

DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF WATERSHED MANAGEMENT

*Conditional
Approval*

AMENDMENT TO THE NORTHEAST WATER QUALITY MANAGEMENT PLAN

Public Notice

Take notice that on **MAR 09 2000**, 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. 7:15-1 et seq., an amendment to the Northeast Water Quality Management Plan was adopted with conditions by the Department of Environmental Protection (DEP). The amendment consists of a Wastewater Management Plan (WMP) for the Rockaway Valley Regional Sewerage Authority (RVRSA) district and sewer service area. The RVRSA WMP area encompasses all or portions of the following Morris County municipalities: Boonton Town, Boonton Township, Denville Township, Dover Town, Mine Hill Township, Parsippany-Troy Hills Township, Randolph Township, Rockaway Borough, Rockaway Township, Victory Gardens Borough, and Wharton Borough. The WMP identifies the existing and future sewer service areas of the RVRSA Sewage Treatment Plant (STP) which discharges to the Rockaway River below the Jersey City (Boonton) Reservoir. The RVRSA STP is permitted to discharge 12 million gallons per day (mgd) under New Jersey Pollutant Discharge Elimination System - Discharge to Surface Water (NJPDES-DSW) Permit No. NJ0022349. The WMP also identifies the following: 1) existing industrial facilities within the WMP area; 2) areas outside of the future sewer service area of the RVRSA which are to be served by facilities discharging to ground water with design capacities of less than 20,000 gallons per day (gpd); and, 3) service areas for facilities discharging to ground water with design capacities of less than 2,000 gpd (such as individual home septic systems).

The future sewer service area of the RVRSA STP includes those areas already serviced as well as those proposed to be serviced under prior 201 facilities planning. The Highlands at Morris (HAM) tract and an abutting 30 homes and New Jersey Department of Transportation maintenance yard are also included, as an expansion to the service area. The RVRSA was required per the November 20, 1996 Order of Final Judgement of the Honorable Reginald Stanton to propose to DEP the inclusion of HAM within the RVRSA's sewer service area. The HAM tract is located between Union Turnpike and Route 80 in Rockaway Township.

Notice of a public hearing on the WMP was published in the November 17, 1997 New Jersey Register. A public hearing on the WMP was held on December 18, 1997. The comment period closed on January 17, 1998 (extended an additional 15 days from January 2, 1998). DEP received written comments from 56 persons or agencies and 17 people presented comments at the hearing. A summary of the comments received on the WMP and DEP's responses thereto, are included below.

On March 11, 1999, in response to comments received on the WMP, DEP requested that RVRSA update the actual and projected flow projections in the WMP. To ensure protection of the Rockaway River Watershed in general and the Jersey City (Boonton) Reservoir specifically, DEP has approved the August 1999 updated RVRSA WMP with the following conditions:

1. Projected Need vs. Permit Condition - While the WMP identifies a projected need of 13.67 mgd, no expansion or re-rating of the RVRSA STP above the current NJPDES permit condition of 12 mgd is approved as part of this WMP.

2. Future Sewer Service Area Changes – DEP will not approve any proposals for RVRSA sewer service area expansion or reconfiguration (i.e., to increase the sewer service area in one area and reduce it in another) until such time as RVRSA's flow issue is adequately addressed through an approved amendment to the WMP. This prohibition applies to amendments submitted in accordance with N.J.A.C. 7:15-3.4 as well as revisions submitted in accordance with N.J.A.C. 7:15-3.5(b)4ii & v.

3. Expansion/Re-rating of the RVRSA STP – DEP will not approve a subsequent WMP amendment allowing an increase in the permitted capacity of the RVRSA STP beyond 12 mgd unless the amendment includes a conclusive and comprehensive demonstration by RVRSA that:

- a) The hydrologic conditions of the Rockaway River watershed and major tributaries will not be changed in a manner that increases watershed flooding or decreases the safe yield of the Jersey City (Boonton) Reservoir, due to development or sewerage within the watershed related to the STP capacity increase;
- b) Ground water resources will not be overdrawn due to new sewage generating activities served by the increased STP capacity, recharge loss from increased impervious cover, and/or additional withdrawals; and,
- c) The water quality of the Rockaway River and major tributaries both upstream and downstream of the Jersey City (Boonton) reservoir will not be degraded by point or nonpoint source discharges related to the STP capacity increase.

This amendment was evaluated in accordance with Executive Order 109 and N.J.A.C. 7:15-5.18 and no alternatives analyses are required at this planning stage. This amendment represents only one part of the permit process and other issues will be addressed prior to final permit issuance. Additional issues which were not reviewed in conjunction with this amendment but which may need to be addressed may include, but are not limited to, the following: effluent limitations; water quality analysis; antidegradation; exact locations and designs of future treatment works (pump stations, interceptors, sewers, outfalls, wastewater treatment plants); and development in wetlands, flood prone areas, designated Wild and Scenic River areas, or other environmentally sensitive areas which are subject to regulation under federal or State statutes or rules.

Summary of Public Comments and DEP Responses on RVRSA WMP

#	Commenter	Affiliation (if one provided)
1	Berson, Muriel	
2	Bertneskie, Mark	
3	Boonton Town Mayor and Board Aldermen	Boonton Town
4	Boonton Township Committee	Boonton Township
5	Bowman, JoAnn	
6	Brockway, Randall	
7	Bucco, Anthony	New Jersey General Assembly
8	Caruso, Lorraine	League to Save Open Space
9	Cilo, John	Mine Hill Township
10	Corbett, Glen	Wharton Borough
11	Denville Township Council	Denville Township
12	Denville Township Planning Board	Denville Township
13	Derstine, Mary	Friends of Pyramid Mountain
14	Dover Town Board of Aldermen	Dover Town
15	Dutill, Charles	Unigene Laboratories
16	Fair, Abigail	Association of New Jersey Environmental Commissions
17	Fally, Nick	Citizens Against Runway Expansion
18	Fenske, Helen	Morris Parks and Land Conservancy
19	Filappone, Ella	Passaic River Coalition
20	Frey, Wilma	The Highlands Coalition

21	Garrabrandt, James	Rockaway Borough
22	Gillaspie, Terry	
23	Gray, Christina	
24	Hantson, Michael	Dover Town
25	Hilderman Smith, Mary	
26	James, Sharpe	Newark City
27	Karovic, Diana	
28	Keegan, Vincent	
29	Keller, Irene	
30	Koehler, Sharon	
31	Koehler-Cesa, Karen	
32	Koehler-Jalbert, Rebecca	
33	Kopp, Chad	
34	Lim, Jasmine	Randolph Township
35	Maxfield, Rich	
36	Miranda, Dennis	New Jersey Conservation Foundation
37	Moen, Nancy	
38	Moss, Robert	
39	Nelson, Diane	Tourne Coalition
40	Pepin Ellen	
41	Randolph Township Council	Randolph Township
42	Reynolds II, Joseph	
43	Rockaway Borough Mayor and Council	Rockaway Borough Rockaway Township Highlands at Morris, Inc.
44	Rockaway Township Council	
45	Rosensweig, Gary	
46	Russell, Emily	
47	Shukailo, Stephen	Dover Town
48	Spencer, Carol	Denville Township
49	Stroh, Constance	Upper Rockaway River Watershed Association
50	Tarlowe, Paul	
51	Taylor, Ellen	
52	Treat, Martin	Friends of the Sparta Mountains, Inc., Friends of the Holland Mountain
53	Turner, C.	
54	Vandertulip, William	Denville Township
55	Victory Gardens Borough Council	Victory Gardens Borough
56	Wharton Borough Mayor and Council	Wharton Borough

