

PUBLIC NOTICE

ENVIRONMENTAL PROTECTION

DIVISION OF COASTAL AND LAND USE PLANNING

Adopted Amendment to the Sussex County Water Quality Management Plan

Public Notice

Take notice that on 6/4/13, pursuant to the provisions of the New Jersey Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., the Water Quality Management (WQM) Planning rules, N.J.A.C. 7:15, and P.L. 2011, c. 203, the Department of Environmental Protection (Department) adopted an amendment to the Sussex County WQM Plan. This amendment adopts portions of the Future Wastewater Service Area (FWSA) map for Morris County that are within the Sussex County WQM Plan (only those portions of Jefferson Township, Mount Arlington Borough, Netcong Borough, and Roxbury Township).

The notice of this amendment proposal was published in the New Jersey Register on January 7, 2013, at 45 N.J.R. 67(a), and the Star Ledger and New Jersey Herald on the same date. In accordance with the Sussex County WQM Plan adopted amendment procedures, as the Designated WQM Planning Agency for the Sussex County WQM Planning Area, the Sussex County Board of Chosen Freeholders held a public hearing on February 13, 2013. The public comment period for the proposed amendment to the Sussex County WQM Plan closed 15 days following the February 13, 2013 public hearing. In accordance with the Sussex County WQM Plan amendment procedures, on May 22, 2013, the Sussex County Board of Chosen Freeholders adopted a resolution approving the amendment for adoption by the Department. The adoption of this amendment addresses the portion of the Morris County FWSA map that is located within the Sussex County WQM Plan only.

A separate public hearing and comment period was held on August 13, 2012, on those portions of a FWSA map for Morris County that are within the Northeast WQM Planning Area, Upper

Raritan WQM Planning Area, and Upper Delaware WQM Planning Area (all of Morris County with the exception of those portions of Jefferson Township, Mount Arlington Borough, Netcong Borough, and Roxbury Township located within the Sussex County WQM Planning Area). Notice of the proposed amendment, public hearing, and comment period appeared in the New Jersey Register on July 2, 2012, at 44 N.J.R. 1919(a), and was published in the Star Ledger and Daily Record newspapers on the same date. That amendment was adopted on April 25, 2013, and notice of the adoption was published in the New Jersey Register on May 20, 2013, at 45 N.J.R. 1253(a).

This adopted amendment was submitted on behalf of the Board of Chosen Freeholders of Morris County as the responsible Wastewater Management Planning Agency. The proposed amendment was submitted to the Department pursuant to P.L. 2011, c. 203, enacted on January 17, 2012, which permits the Wastewater Management Planning Agency to prepare and submit to the Department at least that portion of a wastewater management plan (WMP) designating sewer service area (SSA), which shall comply with the Department's regulatory criteria. The adopted map, titled "Future Wastewater Service Areas (FWSA), Morris County New Jersey," supersedes all wastewater service area mapping in Morris County located within the Sussex County WQM Planning Area for areas served by wastewater treatment facilities located within Morris County, including that which was adopted as part of an approved WMP.

The adopted FWSA map identifies areas to be served by sewage treatment facilities/sewer systems as well as areas to be served by septic systems with design flows of equal to or less than 2,000 gallons per day (gpd). The map modifies the previously approved SSA to eliminate environmentally sensitive areas that are not currently connected to sewer systems. Additionally, the map removes areas from sewer service based on local planning initiatives, and also includes areas previously excluded from SSA based on local planning objectives. This amendment only modifies the wastewater service area mapping portions of the above referenced WQM Plan.

Pursuant to P.L. 2011, c. 203, the Department, in consultation with the applicable wastewater management planning agency, may approve the inclusion of land within a SSA notwithstanding that existing treatment works may not currently have the assured capacity to treat wastewater

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

The Department and Morris County have held numerous meetings with the public, municipal officials, and affected agencies over the past four years. Further, in accordance with Administrative Order No. 2010-03 (AO #2010-3) signed by Commissioner Martin, a public meeting was held on February 9, 2011, to allow public review and comment on the then-current draft of Morris County SSA. As a result, the Department and the County have received continuous input from residents, municipal officials, and other affected agencies regarding mapping corrections and other issues.

