assessed to determine what areas must be excluded from the adopted SSAs. Pursuant to N.J.A.C. 7:15-5.24, environmentally sensitive areas 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 wildlife 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 (Landscape

Project). 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, their tributaries, and all Highlands waters 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 Highlands Water Protection and Planning Act rules (N.J.A.C. 7:38), the Stormwater Management rules (N.J.A.C. 7:8), and the WQM 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 wetlands pursuant to N.J.S.A. 13:9A-1 and 13:9B-25 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, not applicable here, must also be excluded from SSA. Specifically, there are no Coastal Fringe Planning Areas, Coastal Rural Planning Areas, or Coastal Environmentally Sensitive Areas in the Lower Raritan / Middlesex County WQM planning area.

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 to serve development in these areas 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. 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 environmentally sensitive areas, are unaffected by adoption of this amendment and compliance is required.

In addition to the environmentally sensitive 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, not applicable here, which must also be excluded from the adopted SSA pursuant to N.J.A.C. 7:15-5.24(d)2 through 4. Specifically, there are no beaches, coastal high hazard areas, or dunes in the Lower Raritan / Middlesex County WQM planning area.

As provided under N.J.A.C. 7:15-5.24(e) through (h), limited environmentally sensitive areas have been included in the adopted SSA. Where applicable, Department Permits or Jurisdictional Determinations have been utilized to determine the extent of the SSA on individual lots.

The notice of this amendment proposal was published in the New Jersey Register on November 19, 2012, at 44 N.J.R. 2966(c). A public hearing was held on December 21, 2012.

The following people submitted comments on this amendment during the public comment period:

**Number – Commenter Name, Affiliation**

1. Timothy Touhey, New Jersey Builders Association (NJBA)
2. Robert Bzik, Somerset County Planning Board

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 commenter commends Somerset County on providing adequate public notice to residents throughout the SSA mapping process. Somerset County has been transparent and very proactive in communicating with affected parties from the onset of developing its FWSA map. During the SSA delineation process, Somerset County initiated a property owner notification effort where all property owners whose lands were proposed to be removed from the SSA, in whole or in part, were notified by the County via certified mail and provided with written guidance on Department requirements and procedures for requesting the return of lands to the SSA. The public review and comment process is critical to rectifying mapping errors and allows oversight over the draft prior to adoption. The commenter has advocated to the Department that such measures are needed State-wide. (1)

**Response:** The Department thanks the commenter for its comments and will take its recommendations into consideration. However, the Department notes that notice to every individual property owner impacted by this amendment is not required by the adopted WQM Planning rules.

**2. Comment:** The commenter states that the Somerset County FWSA map should align with the criteria defining priority growth investment areas provided under the draft State Strategic Plan. (1)

**Response:** Neither P.L. 2011, c. 203, nor the WQM Planning rules require alignment with the State Planning Act, N.J.S.A. 52:18A-196 *et seq.*, the adopted State Development and Redevelopment Plan (SDRP), or its proposed replacement, the draft State Strategic Plan. However, the Department will take necessary actions to support the State Strategic Plan upon adoption and seek to integrate the SDRP, regional, and local land use plans, consistent with the WQM Planning rules. Upon adoption of the State Strategic Plan, the Department will work to establish a clear connection between Strategic Plan-identified “Investment Area” criteria and the WQM planning process. Further, the WQM Planning rules allow for the inclusion of SSA in environmentally sensitive areas provided it is designed to accommodate center based development and is an element of an endorsed plan approved by the State Planning Commission, in certain circumstances, at N.J.A.C. 7:15-5.24(h).