(Commenter #'s are reflected at the end of each comment)

Comments Objecting to HAM

1. COMMENT: The Town of Dover is meeting its Council on Affordable Housing (COAH) obligations within the boundaries of the existing service area. Why should Rockaway Township be permitted to do so outside of their existing service area (i.e. HAM tract)? Are there not other suitable tracts of land within the present service area boundaries that could support COAH housing and the necessary densities? For example, the Rockaway Township Planning Board recently approved a high density planned adult residential community development within the existing service area along Mount Hope Avenue and abutting Interstate 80. (24, 47)

RESPONSE: Although there may be other tracts in Rockaway Township which could be used for meeting the Township's COAH obligation, the DEP has approved the RVRSA WMP with the inclusion of HAM in the RVRSA STP sewer service area. Reasons for approving inclusion of that tract include the following: 1) The RVRSA WMP meets the WMP requirements of the Statewide Water Quality Management Planning rules; 2) The intensity of development proposed for HAM requires some type of centralized

wastewater treatment. Connection of this tract to the RVRSA STP is reasonable considering that HAM is adjacent to the existing service area and does not represent environmentally sensitive area (ESA) impact as long as the ESA grant condition associated with the 201 facilities plan for RVRSA is adhered to; 3) In accordance with N.J.A.C. 7:15-5.18(b), wastewater service areas in WMPs need to be based on land uses allowed in zoning ordinances, or municipal or county master plans. HAM is consistent with the land uses allowed in the Rockaway Township Zoning Ordinance, specifically the office/residential multi-use district; and, 4) The RVRSA STP is operating within its NJPDES permit limits and no expansion above 12 mgd is proposed or allowed to treat the additional flows from the HAM site.

2. COMMENT: The expansion of the RVRSA service area to include HAM would be the first expansion of any significance since the planning process was undertaken by the RVRSA approximately 20 years ago for the purpose of designing and subsequently constructing in the early 1980's an STP for the RVRSA. Concern is expressed that the inclusion of the HAM development in the RVRSA service area will set an adverse and inappropriate precedent for future amendments to the RVRSA WMP. (3, 4, 5, 7, 11, 12, 14, 15, 24, 25, 27, 30, 31, 32, 39, 42, 43, 47, 48, 50, 53, 56)

RESPONSE: As noted in the approval conditions, until such time as RVRSA addresses its outstanding flow/capacity issues, DEP will not consider any proposals for additional expansion or reconfiguration of the RVRSA sewer service area.

3. COMMENT: Reasons for objecting to the inclusion of the HAM tract include the following:

- a) At the time of RVRSA's creation, Rockaway Township received an allocation of flow, along with all other municipalities served by RVRSA, and used up its entire allocation prior to January 1, 1997. The inclusion of HAM in the RVRSA sewer service area would essentially grant Rockaway Township an additional allocation that could have and should have come from their original allocation and been limited to the original service area. (3, 4, 5, 11, 12, 14, 24, 47, 48, 55, 56)
- b) Expansion of the RVRSA service area to include HAM violates the contractual agreements entered into by all the members of the RVRSA at the time of its creation. (55)
- c) Capacity within the RVRSA STP is limited by way of physical and financial constraints and the regulatory restraints placed upon the operation and maintenance of such a facility. Expansion of the service area to an area not previously planned to be sewered undermines the underlying principles by which the RVRSA has operated and by which all of the other municipalities served by RVRSA have been required to limit and/or constrain development within their respective municipalities. (3, 4, 9, 11, 12, 14, 47, 48)
- d) The RVRSA service area should not be expanded since there is still considerable land remaining for development and redevelopment within the existing service area which, if fully developed, would far exceed the existing capacity of the RVRSA STP. Allocation of flow to HAM will severely restrict development in the existing service areas by

significantly reducing the remaining unallocated gallonage. (15, 21, 24, 41, 43, 44, 47, 48, 55, 56)

e) Failure to obtain approval of the RVRSA WMP from the participating municipalities disregards the principles and efficiencies of regionalization. If DEP were to approve this proposal, it will demonstrate that regionalization no longer requires that all municipalities are treated fairly and equally. (4, 11, 12, 14, 47, 48)

f) Those citizens in the existing service area have borne the costs of expansion and operation of the RVRSA STP. Expansion of the service area to include HAM will permit the developers of that property to obtain unjust enrichment at the cost of existing customers of RVRSA, with no provision to reimburse those customers for the costs incurred. (5, 55, 56)

RESPONSE: With regard to Comments #3a and b, the previous system of court ordered allocations which was instituted on July 25, 1986 per Superior Court Order Lifting Restraints ("Building Ban") is no longer in effect. As of January 1, 1997, remaining available gallonage at the RVRSA STP is available on a "first come, first served" basis. Therefore, to the extent that remaining gallonage exists, municipalities can now receive gallonage beyond what they were previously allowed per the court order.

The objections in Comments #3c, d and e have been raised because a permanent system for allocating flows to the RVRSA STP, namely contracts with the RVRSA and each municipality specifying a binding flow allocation, was never effected. Instead, the municipalities and RVRSA relied on the court order identified above (and no longer in effect) to provide the means of controlling municipalities' flow contributions.

DEP agrees with the commenters that the inclusion of the HAM site in the RVRSA sewer service area will reduce the amount of gallonage remaining for users within the existing service area. Even without the inclusion of the HAM site in the sewer service area, however, the issue of insufficient remaining gallonage appears to be pertinent based on RVRSA's most recent projection of 13.67 mgd for the RVRSA future sewer service area. In its March 11, 1999 letter, DEP requested RVRSA to reevaluate the actual and projected flows in the draft WMP and pursue one of the following three options if the total projected flow exceeded 12 mgd:

- a) The RVRSA future sewer service area must be reduced in size, or municipalities must approve changes in anticipated development density within the future sewer service area, so that the resulting sewer service area will have a total projected flow of 12 mgd or less; or
- b) RVRSA must provide complete justification for providing a larger service area than can reasonably be served with an STP of 12 mgd, and the WMP must clearly state that the combination of existing plus committed average flows from the sewer service area will be no greater than 12 mgd through the WMP planning period; or
- c) RVRSA must provide complete justification for an expansion/re-rating of the RVRSA STP

While the WMP identifies a projected wastewater flow of greater than 12 mgd, it does not yet identify which of the above options the RVRSA will pursue. This issue needs to be addressed through a subsequent amendment to the WMP. In the interim, DEP has approved the WMP with the conditions specified above.

With regard to Comment #3f, Judge Stanton's November 20, 1996 Order provides that RVRSA must execute the requisite Statements of Consent to the HAM Treatment Works Approval application, "upon execution of a Service Agreement providing for the payment of a capital finance charge to be calculated on the basis of the percentage share of the capacity of the various components of the RVRSA System being allocated to the Project." Judge Stanton's order was affirmed by the Appellate Division of the Superior Court on March 24, 1998, and the appeal therefrom was denied certification to the New Jersey Supreme Court on June 16, 1998.

