

ENVIRONMENTAL PROTECTION

OFFICE OF WATER RESOURCES MANAGEMENT COORDINATION

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

Public Notice

Take notice that on **JAN 15 2016**, 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 (N.J.A.C. 7:15-3.4), an amendment (P.I. # 435463 Activity # AMD150001) to the Lower Raritan/Middlesex County Water Quality Management Plan (WQMP) was adopted by the Department of Environmental Protection (Department). This amendment, entitled “Metuchen/South River/North Brunswick Sewer Service Area”, submitted by the Middlesex County Department of Planning on behalf of the Middlesex County Board of Chosen Freeholders, expands the Middlesex County Utilities Authority (MCUA) sewer service area (SSA) to add 4 separate sites totaling 42.43 (not 46 acres as stated in the October 8, 2015 preliminary notice which was published in the October 21, 2015 DEP Bulletin) to the MCUA sewer service area. This amendment has been reviewed in accordance with the Water Quality Management Planning rules at N.J.A.C. 7:15 and P.L. 2011, c. 203 as amended and supplemented by P.L. 2013, c. 188. This notice represents the Department’s determination that the amendment is in compliance with the regulatory criteria pursuant to N.J.A.C. 7:15-5.24 and 5.25.

The four sites are located in the following municipalities in Middlesex County: Metuchen Borough (Site 1) - portions of the following lots: Block 37/ Lots 5.12, 5.22, 16.02, 17.01, 17.02, Block 39/Lot 40 (portions of the following lots in Site 1 that had been originally proposed to be included in the SSA will not be added to the SSA with this adoption: Block 37/Lots 16.03, 20, Block 37.01/Lot 16, Block 38/Lot 1.); South River Borough (Site 2) - Block 49/Lots 1.01, 2 (portion), Block

68/Lot 1 (portion), Block 77.01/Lot 1 (portion), Block 83/Lot 1 (portion); North Brunswick Township (Site 3) - Block 148/Lot 114.01 (portion) and (Site 4) - Block 262/Lot 108. The sewer service area additions are: 3.57 acres (Site 1), 14.23 acres (Site 2), 23.96 acres (Site 3) and 2.97 acres (Site 4). Sites 1-3 were reviewed prior to the adoption (on March 11, 2015) of the Middlesex County Future Wastewater Service Area (FWSA) map amendment but could not be included upon adoption because that would have constituted a substantive change to the amendment that was publicly noticed. All sites are currently vacant, with the exception of Site 4, which has one single family home on the property. There are no development proposals for any of the sites at this time. P.L. 2013, c. 188 allows the Department to review amendments to a WQMP to allow for the inclusion of land in a sewer service area, where the amendment does not propose a specific project or activity.

In accordance with N.J.A.C. 7:15-5.24, environmentally sensitive areas (ESAs) have been assessed to determine what areas of the proposed project sites are appropriate for inclusion in the SSA. Pursuant to N.J.A.C. 7:15-5.24(b), ESAs are defined as contiguous areas of 25 acres or larger consisting of habitat for threatened and endangered species as identified on the Landscape Project Maps of Habitat for Endangered, Threatened or Other Priority Species, Natural Heritage Priority Sites, Category One (C1) special water resource protection areas, and wetlands, alone or in combination. These ESAs are not included in the SSA except as noted below.

In accordance with N.J.A.C. 7:15-5.24(b)1, to identify 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, version 3.1. Areas identified by the Landscape Project as being suitable habitat for threatened and endangered species Ranks 3 (State threatened), 4 (State endangered), and 5 (Federal endangered or threatened) are not to be included in SSAs except as provided under N.J.A.C.

7:15-5.24(e) – (h). Review of Sites 1 and 4 has determined that no threatened or endangered species habitat exist on either site.

Review of Site 2 determined that a portion is identified as Rank 3 habitat for the following species: Yellow Crowned Night Heron and Great Blue Heron. However, the habitat area located on this site is a small, isolated patch that is less than 25 acres. It therefore does not meet the criteria for exclusion from the SSA pursuant to N.J.A.C. 7:15-5.24(b)1.

Review of Site 3 determined that a portion is identified as Rank 3 habitat for the following species: Wood Turtle, Wood Thrush and Great Blue Heron. In June 2013 the Department received a Habitat Suitability Determination application (HSD). The HSD application was submitted in accordance with the provisions at N.J.A.C. 7:15-5.26 which describes the information that must be submitted by an applicant in order for the Department to re-evaluate the finding that a site is constrained for threatened and endangered species habitat. The Department concurred with the application's finding that the site was not suitable habitat for the species identified in the Landscape Project mapping.