**3. Comment:** The commenter asserts that the reliance on existing Department Geographical Information Systems (GIS) mapping data to create the first draft of proposed SSA provided to each county is not reliable and therefore requires extensive field verifications. (1)

**Response:** The Department believes that the use of GIS is not only the most accessible approach for wastewater management planning agencies but is also appropriate for the scale of planning required in the WQM Planning rules at N.J.A.C. 7:15. Because GIS coverages are readily available, have a high degree of accuracy, and can be viewed at various scales, they provide a means to simplify the wastewater management plan development process that will help ensure plans are developed, kept up to date, and serve the purpose for which they were intended. More detailed, or site by site analysis, is more appropriate for



regulatory programs (that is, site plan review, or land use permitting) and is infeasible at a planning level. However, it was recognized by the Department from the beginning of the WMP development process that the Department's existing GIS data utilized to create the first draft of proposed SSA required some verification and "ground truthing" by the WMP agencies. Accordingly, each WMP agency participating in this planning process was contacted by the Department via written correspondence that included a first draft of the proposed SSA. This correspondence noted that the SSA map provided was intended as the starting point from which the County should begin discussions with the municipalities to refine the draft SSA. Where new, more accurate information is available to local entities regarding development, wastewater management planning agencies are encouraged to use it to enhance the GIS data layers the Department provides on its website. Changes based on existing land use/construction since 2002 and approved (having obtained local and wastewater approvals) but not yet constructed projects were a particular focus of the process. In addition, numerous site-specific analyses, including Freshwater Wetlands (FWW) Letter of Interpretations, Habitat Suitability Determinations, and FWW and Flood Hazard Area permits were utilized to further modify the draft SSA. As such, development of the SSA did indeed result in extensive field verification, which validates the SSA delineation included in this amendment.

**4. Comment:** The commenter asserts that the proposed FWSA map does not include the underlying rationale explaining why specific areas are proposed to be removed (or added) to SSA. It is suggested that footnotes be added to explain those bases (i.e. threatened and endangered species habitat, wetlands). (1)

**Response:** As indicated by the commenter, the proposed FWSA map does not include footnotes explaining which regulatory mapping criteria (i.e. wetlands threatened and endangered species etc.) was used as the basis for exclusion of specific areas from the proposed SSA. This is because the mapping display is constrained by the actual amount of information included. Similarly, adding

footnotes or other textual information associated with every location excluded or removed from the SSA would not be practical or desirable from a display standpoint. The Department notes that all of the GIS data utilized by the Department during this process is available for review and download on the Department's website (<http://www.nj.gov/dep/gis>). Further, pursuant to AO# 2010-03, the Department will provide any property owner, upon written request, an explanation of the issues preventing the inclusion of a specific site in the proposed SSA. In addition, the Department and Somerset County have provided at numerous meetings, and via numerous correspondence, similar information. The Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., 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. A complete county-wide WMP is required to include mapping of all of the environmental resource criteria used as the basis for the SSA delineation.

**5. Comment:** The commenter asserts that areas currently served by septic systems that were designed and constructed prior to 1989 should be included in SSA. (1)

**Response:** The decision to include parcels currently served by septic systems within the SSA is based on local planning objectives of the individual municipality, prioritizing existing failing systems, the availability of sewer infrastructure, if any, upon agreement from the managing sewerage or municipal utilities authorities, regardless of the timeframe it was installed, and a demonstration that the expanded service area does not create a significantly new pattern of sewered development such that a significant potential or incentive is created for additional revisions or amendments to open new areas to sewered development.

**6. Comment:** The commenter asserts that large areas of lands constrained in various ways have been removed from the previously approved SSA. The

commenter questions why such a significant portion of these lands should be removed from the SSA if they are not buildable. (1)

**Response:** The Department recognizes that some undevelopable lands, such as detention basins, cemeteries, highway medians, ROWs, and common lands owned by homeowners associations, although not environmentally sensitive, were removed from the SSA. The Department maintains that, as no wastewater is to be generated for such sites, there is no compelling need to identify them as SSA. In fact, their inclusion in SSA gives the misrepresentation that these areas can be developed.

**7. Comment:** The commenter notes that per clause 4 of P.L. 2011, c. 203, the submission that was required within 180 days of enactment was the “portion...designating a sewer service area, which shall comply with the department’s regulatory criteria.” The commenter is concerned about how the Department will review and process development or activity on septic systems, particularly as Somerset County’s proposed map depicts areas as dependent on septics. (1)