While some of the above objections raise valid concerns, they do not provide compelling reasons for not including HAM within the RVRSA STP sewer service area at this time. DEP agrees with Judge Stanton's determination, as provided in the following statement, that the HAM tract is a "natural fit" to the RVRSA service area: "...the lands are a natural fit, in terms of the river basin boundaries, in terms of the constituent municipalities' boundaries, in terms of planing and zoning considerations, and in terms of inability of anyplace else readily to dispose sewage from this site." (Transcript, Page 18, October 30, 1996) Recognizing that there is also a need to provide protection of the water resources (quality and supply) in this area, DEP has adopted the RVRSA WMP with the conditions noted above.

4. COMMENT: Mine Hill Township has secured a certain amount of sewer capacity in the RVRSA STP (87,500 gpd) and requires an additional 81,300 gpd capacity for its next phase of sewerage. The only source for sewer capacity for the remaining Mine Hill Township areas included in the RVRSA STP service area is the special set-aside capacity programs that have been set up by the RVRSA. Therefore, Mine Hill Township objects to the granting of any sewer capacity to HAM. (9)

RESPONSE: RVRSA has set aside capacity to provide for sewer service to homes constructed prior to January 1, 1990 which are served by septic systems. Mine Hill Township has already received a certain amount of allocation from that reserve capacity to connect a portion of its service area. Inclusion of the HAM tract in the RVRSA sewer service area will not affect Mine Hill Township's ability to request additional allocation from that reserve capacity. It should be noted that the RVRSA WMP now identifies a future need for wastewater treatment plant capacity of 250,000 gpd for Mine Hill Township. How RVRSA intends to address this flow as well as the total projected flow of 13.67 mgd still needs to be determined.

5. COMMENT: Westminster Associates is proposing a 600 to 800 multi-dwelling project west of the RVRSA service area line in Mine Hill Township. This developer is proposing a treatment plant with land disposal and is not requesting connection to the RVRSA STP. (9)

6. COMMENT: HAM has the means to install their own centralized wastewater treatment system. (43)

RESPONSE to Comments #5 & #6: Whether or not HAM has the ability to build its own STP, Judge Stanton's November 20, 1996 Order of Final Judgment and January 27, 1997 Order on Motions for Stay and Enforcement of Order of Final Judgment require that the RVRSA WMP include HAM as within the RVRSA future sewer service area. DEP has accepted inclusion in the sewer service area as a reasonable means of addressing wastewater from the site as noted in the response to comment #1.

With regard to Westminster Associates, the Northeast WQM Plan does not currently identify a new STP to serve that proposed development. An amendment to the WQM Plan, which includes a WMP for all those portions of Mine Hill Township not contained within the RVRSA service area and environmental analysis as determined to be necessary, is required prior to proceeding with permitting such a facility.

7. COMMENT: Commenters objected to sewerage the HAM site based on the following environmental concerns:

- The site contains extensive wetlands and prime aquifer recharge soils, which is why it was excluded from the sewer service area in the previous 201 facilities planning. (1, 5, 24, 25, 37, 39, 42, 47, 49)
- Secondary impacts of the development could result in the degradation of the region's water resources (water quality and supply) and the despoiling of the lower Rockaway River. (1, 5, 16, 19, 24, 39, 46, 47, 49)
- Already, because adequate investigation of the HAM site was neglected, a number of acres of wetlands have been filled during preliminary site work. (16, 24, 28, 42, 47)
- Wells run dry and flooding occurs when a new development goes into an area. (2, 5, 8, 13, 25, 48)
- The Highlands region provides water for over 4 million people in the State. DEP needs to consider the threat to the water supply from the proposed expansion of the RVRSA service area. (20, 18)

RESPONSE: While the HAM tract was originally excluded from the RVRSA sewer service area based on the inclusion of wetlands and aquifer recharge areas, the 201 facilities plan ESA grant conditions apply only to wetlands and floodplains. They do not apply to any other environmentally sensitive areas such as aquifer recharge areas.

The 1981 Environmental Impact Statement (EIS) environmental constraints analysis was a good planning tool for determining future flow contributions to the RVRSA STP based on the potential for development. However, subsequent wetlands field delineations and a change in zoning from industrial to office/residential multi-use, allowed for the HAM tract to be considered for the intensity of development now proposed. This intensity of development is proposed with the understanding that there will be no violations of the Freshwater Wetlands Protection Act and Rules, and that the development complies with the ESA grant condition that no sewage generating structures be built in wetlands. At the

request of RVRSA, DEP investigated the HAM site for compliance with the applicable wetlands requirements. Results of that investigation include the following: 1) Under United States Army Corps of Engineers (ACOE) approval, wetlands were filled for minor road crossings and stormwater outfalls; 2) Some additional wetlands, which were apparently not subject to ACOE jurisdiction, may have been filled. It appears that these wetlands were filled before the project became subject to the Freshwater Wetlands Protection Act; and, 3) A one acre area was filled after the project became subject to the Freshwater Wetlands Protection Act. Upon DEP notification, the fill was removed and the area was stabilized and seeded. DEP will monitor this area for compliance to ensure long term stability.

In addition to the above investigation, a Compliance Assurance Plan was developed and agreed to by DEP and HAM. The Compliance Assurance Plan provides a delineation, verified by DEP, of the jurisdictional freshwater wetlands and jurisdictional State open waters as regulated by the New Jersey Freshwater Wetlands Protection Act. As stated in the April 2, 1998 letter from Barbara Hirst, Municipal Finance and Construction Element to Ed Ho, Administrator for RVRSA, no sewage generating structures are proposed to be located within the delineated wetlands. The HAM project would therefore qualify for a mapping revision with respect to the ESA grant condition.

Since the HAM site meets the ESA grant condition requirements and the State's wetlands regulatory requirements, DEP can not restrict the density of development on the site to less than that currently proposed. We recognize that there may be nonpoint source impacts from the development which could impact surface and ground water quality and quantity. However, DEP has approved the inclusion of the HAM tract in the RVRSA sewer service area for the reasons specified in the response to comment #1. In addition, as noted in the approval conditions, extensive studies related to the impacts of point and nonpoint source discharges and related development on water quality, water supply and flooding must be performed for any proposal to expand/re-rate the RVRSA STP above 12 mgd.

It should be noted that the current density of development planned for HAM is possible because of the timing of local approvals. Since the project received Preliminary Site Plan approval and Preliminary Major Subdivision approval on June 18, 1989, it is exempt from the wetlands transition area requirements of the Freshwater Wetlands Protection Act Rules. In addition, since that time, the Flood Hazard Area Control Act Rules and Freshwater Wetlands Protection Act Rules have been updated, and the Residential Site Improvement Standards have been adopted.

DEP has initiated a watershed planning process for Watershed Management Area (WMA) #6 (Upper Passaic/Rockaway/Whippany River Basins). Significant issues with regard to the RVRSA STP and sewer service area can be further discussed/addressed through that process. The Division of Watershed Management should be contacted at (609) 633-1179 for additional information on the watershed planning effort.