In accordance with N.J.A.C. 7:15-5.24(b)2, areas mapped as Natural Heritage Priority Sites are not to be included in SSAs, except as provided under N.J.A.C. 7:15-5.24(e) – (h). The review has determined that no Natural Heritage Priority Sites exist on any of the sites.

In accordance with N.J.A.C. 7:15-5.24(b)3, areas identified as special water resource protection areas along Category One waterways and their tributaries are not to be included in SSAs, except as provided under N.J.A.C. 7:15-5.24(e) – (h). The Department has determined that no special water resource protection areas along Category One waters exist on any of the sites.

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 to be included in SSAs, except as provided

under N.J.A.C. 7:15-5.24(e) – (h). Review of Site 4 has determined that no wetlands are on the site. For Site 1 in accordance with N.J.A.C. 7:15-5.24(e)2, Letter of Interpretation: Line Verification File # 1210-13-0001.1 FWW130001 was provided, confirming the extent of wetlands and transition areas on the site. The preliminary notice had incorrectly stated that the 50 foot wetlands transition areas were not included in the proposed SSA. However, portions of the transition areas within Block 37/Lot 17.02 are, in fact, being included in the SSA and had been included in the draft map that accompanied the preliminary notice. This issue is further addressed in the comment/response section of this notice. The provisions at N.J.A.C 7:15-5.24(b)4, have been satisfied by the exclusion of the mapped wetlands from the SSA.

For Site 2, in accordance with N.J.A.C. 7:15-5.24(e)2, Letter of Interpretation: Line Verification File #1223-04-0001.1 FWW080001 was provided, confirming the extent of wetlands and transition areas on the site. The provisions at N.J.A.C 7:15-5.24(b)4, have been satisfied by the exclusion of both the mapped wetlands and associated 50-foot transition areas from the SSA. The above mentioned approval remains valid under the Permit Extension Act at N.J.A.C. 7:1B until June 30, 2016.

For Site 3, in accordance with N.J.A.C. 7:15-5.24(e)2, Letter of Interpretation: Line Verification File #1215-05-0007.1 FWW050001 was provided, confirming the extent of wetlands and transition areas on the site. The wetlands area located on this site are small, non-contiguous areas of less than 25 acres. They therefore do not meet the criteria for exclusion from the SSA pursuant to N.J.A.C. 7:15-5.24(b)1. One small wetlands area on the southeast corner of the site will remain excluded from the SSA. The approved LOI referenced above remains valid under the Permit Extension Act at N.J.A.C. 7:1B until June 30, 2016.

Pursuant to N.J.A.C. 7:15-5.24(c), Coastal Fringe Planning Areas, Coastal Rural Planning Areas, and Coastal Environmentally Sensitive Areas shall be excluded from SSA. There are no such areas on the sites.

Pursuant to N.J.A.C. 7:15-5.24(d)1, areas with Federal 201 grant limitations that prohibit the extension of sewers into specified environmentally sensitive areas are excluded from the SSA. 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, there are other special restricted areas, not applicable here, which must also be excluded from SSA pursuant to N.J.A.C. 7:15-5.24(d)2-4. Specifically, there are no beaches, coastal high hazard areas, or dunes on the project sites.

In accordance with N.J.A.C. 7:15-5.25(h)1, the projected wastewater flow of a site is to be evaluated. However, P.L. 2013, c. 188 allows the Department to approve the inclusion of land within a sewer service area notwithstanding that existing treatment works may not currently have the assured capacity to treat wastewater from such land without infrastructure improvements or permit modifications. Therefore amendments to expand a sewer service area 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. Currently the MCUA sewage treatment plant (NJ0020141) is permitted to discharge up to 147 million gallons per day (MGD) of treated wastewater to the Raritan River. Based on an average of the monthly average flow for the most recent twelve month period for which discharge monitoring data is available, the existing wastewater flow discharged from the MCUA sewage treatment plant was calculated to be 105.61 MGD.