**Response:** The Somerset County FWSA map designates areas outside of SSA as a wastewater planning area designation of “Septic Areas (Areas to be served by Individual Subsurface Sewage Disposal Systems with planning flows 2,000 gpd or less (ISSDS).” Development in the Septic Area is to be served by ISSDS, more commonly referred to as septic systems. A proposed development in the Septic Area utilizing an ISSDS/septic system is regulated by the local public health department as the acting administrative authority or the Department under N.J.A.C. 7:9A and is not subject to the WQM Planning rules amendment requirements or review procedures. However, any proposed development within the Septic Area utilizing an ISSDS and that has been determined to discharge, individually or in combination on a single project property, greater than 2,000 gpd and requires a NJPDES permit, would necessitate an amendment to the

appropriate WQM Plan and therefore would be subject to site specific review procedures pursuant to the WQM Planning rules and/or P.L. 2011, c. 203, as applicable.

**8. Comment:** The commenter asserts that application of the Recharge-Based Hydraulic Unit Code (HUC) 11-Scale Nitrate Carrying Capacity Planning Tool model developed by the Department employs conservative assumptions that result in significantly large lot sizes for single family dwellings. These lots can range from five to ten acres and greatly contribute to residential sprawl. The commenter asserts that the larger lots that are required under this model are not justified and make it all the more difficult for a developer to satisfy their COAH obligation in the rural areas of Somerset County. The commenter encourages the County and the Department to recognize the availability of alternative wastewater treatment technologies that can reduce nitrate levels in the wastewater discharge. (1)

**Response:** As the Recharge-Based HUC 11-Scale Nitrate Carrying Capacity Planning Tool model was not used in the delineation of the SSA, this comment goes beyond the scope of this proposed amendment. A full WMP, which must include a septic density analysis on a HUC 11 basis, where the model is appropriately used, has not been submitted to the Department at this time. However, the Department has previously responded to similar comments submitted in response to its May 21, 2007, proposal of the WQM Planning rules (N.J.A.C. 7:15). For the specific responses to the comments regarding applicability of the Recharge-Based HUC 11-Scale Nitrate Carrying Capacity Planning Tool model in conducting a HUC-11 septic density analysis as part of completing a WMP, the commenter may refer to the adopted rule notice published in the New Jersey Register on July 7, 2008, at 40 N.J.R. 4000(a).

**9. Comment:** The commenter commends Somerset County for providing on its website supporting mapping information and associated tables created by the County as a result of the ongoing development of its FWSA mapping and ongoing

process to complete a WMP. It is noted that specific tables indicate total acres proposed to be removed from and/or added to the SSA. However without knowing the underlying information, the commenter is unable to determine and comment on the appropriateness of the total decrease of the SSA. (1)

**Response:** With regard to the supporting mapping and associated information maintained by the County, the Department supports Somerset County's decision to post and share this information with the public, but the Department notes also that doing so is not a requirement of the WQM Planning rules. In addition, as the tables referred to by the commenter are a product of Somerset County, questions as to the results or its interpretation are best directed to them. However, as noted above, the underlying rationale for the exclusion of areas within SSA would have been provided by the Department, pursuant to AO# 2010-03, upon written request. In addition, the Department and Somerset County provided at numerous meetings, and via numerous correspondence, similar information.

**10. Comment:** The commenter maintains that the Department and Somerset County will be inundated with applications for site-specific amendments and revisions following the adoption of the county FWSA maps. The commenter expressed that, based upon experience, the site specific amendment and revision process is very costly, resource intensive, and unnecessarily slow. Therefore, the commenter strongly urges the Department and Somerset County to abide by the timeframes and review process set forth in sections 6-8 of P.L. 2011, c. 203. (1)

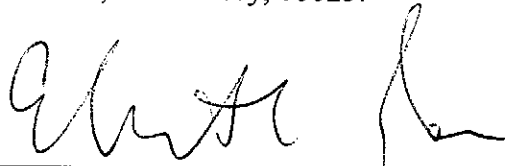
**Response:** The Department fully intends to adhere to the specific review timeframes as required by law.

**11. Comment:** The commenter voiced support for the adoption of Somerset County's FWSA map. (2)

**Response:** The Department thanks the commenter for his support and acknowledges the endorsement for adoption of the FWSA map.

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. Adoption 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, N.J.S.A. 58:11A-1 et seq., 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  
Division of Coastal and Land Use Planning  
Department of Environmental Protection

3/5/13

Date