8. COMMENT: With the onset of Watershed Planning for Area #6, the time is most inappropriate to modify, alter, or change in any way at this time the service area of RVRSA. (19, 37, 51)

RESPONSE: The wastewater management planning process should be integrated into the watershed planning process. However, watershed planning for the 20 watershed management areas identified by DEP has only recently been initiated. It may take some time before that process can address some of the broader issues raised during the RVRSA WMP public comment period. Meanwhile, the WQM Plan regulations and program are in place and must continue to function. Since the inclusion of HAM in the RVRSA service area is acceptable under the current rules and policies, DEP has adopted the RVRSA WMP.

9. COMMENT: Approval of the WMP with inclusion of the HAM tract would not be a sound planning decision. (5, 8, 20, 37, 42, 50, 52)

10. COMMENT: The RVRSA WMP does not conform to the Water Quality Planning Act or the existing rules and policies for how DEP approves WMPs. We should not be having a hearing on such an environmentally unsound plan. (36)

11. COMMENT: The New Jersey Highlands are an irreplaceable treasure, providing critical scenic, recreational, and environmental values to the State. Inappropriate development, such as proposed for the HAM tract, will destroy these values (20, 38)

RESPONSE to Comments #9, #10 & #11: Sound planning must start at the municipal level with zoning decisions based on natural resources and the land's ability to contain development without adverse impacts. This is critical since zoning decisions are carried through the WQM Plan amendment process and serve as the basis for wastewater service area delineations. The HAM tract has been included in the sewer service area for the reasons specified in the response to comment #1. In addition, the WMP approval conditions noted above require that the environmental soundness of any proposed increases to the RVRSA STP's permitted capacity be ensured prior to DEP approval of a WMP amendment.

Based on DEP's reliance on zoning in the WQM planning process, and commenters' objections to the density of development proposed for HAM, it appears that zoning for Rockaway Township, and potentially other municipalities within the Highlands area, should be reevaluated in terms of the goals for the Highlands area. This should be a matter for discussion as part of the watershed planning effort for WMA #6.

12. COMMENT: Because the HAM tract is outside of the Finding of No Significant Impact (FONSI) line, it is incumbent upon the DEP to require and to review an environmental impact study on the tract prior to it giving serious consideration to the proposed WMP. (4, 11, 12, 13, 14, 27, 30, 31, 32, 38, 43, 46, 47, 48)

RESPONSE: The federal rules which were in effect for preparation of the RVRSA draft EIS in 1981 and FONSI in 1984, are separate and distinct from the rules which now govern the preparation and adoption of WMPs. The rules currently in place governing WMPs, N.J.A.C. 7:15, do not include equivalent EIS requirements. Therefore, the Department has not required the preparation of an EIS for the HAM tract or for the entire RVRSA WMP area. The EPA does expect that the modifications to the sewer service area would be consistent with the environmental constraints analysis done under the EIS process. Adherence to the ESA grant condition restrictions is expected to accomplish this.

13. COMMENT: Because some wetlands areas on the HAM tract have been filled, will sewerage of the HAM tract cause the federal government to withdraw its funds from RVRSA? (28)

RESPONSE: The special grant conditions applicable to RVRSA prohibit the construction of sewage generating structures in wetlands and floodplains, without approval of the Regional Administrator of EPA, for a period of 50 years. The issue of withdrawing federal funds is applicable only if sewage generating structures are proposed in wetlands and EPA has not issued a grant condition waiver for such activity. DEP has reviewed the wetlands delineation submitted as part of the Compliance Assurance Plan for HAM and determined, as stated in Barbara Hirst's letter of April 2, 1998, that no sewage generating structures are proposed to be located within delineated wetlands. The HAM project would therefore qualify for an ESA mapping revision and the matter of withdrawing federal funds does not apply.

14. COMMENT: If, despite objections from member municipalities, environmental organizations, and members of the public, the RVRSA WMP is approved which includes the HAM tract, as well as associated nearby areas (e.g. DOT Maintenance Yard, Route 15), within an expanded RVRSA sewer service area, what is to prevent other environmentally sensitive tracts from being included in the service area? Already, a 300 acre tract is offered for sale that is located adjacent to the HAM tract. (39)

RESPONSE: The HAM tract is being included in the RVRSA STP sewer service area for the reasons specified in the response to Comment #1. As noted in the WMP approval conditions, DEP will not approve any further requests for RVRSA sewer service area expansion or reconfiguration until such time as the wastewater flow/capacity issues are adequately addressed.

15. COMMENT: Why has the Department processed this WMP when there is currently an appeal before the Appellate Division on the case of Highlands vs. RVRSA? (19,39, 43)

RESPONSE: The final judgment of Judge Stanton entered November 20, 1996 in the case of Highlands vs. RVRSA was affirmed by the Appellate Division of the Superior Court on March 24, 1998, and an appeal therefrom was denied certification to the New Jersey Supreme Court on June 16, 1998. DEP has adopted the RVRSA WMP with HAM

in the RVRSA sewer service area for the reasons specified in the response to Comment #1.

16. COMMENT: The Superior Court Judge ordered RVRSA to include the HAM site within its WMP, but there is nothing in the Judge's order requiring the DEP to accept this plan. (5, 10, 23, 39)

RESPONSE: DEP agrees with the comment. There is nothing in the Judge's order requiring DEP to accept the WMP proposed by RVRSA. On the contrary, Judge Stanton states that, "the Authority is to make and propose the Amendment and submit it to the Department of Environmental Protection, and the Department of Environmental Protection is to deal with it exactly as it would deal with any other part of the Wastewater Management Plan" (Transcript, Page 41, October 30, 1996).

17. COMMENT: The State Enabling Act creating the DEP states that it shall, and that means must, protect the State's essential resources. DEP does, therefore, have the authority to disapprove the service area expansion to include HAM. DEP should review the brief prepared under Commissioner Daggett with regard to the Great Swamp National Wildlife Refuge and the proposed Woodland STP increase. (18)

RESPONSE: DEP clearly has the legal authority pursuant to N.J.A.C. 7:15 to approve or disapprove service area extensions proposed to it. Note that DEP is aware of a memorandum concerning the Great Swamp that was prepared by a Departmental Regulatory Officer during the time when Mr. Daggett was Commissioner, however this is not a legal brief and thus may not be what the commenter is referring to.

18. COMMENT: DEP should object to the court ordered inclusion of the HAM tract into the RVRSA system on the basis of the original EIS for the RVRSA which directed against any such inclusions. (39, 54)

RESPONSE: The inclusion of the HAM tract into the RVRSA service area is contrary to the findings of the 1981 Draft EIS and 1984 FONSI both of which concluded that the HAM tract was undevelopable because it appeared to be predominately wetlands. Only a small portion of the tract was defined as developable land (See figure 4-1, Draft EIS). This conclusion was DEP's position in the Treatment Works Approval litigation and is confirmed in the memorandum prepared by Barbara Hirst, of DEP's Municipal Finance and Construction Element, dated August 29, 1996.

Barbara Hirst's memorandum details the history underlying EPA's determination not to include the tract within the sewer service area. This history includes the determination of the size of the treatment plant and areas to be served thereby which were the subject of intensive and extensive debate and which resulted in litigation commenced by Parsippany-Troy Hills and opposition expressed by the local citizenry, which is summarized in the April 27, 1982 Responsiveness Summary on the Draft EIS. The planning effort resulted in a decision made by the EPA in 1984 that, through hook up restrictions and a reduction in the area to be served, a 12 mgd capacity treatment plant

would be justified. Based upon this determination and conclusion that HAM and other areas were not developable, EPA with the FONSI abandoned its effort to complete the preparation of a final EIS.