In accordance with N.J.A.C. 7:15-5.25(h)3, the water supply need of a project is to be evaluated. However, P.L. 2013, c. 188 allows the Department to review amendments to a WQMP that allow for the inclusion of land in a sewer service area, where the amendment does not propose a specific project or activity. For Site 1, Metuchen Borough is served by the Middlesex Water Company (PWSID No. 1225001). Middlesex Water Company has diversion privileges set by Water Allocation Permits 5293 and 5294, with additional bulk purchases, for a total supply of 2,051.960 million gallons per month (MGM) and 21,160 million gallons per year (MGY). Middlesex Water Company currently has a water supply surplus of 141.350 MGM and 1,781.793 MGY. For Site 2, South River Borough is served by the South River Borough Water Department (PWSID No. 1223001). South River Borough Water Department currently has diversion privileges of 56 MGM and 238.424 MGY set by Water Allocation Permit 5171. South River Borough Water Department also purchases water (29.45 MGM and 346.75 MGY) from East Brunswick Township, however, the contracts for water sold to other systems by the East Brunswick Water Utility have not been approved by the Department's Bureau of Water Allocation and Well Permitting. Therefore, the water purchased by the South River Borough Water Department from the East Brunswick Water Utility cannot be credited towards South River Borough Water Department's Firm Capacity, available monthly and yearly limits. As such, the South River Borough Water Department currently has a Firm Capacity deficit of 0.060 MGD and a yearly water deficit of 185.074 MGY (not 0.028 MGD and 166.657 MGY respectively, as stated in the preliminary notice). The Department and East Brunswick are currently in discussions pertaining to this matter. For Sites 3 and 4, North Brunswick Township is served by the North Brunswick Water Department (PWSID No. 1215001). The North Brunswick Water Department does not have its own water allocation limits rather, it has a water supply contract with the New Jersey Water Supply Authority (NJWSA) totaling 248 MGM and 2,920 MGY. North Brunswick Water Department currently has a water supply surplus of 12.046 MGM and 716.940 MGY.

In accordance with N.J.A.C. 7:15-5.25(h)4, a project or activity's stormwater management is to be evaluated. However, P.L. 2013, c. 188 directs that there is a presumption that an engineered subdivision or site plan is not required. Without such information, a review and determination of compliance with the Stormwater Management rules (N.J.A.C. 7:8) is not possible. The municipal governments are responsible for review and implementation of the Stormwater Management rules during their review and approval of proposed development. Metuchen Borough, South River Borough, and North Brunswick Township have adopted stormwater management ordinances (No.'s 2005-18, 2007-17, Chapter 205 Article 37, respectively); see N.J.A.C. 7:8-4. These municipalities are also required to implement the N.J.A.C. 7:8 requirements incorporated in the Residential Site Improvement Standards; see N.J.A.C. 5:21-7.

In accordance with N.J.A.C. 5.25(h)5, riparian zones are not to be included in SSAs, except as provided under N.J.A.C. 7:15-5.25(h)5i-vii. Riparian zones or buffers are established along all surface waters, based on the surface water body's classification designated in the Surface Water Quality Standards at N.J.A.C. 7:9B, under the following regulations: the Flood Hazard Area Control Act rules, the Stormwater Management rules, and the Water Quality Management Planning rules. For Site 1, a riparian zone of a Bound Brook tributary has been identified on Block 37/Lot 5.22. The required buffer width for the Bound Brook tributary, which is designated FW2-NT, is 50 feet. There are no riparian zones located on Sites 2, 3, and 4.

In order to satisfy the Riparian Corridor Analysis, Metuchen Borough has adopted Ordinance No. 2011-04 to ensure the protection of the riparian corridors along all perennial and intermittent streams. The adopted ordinance establishes and protects Water Resource/Buffer Conservation Zones ("stream corridor buffer") adjacent to New Jersey Surface Water Quality Standards designated waters (excluding man-made) and regulates development within those zones. The stream corridor buffers vary in width depending upon the water body's classification in the Surface Water Quality Standards at N.J.A.C. 7:9B-1.15. The preliminary notice

correctly stated that the proposed SSA was not located within the riparian buffer zone. However, portions of the riparian buffer zone located on Block 37/Lot 5.22 were incorrectly included in the draft map accompanying the preliminary notice. These riparian buffer areas have not been adopted as SSA as part of this amendment. The provisions at N.J.A.C. 7:15-5.25(h)5i, have been satisfied for Site 1 by the exclusion of the riparian corridor and associated 50 foot buffer of the Bound Brook tributary from the SSA and the adoption of Ordinance 2011-04.

In accordance with N.J.A.C. 7:15-5.25(h)6, proposed development disturbance is not to be located in areas with steep slopes, defined as any slope equal to or greater than 20 percent. There are no steep slopes on the subject sites.

This amendment proposal was noticed in the DEP Bulletin on October 21, 2015 at Volume 39, Issue 20, pages 7-11 and comments were received during the comment period.

List of Commenters

Number—Name, Affiliation

1. Jennifer Maier, Metuchen Borough Administrator
2. Kevin MacManimon, Metuchen Borough Attorney
3. Metuchen Borough – via resolution 2015-306
4. Lori Grifa, Archer & Greiner, P.C.

