

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 2015**, 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 (PI# 435463; Activity# AMD150005) to the Lower Raritan/Middlesex County Water Quality Management Plan (WQMP) was adopted by the Department of Environmental Protection (Department). This amendment, submitted on behalf of Middlesex Energy Center LLC, expands the sewer service area (SSA) of the Middlesex County Utilities Authority (MCUA) Sewage Treatment Plant (STP) by 8.19 acres to serve a proposed combined cycle power plant. The project site is located in Sayreville Borough, Middlesex County on portions of: (Block 57.02/Lot 1; Block 57.04/Lot 1; and Block 57.05/Lot 1) now known as Block 58, Lot 9, which is west of Jernee Mill Road (Route 675) and east of the South River. 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.

N.J.A.C. 7:15-5.24 identifies several areas that are not to be provided sewer service due to their environmental sensitivity. 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. No such ESAs are included in the SSA.

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 the project site determined that a portion of the site is identified as Rank 4 Yellow Crowned Night Heron and Bald Eagle habitat.

In August, 2015, the Department received a Habitat Suitability Determination application (HSD), prepared by Maser Consulting. The HSD application was submitted in accordance with the provisions at N.J.A.C. 7:15-5.26. This section of the Water Quality Management Planning Rules 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 determined that only a small portion of this area falls within the bald eagle foraging model based on the Department's further review of resource mapping for the site. These areas of suitable habitat have not been included in the SSA. With regards to Yellow Crowned Night Heron, tidal ditches and creeks occur along the shoreline of the South River, Pond Creek, and tributaries of the South River at this location. However, these potential foraging areas for Yellow Crowned Night Heron occur more than 400 feet from areas being included in the SSA with this amendment. In the Department's review of the Freshwater Wetlands Letter of Interpretation (LOI) issued for this property, the wetlands received a classification of intermediate resource value. This classification was reaffirmed when the LOI was extended in 2014 (see below) and supports the findings in the HSD that the project site does not contain suitable foraging habitat for Yellow Crowned Night Heron.

The potential for Yellow Crowned Night Heron nesting within the proposed SSA was raised during the public comment period. Without Department confirmation and reflection of it in the Department's Landscape Mapping, such information, by regulation, shall not form the basis for an amendment request denial. This issue will be fully investigated through the wetland permitting process pursuant to N.J.A.C. 7:7A if such permits are needed.

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). Review of the project site has determined that no Natural Heritage Priority Sites exist on site.

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 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 or their tributaries exist on the site.

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). In accordance with N.J.A.C. 7:15-5.24(e)2, a Letter of Interpretation – Line Verification File No. 1219-08-0004.1 FWW080001 was provided, confirming the extent of wetlands and transition areas on the site. The above mentioned approval received an extension to August 25, 2019 File No. 1219-08-0004.1 FWW140001. The wetlands areas 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.

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 site.

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 site.

In accordance with N.J.A.C. 7:15-5.25(h)1, the projected wastewater flow of the project 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. The projected wastewater flow for the proposed project, calculated in accordance with N.J.A.C. 7:14A-23.3 is 1.47 mgd.

Water supply for the proposed project will be provided by the Borough of Sayreville Water Department, stormwater collected on site, and reclaimed water from MCUA. The Borough of Sayreville Water Department is a public water system that withdraws water from the Potomac Raritan Magothy aquifer. The location of the diversion is on Bordentown Avenue. The Borough of Sayreville Water Department is currently allocated 427 million gallons per month (MGM) and has a water supply surplus of 132.324 MGM established by Water Allocation Permit No. 5313. It is estimated that between 1.47 mgd and 5.2 mgd of reclaimed water (“grey water”) will be purchased from MCUA. The proposed water demand of the project, calculated in accordance with N.J.A.C. 7:15-5.25(f)1i, is 0.469 MGM.

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. Sayreville Borough has an adopted stormwater management ordinance (No. 957-06); see N.J.A.C. 7:8-4. Sayreville Borough is 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)i–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. Riparian zones of Pond Creek (FW2-NT/SE1) and Duck Creek (FW2-NT/SE1) have been identified on the property. The required buffer widths for these sections of the Pond and Duck Creeks is 150 feet due to the potential presence of acid producing soils. The provisions at N.J.A.C. 7:15-5.25(h)5i,

have been satisfied by the exclusion of the riparian corridor and associated 150 foot buffer to the Pond and Duck Creeks from the SSA.