As stated in the letter from Jeanne Fox, Regional Administrator, EPA, dated July 17, 1997 clarifying the letter prepared by Robert Hargrove, EPA, which allegedly supports HAM's proposition that EPA did not intend to establish RVRSA's sewer service area in the context of the planning documents forming the basis for the construction of the RVRSA facility, EPA confirmed its desire to preserve and protect environmental resources in the area. EPA stated:

...An environmental constraints analysis was performed by EPA and documented in the 1981 DEIS. Based upon the analysis, EPA, in consultation with NJDEP and RVRSA, identified environmentally sensitive areas (e.g., wetlands, floodplains, and aquifer recycling areas) that should not receive sewer service. Moreover, we included conditions in the subsequent construction grants restricting sewer connection from wetlands and floodplains. We would, of course, expect that any service extensions would be consistent with conclusions of the environmental constraints analysis, and the aforementioned grant conditions.

This letter from the Regional Administrator of the EPA confirms DEP's determination that a sewer service area was established and that, contrary to the Trial Court's finding that the EPA was not locked into a carefully delineated service area, the EPA remains committed to the planning determinations and commitments made in the early 80's and that the constraints are even now, intended to be binding.

This letter evidences EPA's present acknowledgment of these prior commitments and its renewal of EPA's intentions with respect to protection of the areas of concern identified in the environmental constraints analysis. Pursuant to the Draft EIS, Figure 4-1, the HAM site was not considered to be developable land and this position is consistent with the opinion of Barbara Hirst which concluded that the provisions of sewer service to the area would be inconsistent with the environmental constraints analysis, the conclusions of which are incorporated into the Northeast WQM Plan.

In a separate letter from Constantine Sidamon-Eristoff, Regional Administrator of EPA, to Thomas Horn, Executive Director of RVRSA, dated September 11, 1992, EPA acknowledged the significance of the input received from the public during the planning process and directed RVRSA to work with environmental groups prior to any expansion of its service area which may impact the efforts undertaken to preserve and protect environmental resources in the areas. EPA stated,

EPA is aware of, and supportive of, the efforts of a consortium of environmental groups and agencies which have been attempting to formulate a plan for preserving and protecting the valuable environmental resources of the Farny Highlands Watershed area. I would encourage the RVRSA and its member municipalities to work with this consortium in order to ensure that any additions to the RVRSA's sewer

service area are consistent with, and complement the recommendations of this group and the public as a whole.

Notwithstanding the above, DEP can and should make changes to the 201 planning when DEP believes it to be appropriate, as it does for this service area. See the response to Comment #1 above.

19. COMMENT: Planning decisions should not be left to litigation. There needs to be more comprehensive planning with more stakeholders represented especially for such decisions with long term, irreversible and cumulative impacts. (23)

RESPONSE: Recourse to litigation and hence the court system is a fundamental right. DEP encourages comprehensive planning and supports public participation and the stakeholder process. This is reflected in the regulatory process, the rule making process, and the watershed management planning process.

20. COMMENT: A decision in favor of this plan will leave countless municipalities and authorities vulnerable to suit to include previously excluded sites within their WMPs. (2, 8, 37)

RESPONSE: The competition for scarce resources could spur litigation; however, proper, prudent planning and environmentally sound decision making must occur and should be upheld by the courts. DEP has added conditions to the approval of the WMP in order to aid in making environmentally sound decisions with regard to changes in the RVRSA sewer service area and/or STP capacity. These decisions should provide wastewater management planning agencies and the DEP with the tools needed to defend against such challenges. An example case includes Township of Springfield vs. Sod Farm Associates, which affirmed local planning, including a WMP.

21. COMMENT: The concern was expressed that if DEP does not disapprove the proposed increase in service area for HAM, there could be constant confrontations from now on between DEP and judicial decisions. (8)

RESPONSE: The Department reviews each WMP and WQM plan amendment on its own merits and would expect any judge to review the record in the same manner.

22. COMMENT: DEP should order a ban on sewer expansion to the RVRSA STP. (8)

RESPONSE: DEP can not order a ban on sewer extensions to the RVRSA STP in accordance with N.J.A.C. 7:14A-22.17 as the STP is meeting its NJPDES permit limits and is therefore not subject to sewer ban.

23. COMMENT: The goals of the State Development and Redevelopment Plan (SDRP) include curbing suburban sprawl, protecting environmentally sensitive lands, and supporting the redevelopment of already built-up areas. The proposed RVRSA service

area expansion to include the HAM tract runs counter to those goals in the following ways:

- a) Extension of the RVRSA service area would encourage and support suburban development in western Morris County away from existing town centers.
- b) Extension of sewers to the HAM tract will allow the degradation of important and strategically located wetlands and watershed lands. The Rockaway River lies a quarter mile away from the HAM tract and its shallow underlying aquifer provides drinking water to nearly 200,000 homes and businesses. The Division of Fish, Game and Wildlife's Berkshire Valley Wildlife Management Area shares a common boundary with the HAM immediately southwest of the tract. Both water and wildlife resources will be compromised by the development that will follow the RVRSA service area expansion.
- c) The RVRSA service area expansion will reduce sewer availability to municipalities striving to redevelop brownfields, vacant or underutilized industrial and commercial sites. (2, 6, 17, 26, 46)

RESPONSE: It should be noted that the HAM proposal appears to be consistent in large respect to the SDRP as it is located mostly within a Metropolitan Planning Area. DEP, however, has not requested a definitive determination from the Office of State Planning on the project's consistency. The reason for this is that the SDRP is not a regulatory document, nor do the Statewide Water Quality Management Planning rules require that WMPs and amendments be consistent with the SDRP prior to DEP approval.

24. COMMENT: Inclusion of HAM in the service area would remove sewage capacity from existing homes and businesses currently using septic systems, including some failing systems. (29, 34, 41, 43)

RESPONSE: A main focus of the prior RVRSA 201 facilities planning was to sewer many existing residents with inadequate septic systems including 400 homes in the lower portion of Rockaway Township and the White Meadow Lake community. RVRSA concurs with the commenters that a certain amount of the limited wastewater resources should be applied to sewer existing development. RVRSA has therefore set aside 200,000 gpd of capacity for that purpose, of which 145,000 gpd still remains.

25. COMMENT: Since the HAM tract is a key component of the federally protected Sole Source Aquifer, the federal government must prohibit the extension of sewers to HAM. Under the requirements of the Sole Source designation, the federal government may prohibit federally insured banks from issuing loans to projects which have potential for significant contamination of the aquifer as does HAM. (49)

RESPONSE: Contrary to the above, EPA can not restrict the issuance of loans from federally insured banks for projects within a sole source aquifer area.

26. COMMENT: Should the Appellate Division not sustain the RVRSA position in the Highlands vs. RVRSA case, DEP, as the legal agent for protection of the environmental laws, should call for advancement of the cited case to the State Supreme Court. (54)

RESPONSE: The Supreme Court has declined to hear RVRSA's appeal.

