

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 **JUL 25 2013** pursuant to the provisions of the New Jersey Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Water Quality Management Planning rules, N.J.A.C. 7:15, an amendment to the Sussex County Water Quality Management (WQM) Plan was adopted by the Department of Environmental Protection (Department). In addition to the Sussex County WQM Plan, this amendment also modifies the Sussex County Wastewater Management Plan to delineate a sewer service area (SSA) and to allow for the construction of a discharge to groundwater wastewater treatment facility to serve a proposed multi-phased, mixed use development on existing Block 11, Lots 1, 1.01-1.03, 13, 13.01-13.15, 14, and 15, in Frankford Township, Sussex County, commonly referred to as Ross's Corner (Frankford Town Center). The amendment also provides for wastewater generated from the existing Skylands Park baseball stadium, which is currently treated by a treatment facility (NJ0103748) at the stadium, to be conveyed to the new treatment facility proposed to serve the Frankford Town Center development. Upon construction of the new treatment facility and connection of the stadium to that facility, the existing stadium treatment facility would be decommissioned.

The proposed development of the site is to occur in three phases within two separate hydrologic unit code (HUC) 11 watersheds, the Paulinskill and the Wallkill. The total projected flow for the entire project, including all three phases, is 210,394 gpd.

Phase 1 includes the Sussex Commons project which consists of 336,000 square feet (s.f.) of retail space and restaurants totaling 504 seats, and 18 residential units (2 one-bedroom units, 12 two-bedroom units, and 4 three-bedroom units), and has a projected flow of 55,440 gallons per

day (gpd). Phase 1 also includes the treatment of wastewater from the 4,200 seat Skylands Park baseball stadium upon connection to the proposed to discharge to groundwater wastewater treatment facility with a flow of 12,600 gpd. Therefore, the total projected flow for Phase 1 of the proposed development, including the treatment of wastewater from the Skylands Park baseball stadium, is 68,040 gpd. Phase 1 will occur within the Paulinskill HUC 11 watershed.

Phase 2 of the project proposes 675,180 s.f. of commercial development with a total projected flow of 67,518 gpd and will occur within the Wallkill HUC 11 watershed.

Phase 3 of the project proposes 333,670 s.f. of commercial development and 414,691 s.f. of light industrial development with a total projected flow of 74,836 gpd and will occur within the Wallkill HUC 11 watershed.

The notice of the proposed amendment, published in the New Jersey Register on August 6, 2012, at 44 N.J.R. 2067(a), erroneously identified the Wallkill HUC 11 watershed as the primary location for Phase 1 of the development. The correct watershed location for the first Phase of the proposed development is the Paulinskill HUC 11 watershed. The notice of the proposed amendment also incorrectly identified Phase 2 of the proposed project as located in the Paulinskill HUC 11. The correct watershed location for Phase 2 is the Wallkill HUC 11. In addition, the notice of the proposed amendment also failed to accurately include in the total projected flow the 12,600 gpd of wastewater flow attributed from the existing 4,200 seat Skylands Park baseball stadium to be connected to the proposed new discharge to groundwater wastewater treatment facility for Phase 1. The total projected flow for Phase 1 of the proposed development is 68,040 gpd and not 55,440 gpd as was indicated in the notice of proposed amendment.

When evaluating a site specific amendment under N.J.A.C. 7:15-5.25(h), projected flows are examined in evaluating treatment plant capacity requirements and demonstrating that the wastewater generated can be discharged in conformance with the nitrate planning standard of 2.0 mg/L. The Department's review of the proposed amendment was based on the correct total projected flows for the entire proposed project and, therefore, included the correct total flow for

Phase 1 of 68,040 gpd, as well as the correct HUC 11 watershed locations of each phase of development. In addition, as the notice of the proposed amendment identified the impacted watersheds and noted the correct total flow of the project (210,394 gpd), the corrections noted herein neither impact the outcome of the Department's analysis nor impact the value of the proposal notice as the errors do not change the outcome of either the analysis of the capacity requirements or conformance with the nitrate planning standard of 2.0 mg/L.