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 site.

This amendment proposal was noticed in the DEP Bulletin on November 4, 2015 at Volume 39, Issue 21, pages 26-29 and comments were received during the comment period from Brian Racin of the Middlesex County Water Resources Association and South River Environmental and Shade Tree Commission and are summarized below.

1. Comment: The commenter relayed that he conducted a resource inventory of the site has and found the following species: Red Tailed Hawk, Falcon, Yellow Crowned Night Heron, Snowy Egret, Green Back, Great White Heron, Pink Lady Slippers, White River Orchids, Box Turtles, Toads, Spiders, Monarch Butterflies, Bald Eagle, Yellow Frogs, Osprey. Not all of these species were evaluated by the Department.

Response: The Water Quality Management Planning rules at N.J.A.C. 7:15-5.24 require the use of the Landscape Project to identify potential Threatened and Endangered Species habitat when evaluating areas proposed for inclusion in a SSA. The Department's review of the Landscape Project data for this site identified it as habitat for Bald Eagle and Yellow Crowned Night Heron. As stated above, a HSD application prepared in accordance with N.J.A.C 7:15-5.26 was submitted to the Department for review. The Department reviewed the HSD and its findings are discussed above. Habitat of the other species listed by the commenter are not identified on the Landscape Project mapping as habitat and as such are not considered for exclusion under the SSA mapping criteria at N.J.A.C. 7:15-5.24.

2. Comment: Commenter identified the site as being located within the last connecting greenway wildlife corridor between the rural setting characterized by the New Jersey

Pine Barrens located to the south and the Highlands located in the north. Commenter expressed concern that if the Department continues fragmenting the habitat in this area, we are going to expatriate the species in central New Jersey and cause genetic phenotypes of the populations that rely on these greenways to migrate.

Response: Large open space areas surrounding the project site are still extant and the major flyway for migratory birds in this area is actually located to the east of the project site. The proposed project, in and of itself, will not cause significant habitat fragmentation. The commenter's conclusions about the potential impact to wildlife migration patterns are too far reaching and speculative in light of the actual proposed disturbance to occur within the amendment site SSA.

3. Comment: The commenter suggested that, as allowed in the Clean Water Act of 1972, the South River should be designated as a Category 1 waterway not only on the basis of it being a drinking water supply, but because it also supplies habitat for endangered species and for a whole ecosystem that supports endangered species and species diversity.

Response: The South River has a designation of FW2-NT, Duhernal Lake the Sayreville Water Department. From the Sayreville Water Department to the Raritan River, it has a designation of SE1, Saline Estuary 1. The Surface Water Quality Standards (SWQS) provides a Category 1 designation based on exceptional ecological significance, exceptional water supply significance, and exceptional fisheries resources. See the Category 1 fact sheet at <http://www.state.nj.us/dep/wms/bears/docs/2009%20antideg-Category%20one.pdf> for additional information. Under exceptional water supply significance, water systems that serve a population greater than 100,000 including any reservoirs and their natural tributaries qualify for a C1 designation. There are no natural tributaries flowing into a reservoir on the South River. There is no supporting information available at this time on exceptional ecological or fisheries significance to be considered for C1 designation. Therefore the South River does not qualify for a Category 1 designation.

4. Comment: The commenter expressed concern that the proposed project will directly impact water quality in central New Jersey by creating a situation where Total Maximum Daily Loads (TMDL's) will be exceeded on a daily basis from the toxic waste dump upon which this project will be built. TMDL's to be exceeded are for particulates, non-point source pollution, and leachates from the dump.

Response: There are no adopted TMDL's in the vicinity of the project site. Sayreville Borough is not covered by any TMDL's and the nearest areas subject to TMDL's are located more than 3 miles to the south.