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

In accordance with N.J.A.C. 7:15-5.24(b)1, to determine areas designated as threatened or endangered wildlife species habitat, the Department utilized the Division of Fish and Wildlife's

Landscape Project Maps of Habitat for Endangered, Threatened or Other Priority Species, versions 2.1 and 3.0 (Landscape Project), as applicable. Areas identified by the Landscape Project as being suitable habitat for threatened and endangered species are not included in the adopted SSAs except as provided under N.J.A.C. 7:15-5.24(e) through (h).

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

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

In accordance with N.J.A.C. 7:15-5.24(b)4, areas mapped as wetlands pursuant to N.J.S.A. 13:9A-1 and 13:9B-25 are not included in the adopted SSA, except as provided under N.J.A.C. 7:15-5.24(e) through (h).

Pursuant to N.J.A.C. 7:15-5.24(c), certain coastal planning areas, not applicable here, must also be excluded from SSA. Specifically, there are no Coastal Fringe Planning Areas, Coastal Rural

Planning Areas, or Coastal Environmentally Sensitive Areas in the Sussex County WQM planning area.

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

In addition to the environmentally sensitive areas with Federal 201 grant limitations that prohibit the extension of sewers identified under N.J.A.C. 7:15-5.24(d)1, there are other special restricted areas, not applicable here, which must also be excluded from SSA pursuant to N.J.A.C. 7:15-5.24(d)2 through 4. Specifically, there are no beaches, coastal high hazard areas, or dunes in the in the Sussex County WQM planning area.

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

In accordance with N.J.A.C. 7:15-3.10, the Highlands Water Protection and Planning Council (Council) was provided an opportunity to review and comment on the proposed amendment within the Highlands Region for consistency with the adopted Regional Master Plan (RMP). In correspondence dated April 8, 2013, Sussex County, as the WQM Planning Authority, was advised that the Highlands Council consents to the adoption of the proposed amendments with the understanding that when a full WMP is submitted to the Department for review, a Water Use and Conservation Management Plan will need to be adopted for deficit Hydraulic Unit Code (HUC) 14 subwatersheds.

The notice of this amendment proposal was published in the New Jersey Register on January 7, 2013, at 45 N.J.R. 67(a).

The following people submitted comments on this amendment:

Number – Commenter Name, Affiliation

1. Michael Kobylarz, Roxbury Township Engineer/Director of Utilities
2. Tony DiLodovico, Tony D Environmental Permitting, LLC, on behalf of Route 15 Properties, LLC
3. Eric Keller, Omland Engineering Associates, on behalf of the New Jersey Builders Association, Community Builders Association, and Builders and Remodelers Association

As noted below in response to the specific comments, comments requesting to include or exclude SSA, which was not reflected in the proposed amendment and was found to be a substantial change, are not adopted herein. Substantial changes include those changes to the proposed amendment which the Department has determined would enlarge or curtail who and what will be affected by the proposed amendment, change what is being prescribed, proscribed, or otherwise mandated by the proposed amendment, or enlarge or curtail the scope of the proposed amendment and its burden on those affected by it. Thus, changes which would enlarge or curtail which properties would be affected by the adopted FWSA map and/or the way in which properties would be affected by the adopted FWSA map would be considered substantial. Making such substantial changes on adoption would effectively destroy the value of the public notice and, thus, a new notice and public comment period are required prior to consideration of such changes pursuant to the process set forth in N.J.A.C. 7:15-3.4.

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

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

1. Comment: The commenter requested that the property known as Bouquet Roxbury, LLC, Block 9501, Lot 1, in Roxbury Township, be included in the Future SSA. The commenter stated that the property was issued a Treatment Works Approval (TWA), Permit No. 12-0236, on November 13, 2012. (1)

Response: The property in question was identified as environmentally sensitive pursuant to the WQM Planning rules at N.J.A.C. 7:15-5.24. The property is identified as wetlands and habitat for threatened and endangered species. Pursuant to N.J.A.C. 7:15-8.1, wastewater service area will not be withdrawn for projects that have received, prior to the effective date of the wastewater service area withdrawal, both a local preliminary or final site plan approval or subdivision approval where subsequent site plan approval is not required under the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., or a municipal construction permit; and a valid Department-issued TWA or NJ Pollution Discharge Elimination System (NJPDES) permit, if one is required. However, as no local approvals have been submitted to the Department for a project on this property, it does not meet the provisions of the rule at N.J.A.C. 7:15-8.1. As such, Block 9501, Lot 1, in Roxbury Township has not been included in the adopted SSA.