This amendment has been reviewed in accordance with the Water Quality Management Planning rules (N.J.A.C. 7:15). In accordance with N.J.A.C. 7:15-5.24(b), environmentally sensitive areas have been assessed to determine what areas are appropriately included in the adopted SSA. 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 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. These environmentally sensitive areas are not included in the adopted SSA except as noted below.

In accordance with N.J.A.C. 7:15-5.24(b)1, to determine 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 2.1 (Landscape Project).

The Department's review determined that the wooded area along the Conrail railroad right of way is Rank 5 threatened and endangered species habitat for Wood Turtle, Bog Turtle, Barred Owl, Bobcat, and Timber Rattlesnake. This area is not included in the adopted SSA.

The Landscape Project also identified the portion of the site currently in agricultural use as Rank 3 threatened and endangered species habitat for Savannah Sparrow and a small portion of that area as habitat for Wood Turtle. The area identified as habitat for Savannah Sparrow is being adopted as SSA. Frankford Township has agreed to work collaboratively with the Department to permanently mitigate any loss of threatened species habitat. The Department determined that,

while the habitat on site is suitable for Savannah Sparrow, it is not critical to the survival of the species overall. Moreover, the Department determined that the habitat on site occurs within a fragmented and developing landscape reliant on specific agricultural practices, and is subject to the annual management decisions of the individual landowner. Thus, in order for the Department to ensure the continued participation of the Savannah Sparrow in the ecosystem, the survival and recovery of the species would be improved through the permanent creation and maintenance of a suitable habitat at another location. To this end, this amendment is subject to the Memorandum of Understanding (MOU) entered into between Frankford Township and the Department on May 8, 2013, that requires mitigation strategies to actively manage for grassland habitat at an alternative location that will be deemed suitable by the Department. Frankford Township agreed that a tract of at least 19 acres must be permanently deed restricted as habitat for Savannah Sparrow; that the location of that tract must be approved by the Department; that the tract must be within a landscape situation favorable to the long-term management for grassland birds; and to implement a Department-approved grasslands management plan. Further, Frankford Township's obligation to establish and maintain permanent Savannah Sparrow habitat as set forth in the MOU must be fulfilled in order for any subsequent regulated activity for Frankford Town Center to be considered consistent with the WQM Plan. Specifically, the Department will not issue any final permits for the Frankford Town Center, including but not limited to a final NJ Pollutant Discharge Elimination System (NJPDES) permit, unless and until the obligations of the MOU have been demonstrated to the satisfaction of the Department.

As noted above and in the proposal, a portion of the site was identified as habitat for Wood Turtle. Subsequent to the preliminary notice published on August 6, 2012, the Department noted during its review that an update to the Landscape Project (version 3.1) identified the portions of the site proposed as SSA as habitat for additional threatened and endangered species, including Bog Turtle, a federally protected species. However, a habitat suitability review performed by the Department determined that the site was not, in fact, suitable habitat for Wood Turtle or Bog Turtle.

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.

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 SSA.

In accordance with N.J.A.C. 7:15-5.24(b)4, areas mapped as wetland 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 on the project site.

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. There are no Federal 201 grant limitations related to the project site.

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 on the project site.

The Township of Frankford, Sussex County, New Jersey has adopted a stormwater control ordinance (Ord. No. 2006-02 § 4 Art. 1) in accordance with N.J.A.C. 7:8. Consequently, the requirements of N.J.A.C. 7:15-5.25(g)1 for stormwater control have been satisfied. No portion of the proposed development on site is identified as within a riparian zone as established at N.J.A.C. 7:15-5.25(g)2-5 or areas with a steep slope as required at N.J.A.C. 7:15-5.25(g)6.