Comments in Support of HAM

27. COMMENT: The Township of Rockaway endorses the RVRSA WMP and the inclusion of the HAM tract in the RVRSA future sewer service area for the following reasons:

- a) The WMP process anticipates and provides for a mechanism for modifications to sewer service areas and other planning criteria based upon changed circumstances and the evolution and development of land use within the jurisdictional boundaries of a sewage treatment facility.
- b) The planning documents upon which the RVRSA service area was originally established is decades old and does not reflect a variety of changed circumstances, including:
 - i. The constitutional obligations of municipalities to provide a realistic opportunity for the construction of their fair share of affordable housing within the region.
 - ii. The pattern of development and growth that has actually occurred.
 - iii. The shift of population growth within the jurisdictional boundaries of the municipal members of the RVRSA.
- c) The purpose of the RVRSA is to provide sewer treatment capacity and service to the member municipalities which it serves on a "first come, first served" basis.
- d) The WMP, with the proposed inclusion of HAM, does not involve the expansion of the RVRSA STP, but instead will rely upon the existing capacity in the RVRSA STP.
- e) The service area is an ever shifting and fluid designation, based upon facts and circumstances as they exist at the time and must be continually reviewed and updated as time passes.
- f) All member municipalities have the same obligation to continually review the development of land use patterns within their municipality and to seek and obtain an amendment of the sewer service area to reflect these changed circumstances.
- g) All municipalities contribute to the financing of the RVRSA STP based upon the capacity used and thus, to the extent that the WMP involves the use of additional capacity by Rockaway Township, the Township will pay a proportionately greater share of the capital costs for the STP and its operation.
- h) The WMP includes a variety of other changes with regard to sewer service areas in other municipalities to further reflect the change of circumstances that have occurred over a period of time since the original plans were developed.
- i) The proposed amendment was not the subject of any unusual or devious conduct as suggested by some member municipalities of the RVRSA. It instead involved the utilization of the existing regulatory process to seek the required amendment to address the development of a tract of property that had been proposed for high density development since the approval of the settlement of the affordable housing litigation in which the Township of Rockaway and various other member municipalities were involved by Judgment of Compliance and Repose entered by the Honorable Stephan

Skillman on November 20, 1985 in the matter captioned Morris County Fair Housing Council, et al. v. Boonton Township, et al., Docket No. 1-6001-78 P.W.

j) The proposed development of the HAM tract represents a reduction of the number of units from 1,600 units to 1,050 units and thus reflects a significant reduction in the volume of gallonage than would have previously been required for the approved development at 1,600 units. (44)

RESPONSE: For the reasons identified in Comment #27(a), (b), (c) and (d) above, and DEP's response to Comment #1, the RVRSA WMP has been approved with the inclusion of HAM in the RVRSA service area.

28. COMMENT: Highlands at Morris, Inc. supports inclusion of the HAM site in the RVRSA sewer service area for the following reasons:

a) DEP previously concluded HAM should be included in the RVRSA sewer service area. As specified in two DEP letters to RVRSA dated April 7, 1995 and March 19, 1996, DEP previously concluded that HAM should be included in RVRSA's sewer service area unless compelling reasons were identified for not including the property. The issue as to whether compelling reasons exist to not include HAM was fully adjudicated in Highlands vs. RVRSA, L-1309-95. The Honorable Reginald Stanton concluded that no compelling reasons exist and ordered RVRSA to forthwith include HAM in the RVRSA service area in the WMP.

b) HAM affordable housing component justifies HAM's receipt of public sewer service. Rockaway Township's compliance with its affordable housing obligation is specifically linked to HAM's construction and receipt of formal sewer service. Furthermore, the 1991 Reexamination and Comprehensive Revision of Rockaway Township's Master Plan noted that Rockaway Township relied upon HAM to satisfy a significant portion of its Constitutional obligation to provide affordable housing. Recent case law imposes a regional responsibility upon all governmental entities to provide for the realization of affordable housing. This responsibility also extends to those governmental entities overseeing the implementation of wastewater management planning.

c) The RVRSA service area is not constrained by the 1981 EIS and/or the 1984 FONSI. Letters from DEP and EPA to RVRSA dated April 7, 1995 and October 18, 1996, respectively, confirm both EPA's and DEP's position regarding the ability to go beyond the 1981 EIS and 1984 FONSI service area as part of the RVRSA WMP.

d) HAM is consistent with local and regional plans and ordinances. Not only is it permissible to extend sewer service to HAM but N.J.A.C. 7:15 mandates HAM be included in the WMP sewer service area. Comprehensive planning decisions made by the State, Morris County and Rockaway Township required that the HAM project be included in the WMP sewer service area. Highlands is fully consistent with the following documents: SDRP; Morris County's applicable planning documents; Rockaway Township Master Plan; and the Rockaway Township Zoning Ordinance. Also, HAM received approval from the appropriate municipal planning and zoning authorities. The "no build" solution with regard to HAM offered by certain speakers during the public hearing ignores the extensive and final governmental Site Plan Approval process HAM engaged in and completed.

e) RVRSA STP has capacity for HAM. In the matter of Highlands vs. RVRSA the amount of unallocated gallonage remaining in the RVRSA STP was identified as approximately 627,000 gpd. The projected flow from HAM, based on DEP criteria, is 233,000 gpd. Judge Stanton determined, therefore, that the flows from HAM could be accommodated by the RVRSA STP. As of January 1, 1997, RVRSA is required to allocate its available gallonage to all applicants on a "first come, first served" basis. HAM first sought sewer service from the RVRSA on April 6, 1987. Chronologically speaking, no other application to RVRSA appears to predate HAM request for sewer service. Since HAM was the "first to come", HAM must be the "first to get served." HAM further warrants a priority status over other applicants because of the development's affordable housing element.

f) Wetlands Issues - Wetlands related issues should not be addressed through the WMP approval process since separate regulatory and procedural schemes exist for this purpose and the public notice for the WMP specifically identifies "environmentally sensitive areas" as an issue not reviewed as part of the plan. Nonetheless, HAM received all appropriate wetlands clearance, including a wetlands' delineation and nationwide permit from the ACOE; DEP approved ESA waiver; and DEP freshwater wetlands exemption letter. Any remaining wetlands' issues will be resolved through DEP's approval of HAM's Compliance Assurance Plan which required the developer to redelineate and reconfirm on-site wetlands. (45)

RESPONSE: DEP has approved the RVRSA WMP with the inclusion of HAM in the RVRSA sewer service area, and with the conditions noted previously. For the most part, the basis of that decision is supported by points (a), (c), (d) and (e) above. Some clarification is needed on points (b), (d) and (f) as follows:

(b) - DEP approval of a proposed sewer service area expansion is not guaranteed based on inclusion of an affordable housing component. Instead, considerations with regard to capacity at the STP, consistency with zoning ordinances/master plans, reasonableness of service area expansion in relation to existing developed areas, and environmental considerations provide the basis, for the most part, for DEP decisions on WQM plan amendments.

(d) - While N.J.A.C. 7:15 does not mandate that HAM be included in the sewer service area, the rules do require that adequate wastewater service be provided for land uses allowed in zoning ordinances. Adequate wastewater service could mean an individual STP discharging to ground water for HAM versus connection to the RVRSA STP. However, DEP considers a separate STP to be a less desirable alternative in terms of environmental impact than connection to the RVRSA sewer system. Connection to the RVRSA sewer system is an acceptable and reasonable means of treating wastewater from the site, and no compelling reasons for not including HAM in the sewer service area have been provided. Therefore, DEP has approved the WMP with the inclusion of HAM in the sewer service area.