5. Comment: The commenter expressed concern that for a co-generation power plant is in this area. Cogeneration power is not normally supplied to residential housing developments. It normally indicates that industry is to be built in the area. The commenter further suggested that geothermal energy would be preferred and provided examples of where geothermal is currently employed; specifically, Stockton State College in Pomona, New Jersey runs entirely on geothermal energy as well as the Crabiel School building located on the Middlesex County College campus.

Response: The use of geothermal energy versus energy produced by the proposed project is beyond the scope of this amendment. However, to provide some background on the project, the proposed project is not a cogeneration facility. Rather, it is a combined cycle gas fired power plant in which the steamed produced provides the necessary energy to run the turbines. Additionally, this facility will produce energy to the grid under the regulatory oversight of the Federal Energy Regulatory Commission (FERC) and under the supervision of Pennsylvania New Jersey Maryland Interconnection LLC (PJM) who are responsible for the distribution of the energy produced. As such, the facility itself will not directly provide power to any individual homes and or residences in the Sayreville area.

6. Comment: The commenter asserts that the project site is located within a flood hazard area zone and is concerned that the Department is putting infrastructure in harms way. Further, the commenter asserts that this approval violates the intent of the law and allows for additional hook ups for utilities there. Because of Hurricane Sandy we are trying to make our communities more resilient so that they can bounce back from storms. By building in flood zones, you are not increasing your resiliency.

Response: The issues raised above are beyond the scope of this amendment. They may be evaluated and addressed by the Department through the review of needed permits under separate rules such as the Flood Hazard Area Control Act at N.J.A.C. 7:13, the Freshwater Wetlands Protection Act at N.J.A.C. 7:7A, etc.

7. Comment: The commenter asserts SSA is being extended into threatened and endangered species habitat that is at least 25 contiguous acres in violation of the Water Quality Planning rules..

Response: N.J.A.C. 7:15-5.24 identifies several areas that are not to be provided sewer service due to their environmental sensitivity. 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. The commenter is correct in that parts of the site are located within such an ESA based largely on the Landscape Project Maps of threatened and endangered species habitat. This fact was noted and addressed in the preliminary notice. An HSD application, prepared in accordance with N.J.A.C. 7:15-5.26 was submitted by the applicant for Department review. The Department's findings on the HSD are discussed above. ESAs as defined at N.J.A.C. 7:15-5.24(b) are not included in the SSA.

8. Comment: The commenter expressed concerns about the use of and accuracy of Geographic Information System (GIS) mapping (Landscape Project Mapping) and

emphasized the importance of field studies to evaluate the presence or absence of threatened and endangered species.

Response: In the context of land use planning and regulation, the Landscape Project maps were designed to provide scientifically sound information that transparently document threatened and endangered species habitat. The maps help increase predictability for local planners, environmental commissions, and developers and help facilitate local land use decisions that appropriately site and balance development and habitat protection. The Landscape Project Maps were developed using the application of scientific methods under the review of a scientific panel of experts. The report entitled New Jersey's Landscape Project provides a complete description of the method for developing the Landscape maps and additional information on mapping methodology. The report is available at the following website: www.nj.gov/dep/fgw/ensphome.htm.

9. Comment: The commenter asserts that the proposed amendment was not presented to the public in time for a proper oral response, neither at the November 9, 2015 meeting of the Middlesex County Water Resources Association (WRA), nor was ample time given to the public, to either study the proposal or consider the vote properly. Rushing this amendment through proper process according to WRA by-laws without even considering the full depth of the laws (N.J.A.C. 7:15 and P.L. 2013, c. 188) not only violates the public's trust in the law but is in violation of it. The public notice was posted properly in the newspaper on November 4, 2015 and rushed through for approval merely 5 days later on November 9th without a thorough understanding of the implications that this proposal will have on the citizens of Middlesex County.

Response: According to the Middlesex County Department of Planning, information about the proposed amendment was provided to WRA members prior to the November 9, 2015 WRA meeting. The by-laws of the WRA do not stipulate a minimum number of days for review of materials requested by the members prior to the vote itself by WRA members. The Middlesex County Department of Planning has confirmed that the proposed amendment was publicly noticed and reviewed in a manner that is consistent

with the WRA by-laws as well as the Lower Raritan/Middlesex County Water Quality Management Plan Revision and Amendment Procedures.

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