1. Comment: The Borough objects to the inclusion of Block 37, Lots 5.22 and 17.02, both owned by Metuchen Realty Acquisitions (MRA), into the SSA. They are identified as wooded and consisting of freshwater wetlands and associated 50 foot wetlands transition areas. They appear to be totally constrained by wetlands and their associated transition areas. These parcels are partially or completely located within the 100 and 500 year flood hazard areas. (1,2,3)

2. Comment: The Borough's statements regarding the status of the wetlands and flood zones on these lots are inaccurate overstatements of fact and overzealous interpretations of applicable regulations. They contradict the Freshwater Wetlands LOI issued by the Department on October 8, 2013 and in possession of the Borough since that time. (4)

Response to comments 1 and 2: The Department's preliminary notice for this amendment originally included portions of Lots 5.22 and 17.02 in the proposed SSA. As discussed above in regards to Lot 5.22, the preliminary notice correctly stated that the proposed SSA was not located within the riparian buffer zone (although the draft map that accompanied the preliminary notice included these areas in the proposed SSA). These riparian areas have not been included in the SSA with this adoption. In addition, portions of Lot 5.22 are delineated as wetlands as per the LOI. These wetland areas were excluded from the proposed SSA and remain so excluded in this adoption. The sewer service area delineation criteria do not specifically prohibit wetlands transition areas nor flood hazard areas from inclusion in a SSA. The remaining portion of Lot 5.22 included in the SSA are in compliance with N.J.A.C. 7:15-5.24 and 5.25 regarding the sewer service area delineation criteria.

With regards to Lot 17.02, the preliminary notice had incorrectly stated that the 50 foot wetlands transition areas were removed from the proposed SSA. Portions of the transition areas within Block 37/Lot 17.02 were, in fact, included in the proposed SSA on the draft map that accompanied the preliminary notice. As discussed above, wetlands transition areas are not required to be excluded from inclusion in a SSA in the Department's rules regarding sewer service area mapping. As such, the transition areas are being adopted into the SSA. The remaining portion of Lot 17.02 included in the SSA are in compliance with N.J.A.C. 7:15-5.24 and 5.25 regarding the sewer service area delineation criteria.

The applicant may re-apply for further inclusion of SSA on Lots 5.22 and 17.02 through submission of a Department permitting instrument, such as a Flood Hazard Area Act permit (“Stream Encroachment Permit”) issued pursuant to N.J.A.C. 7:13, or a Freshwater Wetland permit issued pursuant to N.J.A.C. 7:7A, respectively, or evidence of a change in environmental conditions that is confirmed officially by the Department.

3. Comment: Metuchen Borough objects to the inclusion of portions of Block 37/Lots 16.03, 20, Block 37.01/Lot 16, Block 38/Lot 1 and Block 39/Lot 40 into the SSA. These lots are the sites of: a satellite dish location, single family dwellings which have existing sanitary sewer service, and vacant land owned by Metuchen Borough. Therefore, these lots do not need to be added into the sewer service area. (1, 2, 3)

Response: These lots were proposed for inclusion in the SSA by the Middlesex County Department of Planning (the amendment applicant) in order to “fill in the gaps” between the currently adopted SSA and the MRA lots proposed to be added to the SSA. This was done in order to have a straighter and smoother SSA boundary. Subsequently the Middlesex County Department of Planning has decided not to proceed with the inclusion of 4 of the 5 Middlesex initiated lots (Block 37/Lots 16.03, 20, Block 37.01 Lot 16, and Block 38/Lot 1). As such, these 4 lots have not been added to the SSA.

As stated by the commenter Block 39/Lot 40 is a very small single family home lot which is currently connected to the MUA sewer system. This lot is already partially within the adopted sewer service area but half of the existing house was mapped as outside of the sewer service area. The Middlesex County Department of Planning had proposed to include the remaining small portion of the lot in the SSA to accurately reflect the extent of existing connected development in the SSA. The Department supports Middlesex’s decision as it is consistent with N.J.A.C. 7:15-3.5(b)1i which provides for revisions to “Correct, clarify, or update erroneous,

unclear, or outdated statements in Statewide and areawide WQM Plans regarding:
i. Development...existing at the time of the most recently adopted areawide WQM
Plan or amendment affecting the site...”.

This amendment represents only one part of the permit process and other issues
may need to be addressed prior to final permit issuance. These issues may include,
but are not limited to, the following: compliance with stormwater regulations;
antidegradation; effluent limitations; water quality analysis; exact locations and
designs of future treatment works; development in wetlands and flood prone areas,
or other environmentally sensitive areas which are subject to regulation under
Federal or State statutes or rules. Approval 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 this project/activity.

Sewer service to any particular project is subject to contractual arrangements
between municipalities, authorities and/or private parties, and is not guaranteed by
this amendment



Colleen Kokas, Director
Office of WRM Coordination
Department of Environmental Protection

1-15-16

Date