Note that the HAM development can not be said to be fully consistent with the SDRP unless it is reviewed and approved by the Office of State Planning, such as through the Centers designation process.

(f) - Based on the results of the Compliance Assurance Plan, the HAM project does qualify for an ESA grant condition mapping revision.

Comments on the RVRSA Service Area and Environmentally Sensitive Areas

29. COMMENT: The 1984 FONSI for the RVRSA STP and interceptor sewers was approved based on the fact that no sewage capacity was provided for extension of sewers into environmentally sensitive lands within the sewer service area. However, the WMP delineates extensive areas of vacant wetlands, floodplains, prime farmlands steep slopes and parklands as within the future sewer service area (ex. Green Pond Road wetlands in Rockaway Township; Rockaway River floodplains, wetlands and prime farmlands in Randolph Township, Rockaway Borough, Denville and Boonton Townships; Beaver Brook and Ford Road wetlands in Denville Township). Those areas should instead be delineated as outside of the future sewer service area. In addition, there is no mechanism to limit roads, parking lots and other structures that come with development. Therefore, the only way to protect these critical, environmentally sensitive areas is to exclude them from sewer service. (16, 39, 49)

RESPONSE: While environmentally sensitive areas should be considered with regard to how they affect WMP population and wastewater flow projections and service area boundaries, under N.J.A.C. 7:15, it is not required to exclude all environmentally sensitive areas from sewer service areas delineated in WMPs. The reason for this is that development in environmentally sensitive areas is not regulated under N.J.A.C. 7:15, but is instead regulated by applicable State and Federal rules, and local requirements. It would be inappropriate for a WMP to exclude lots or portions of lots containing environmentally sensitive areas from the sewer service area if there is the potential that these areas could later receive the appropriate permits/approvals for development.

While the aforementioned environmentally sensitive areas have not been removed from the RVRSA future sewer service area, additional discussion regarding further protection for these areas should occur as part of the watershed management planning effort in WMA #6 and the proposed revisions to N.J.A.C. 7:15 (currently under preparation) that will apply to any future amendments to the RVRSA WMP.

30. COMMENT: The RVRSA future sewer service area includes headwaters and waters classified as trout production. Inappropriate development will degrade these areas and rob the public of resources that belong to everyone. This is already happening in the Jackson Brook watershed where filling of wetlands has lead to increased erosion and flooding downstream in Dover Township. Severe water quality degradation to this trout production stream will be a fact once the stream corridor is fully developed. (16, 19, 49)

31. COMMENT: The Department should condition any approval of the WMP on protection of the headwater areas and minimization of secondary impacts through strict stormwater controls and stream buffers. (16)

32. COMMENT: The undeveloped parcels adjoining the Rockaway River and its tributaries should be removed from the sewer service area. The reliance on best management practices to control nonpoint source pollution is fool-hardy and unrealistic. (49)

33. COMMENT: Some of the potential impacts of the WMP include the following:

- 1) loss of ground water resources through diversion to sewers;
- 2) loss of ground water recharge needed to keep the Rockaway River flowing during drought;
- 3) loss of trout streams through extension of sewers to stream corridors;
- 4) Increase in nonpoint pollution through building boom on HAM site and other wetland and aquifer recharge sites;
- 5) Increase in flooding in Dover Township, Rockaway Borough and Denville Township through development of water holding areas such as the HAM site; and
- 6) Increase in pollution of the Jersey City Reservoir. (39)

RESPONSE to Comments #30 - #33: Through the WQM planning process, DEP is focusing special attention on projects proposing service area expansions in areas with streams classified by the Surface Water Quality Standards, N.J.A.C. 7:9B, as Freshwater 2 - Trout Production (Category 1) [FW2-TP(C1)]. Many such streams are in headwaters areas. The base flow and ecological issues analysis required for the India Brook tributary area sewer proposal in Randolph Township is an example. Issues include protecting the FW2-TP(C1) streams from measurable water quality changes and maintaining the designated use (production of trout). DEP is currently considering revisions to the Statewide Water Quality Management Planning rules to more specifically address these and other environmental issues.

In terms of the potential impacts identified in Comment #33, DEP must rely on the prior facilities planning which allowed for expansion of the RVRSA STP to 12 mgd based on the determination that the STP would not cause significant adverse secondary impacts. If an expansion/re-rating above 12 mgd is proposed, the WMP approval conditions related to protecting stream flow, water quality and water supply will need to be met. In addition, pursuant to Executive Order 109, any new amendments to the WMP will be evaluated to determine if alternative analyses will be required.

COMMENTS Regarding Environmental Impact Analysis

34. COMMENT: Detailed environmental studies and reports were combined with public input in the preparation of a Draft EIS in 1981 and a FONSI in 1984 for the RVRSA STP. However, the RVRSA WMP was put together without public input and environmental impact analysis. The New Jersey Water Quality Planning Act requires meaningful public participation in all phases of the water quality management process. The Department should require RVRSA to do an EIS covering the critical economic, social, environmental and institutional factors implicit in this plan and alternatives. (5, 27, 30, 31, 32, 39)

RESPONSE: See response to Comment #12.

Comments on Population and Wastewater Flow Projections

35. COMMENT: The WMP projects flows to the RVRSA STP for the year 2010 which are dangerously close to design capacity which could have negative implications on the ecology of the lower Rockaway River. (39)

RESPONSE: RVRSA's NJPDES-DSW Permit No. NJ0022349 which expires August 31, 2000 contains effluent limitations which are protective of the receiving water. The design capacity of 12 mgd represents the flow rate which the STP can be expected to treat which would meet the effluent limitations contained in the NJPDES-DSW permit.

Since flows to the RVRSA STP during the spring of 1998 reached 80% of the permitted flow, RVRSA prepared a Capacity Assurance Plan (CAP) pursuant to N.J.A.C. 7:14A-22.16. The CAP identifies the actions which are necessary to prevent an overloading of the STP or a violation of the NJPDES permit.

36. COMMENT: Some objections raised with regard to the projections of population and sewage flow in the WMP include:

- a) The proposed WMP includes an actual accounting of wastewater flows on an annual average basis as of December 1994. Since that time, participating municipalities have authorized additional development within their allocation. The proposed plan should be revised to include an updated flow and population projection so that the DEP may render a decision based upon more accurate data and information (4, 11, 12, 14, 47, 48, 54)
- b) The WMP's flow projections are not related to the actual projects under construction in a given community. For example, if one multiplies the total number of residential units proposed for the specific projects authorized by Denville Township after December 1994 by the DEP flow criteria, the estimated flow is 2.044 mgd, not 1.779 mgd as specified in Table III-1(A) of the WMP. Also, under this scenario, projected flows are attained by the year 2004, whereas the WMP reflects attainment by the year 2010. This analysis assumes an aggressive sewerage of 822 unsewered units, which schedule has not yet been determined.

It must be noted that the list of authorized projects in Denville Township does not include the fact that a builder's remedy lawsuit has been filed against Denville Township to add 570 units and would thus accelerate the Township's sewage growth rate at an even higher pace.