2. Comment: The commenter requests, on behalf of Route 15 Properties, LLC (Block 273.01, Lot 11 & Block 273.02, Lots 1 & 2), located in Jefferson Township, Morris County, that the project location, collectively, be proposed as its own FWSA based upon local and Department approvals for proposed onsite development. (2)

Response: The Department issued an Informal WQM Plan Consistency Determination of "Consistent" on December 23, 2011, for construction of a proposed Quick Chek Food Market and Gasoline Sales on Block 273.02, Lot 2. The Department issued TWA No. 11-0134a on December 23, 2011, for a proposed Quick Chek Store/Gas, utilizing an individual subsurface sewage disposal system (septic system) with a design volume of sanitary sewage of 1,985 gpd on Block 273.01, Lot 11, and Block 273.02, Lots 1 and 2. Both Department-issued documents are for a discharge to a septic system generating 1,985 gpd. As such, the site is inappropriate for inclusion in the SSA.

3. Comment: The commenter believes that there is a lack of balance in the plan because rules for inclusion in SSA are black and white and no consideration is given to the various sewerage and municipal utility authorities that have built and invested in treatment and/or collection systems and are now being precluded from utilizing these systems to their full capacity. (3)

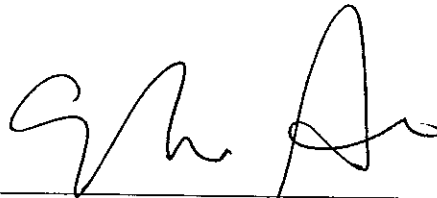
Response: The Department believes that the WQM Planning rules and the criteria and procedures therein provide for a fair and equitable process that meets the goals of the State and the requirements of applicable State and federal statutes. The primary intent of the WQM Planning rules is to protect water quality in the State, to unify land use planning among various levels of government through a continuing planning process, and to ensure that environmental infrastructure exists to support future development. The rules at N.J.A.C. 7:15-5.24 identify the conditions where extension of sewer service is not appropriate (sewer service area delineation criteria). As the Department has previously stated regarding this rule, N.J.A.C. 7:15-5.24(a) sets forth the general policy that large contiguous areas of environmentally sensitive resources should not be included in SSAs. The limitations on the extension of sewer service in these areas are consistent with the Department's mandate to protect the ecological integrity and natural resources of New Jersey, including water, threatened and endangered species, wetlands and unique and rare assemblages of plants. Centralized wastewater is inappropriate for these areas because it subsidizes and otherwise encourages the development of these resources at a density that is inconsistent with their protection and the environmental protection mandate of the Department. The Department has determined that the appropriate wastewater management alternative for these areas is individual subsurface sewage disposal systems that discharge less than 2,000 gallons per day, typically called septic systems. Therefore, though excluded from the extension of sewer service, these areas have a wastewater management alternative that will promote a density of development consistent with the conservation of these resources.

Further, the rules also provide a level of deference to local planning objectives and identify multiple avenues by which environmentally sensitive lands may be included in SSA, at N.J.A.C. 7:15-5.24(e) through (h). These avenues include methods to rebut the presumption that the environmental data utilized to delineate SSA is correct, to allow for infill development when the

land is not critical to a protected species population, to create a linear boundary that relates to recognizable geographic features as allowed by N.J.A.C. 7:15-5.20(b)2 when the land is not critical to a protected species population, and to recognize comprehensive planning efforts that accommodate center based development.

Adoption of this amendment does not eliminate the need for any permits, approvals, or certifications required by any Federal, State, county, or municipal review agency with jurisdiction over any project/activity. Approval of these amendments does not provide any implied approval for any other aspects of any project or needed permits and approvals. Further, the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and implementing regulations require that full county-wide WMP updates be completed pursuant to the requirements set forth in N.J.A.C. 7:15.

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



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

6/4/13

Date