- c) While the WMP population projection for Denville Township is 12,716, the commenter estimates that the present population within the RVRSA service area is 13,000. It is the commenter's opinion that the Denville Township 2010 population projection is unrealistic and since it is a primary statistical tool in the RVRSA flow projection methodology needs revision. (54)

RESPONSE: (a), (b), (c), and (d) – In response to these and other comments, DEP requested RVRSA to update the population and flow projections in the WMP. Working with its member and customer communities RVRSA revised the WMP to identify a total year 2010 projected flow of 13.67 mgd. The flow of 13.67 mgd was calculated using the 1998 annual average flow of 9.76 mgd plus future committed and projected flows (using DEP criteria) for each municipality. In addition, unused flow provided to industrial pretreatment facilities through Significant Indirect User permits is included in the projections. It should be noted that while projected flows for most of the member municipalities increased as part of this reevaluation, total projected flows for Denville Township and Dover Town decreased.

While the RVRSA WMP now identifies a projected flow greater than 12 mgd, as noted in the WMP approval conditions, DEP does not approve any expansion or re-rating of the RVRSA STP above the current NJPDES permit condition of 12 mgd. In order to address the discrepancy between the projected need within the service area and the capacity at the RVRSA STP, RVRSA will need to evaluate which of the actions outlined in DEP's March 11, 1999 letter is appropriate. A future amendment to the RVRSA WMP will be needed once this issue is decided.

37. COMMENT: The 2010 flow projections in Table III-I(A) are flawed and do not represent the actual flow plus projected flows. For example, the 2010 projected industrial flow for Wharton Borough is 41,000 gpd. Wharton Borough, however, has an industrial user that is not only currently using 41,000 gpd but has been allocated 250,000 gpd. This industrial user intends to increase production over the next few years and use the entire 250,000 gpd. In addition, while the 2010 total projected flow for Wharton Borough is specified as 557,000 gpd, the flow from Wharton in May of 1997 was 601,000 gpd.

In additional to the above, Wharton Borough has had a come back and now has several other major sewerage users and a couple of others that may restart. With these additional users, actual usage is projected to be around 900,000 gpd, versus 557,000 gpd.

The 2010 projected flow for Boonton Town is specified as 782,000 gpd in Table III-1(A); however, the May 1997 flow was 907,000 gpd.

The 2010 projected flow for Rockaway Borough is specified as 872,000 gpd; however, in May 1997 the flow was 990,000 gpd.

The 2010 projected flow for Victory Gardens is specified as 133,000 gpd; however, in May 1997 the actual flow was 160,000 gpd.

The DEP should not be relying on flawed flow projections in its determination of whether or not to allow expansion of the RVRSA sewer service area. (10)

RESPONSE: See the response to comment #36.

Comments Regarding the Proposed Butterworth STP Service Area

38. COMMENT: Randolph Township objects to the exclusion in the WMP of the area of Randolph Township proposed for service by the Butterworth STP. The delay in approval of the proposed expanded Butterworth STP service area may result in serious damage to India Brook should the India Brook Village septic system fail and raw sewage flow into the brook. This is quite possible given the age of the system, the system's unreliability, the size of the system (serving 100 senior citizen units) and the very close proximity of the system to India Brook.

In addition, the proposed expanded service area would provide for sewerage of portions of Randolph's Village Center. This downtown project has been envisioned for over 20 years and is now just beginning to move along with a major anchor development which cannot proceed without public sewers.

Keller & Kirkpatrick's analysis of the India Brook Tributary Area shows only 147 remaining acres of undeveloped land which could support 204 new, residential units under current zoning. This compares to the 1090 residential units which will be constructed in the HAM project. While Randolph Township recognizes the extraordinary value of India Brook and appreciates DEP efforts to protect the brook, we are quite disturbed by the intense scrutiny to which this proposed sewer service area is being subjected.

Randolph Township urges the DEP to expedite its review of the proposed expanded sewer service area in Randolph Township in order to ensure public sewers for the 100 unit India Brook Village senior housing project and the Village Center. (34)

RESPONSE: The India Brook tributary area sewer proposal was reviewed differently from HAM because India Brook is an FW2-TP(C1) stream in the headwaters of the Raritan River basin. In accordance with the Surface Water Quality Standards, FW2-TP(C1) streams are to be protected from any measurable changes, and the designated use (trout production) must be maintained. While there was concern regarding the potential for failure of the India Brook Village septic system, there was also concern regarding the impact of sewerage on the base flow and ecosystem of India Brook. The analysis of these issues has now been completed and demonstrates that there will not be significant impact from sewerage the area. RVRSA and the applicant may therefore proceed with an amendment to the RVRSA WMP to address this area.

Comments Regarding the RVRSA STP

39. COMMENT: For several months during the fall of 1997 there was a marked increase in RVRSA STP odors that were noticeable over several consecutive days before there was any relief. Any further tie-ins to the STP should be denied until either the 12 mgd capacity is increased and/or other corrective measures are taken to control the odors. (22)

RESPONSE: Neither DEP nor RVRSA had previously been aware of any odor problems or complaints regarding the RVRSA STP. The RVRSA STP is currently functioning properly and meeting its permitted effluent limitations and is therefore not required to be upgraded at this time.

40. COMMENT: It is generally recognized that, due to the location of the plant and environmental features in the area, in conjunction with stipulations in past court orders and planning documents, it is likely to be very difficult if not impossible to expand the RVRSA STP beyond its current capacity of 12 mgd. As such, it should be assumed that this is the ultimate capacity of the STP available to existing users, as well as to existing and future facilities within the sewer service area. (15)

RESPONSE: Based on the history of this area, we agree that it will be difficult to expand beyond 12 mgd, but disagree that it is impossible. We have identified the constraints and conditions which apply to any proposed expansion or re-rating of the RVRSA STP above 12 mgd. See WMP approval condition #3.

Comments regarding Public Notification and Hearings

41. COMMENT: Since the December 18, 1997 public meeting is not conveniently scheduled for the public another meeting should be held in 1998 and the comment period should be extended past the holiday season. (1, 20, 27, 30, 31, 32, 33, 35, 38, 42, 51, 52)

RESPONSE: A second public hearing was not scheduled, however the public comment period was extended (by notice at the public hearing) until January 17, 1998.

42. COMMENT: The proposed RVRSA WMP has not been well publicized. (40)

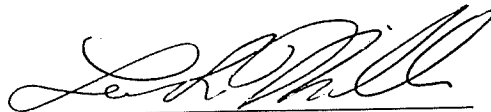
RESPONSE: The draft RVRSA WMP was noticed in accordance with the Statewide Water Quality Management Planning rules including providing public notice in the November 17, 1997 New Jersey Register and the November 19, 1997 Star Ledger. In addition, a public notice of the draft WMP was placed in the November 17, 1997 Daily Record and the November 19, 1997 Citizen of Morris County.

43. COMMENT: The commenter requested that the DEP consider having public hearings on any wastewater issue that arises in the Highlands region in the future. (2)

RESPONSE: As with the RVRSA WMP, if major changes are proposed or major wastewater issues are raised as part of a WQM plan amendment, DEP will strongly consider holding a hearing.

44. COMMENT: There needs to be more opportunity for public participation in the WQM planning process. DEP should consider this as it prepares revisions to the current WQM Planning rules. (16)

RESPONSE: This is being considered as part of the proposed changes to the Statewide Water Quality Management Planning rules.



Lance R. Miller
Director
Division of Watershed Management
Department of Environmental
Protection

3/9/00
Date