The Department has determined that the project has demonstrated that the wastewater generated can be discharged in conformance with the nitrate planning standard of 2.0 mg/L, considering

dilution available on the project site, pursuant to N.J.A.C. 7:15-5.25(h)2. In order to meet the nitrate planning standard for each HUC 11 watershed, considering the soils on the project site and a discharge rate of 210,394 gpd, the effluent from the project must be discharged at a nitrate concentration no higher than 4.3 mg/L, to be achieved as an average on an annual basis. Any NJPDES permit issued for this project shall demonstrate consistency with the Sussex County WQM Plan, and reflect the nitrate concentration of the discharge noted therein.

The proposed project will utilize privately owned wells associated with the individual parcels to provide water to the proposed development. The proposed treatment system will discharge treated effluent to each of the two HUC 11 watersheds with the amount of effluent discharged to each HUC 11 watershed proportionate to the projected volume of water withdrawn from that HUC 11 watershed. Accordingly, potential depletive/consumptive impacts have been addressed.

Notice of the proposal of this amendment was published in the New Jersey Register on August 6, 2012, at 44 N.J.R. 2067(a). A public hearing was held by the Sussex County Board of Chosen Freeholders, as the WQM Planning Agency, on September 12, 2012, and the public comment period closed 15 days following on September 27, 2012.

The following people submitted comments on this amendment:

Number – Commenter Name, Affiliation

1. John Hatzelis, Administrator, Sussex County Municipal Utility Authority
2. Michael C. Gaus, Esq., on behalf of Lorterdan Properties at Frankford I, LLC
3. Thomas F. Collins, Jr., Esq., on behalf of the Township of Frankford

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 notes that the notice of the proposed amendment incorrectly indicated that Phase 1 Town Center development with a combined projected flow for Phase 1 is 55,440 gpd will occur primarily within the Walkkill HUC 11 watershed. This should be revised

to indicate that Phase 1 of the proposed development has a total projected flow of 68,040 gpd and is within the Paulinskill HUC 11. (1)

Response: As indicated above, the inaccurate statements in the notice of proposed amendment noted by the commenter have been corrected where appropriate in this adoption notice.

2. Comment: The commenter notes that the proposed amendment notice indicates “the effluent from the project must be discharged at a nitrate concentration no higher than 4.3 mg/L” and that any NJPDES permit issued for this project shall reflect this nitrate concentration. This would seem to imply that the effluent nitrate concentration is a daily or even instantaneous maximum nitrate limit. The Department should correct/clarify that the appropriate nitrate limitation of 4.3 mg/L as an annual average so to avoid future NJPDES permitting questions or concerns. (1)

Response: To clarify, as part of the NJPDES discharge permit, the Department will propose a nitrate limitation of 4.3 mg/L for this on-site discharge facility to be achieved as an average on an annual basis. An annual average limit is consistent with the nitrate dilution model which utilizes an annual average rainfall to predict the total recharge volume available for nitrate dilution over a project area or HUC 11. It is recognized that over a year there are periods of little or no precipitation and/or extended rainfall. Those periods of extended prolonged rainfall provide saturation below the root zone necessary for diluting nitrate within the ground water table throughout the site. Therefore, a proposed NJPDES permit will specify a 4.3 mg/L nitrate limitation as an annual average. However, the proposed permit will include a monthly sampling requirement for the nitrogen limitation of 10 mg/L as an instant maximum.

3. Comment: The commenter notes that Lorterdan Properties at Frankford I, LLC (Lorterdan) has serious concerns about the proposed amendment. In particular, the commenter states that the proposed amendment is inconsistent with a Developer’s Agreement executed by Lorterdan, Frankford Township, and Sussex Commons on May 10, 2010. The commenter states that the Developer’s Agreement is based on the development of an active adult housing community on parcels currently zoned as Light Industrial (LI). The commenter states that despite repeated requests, Frankford Township has not taken the necessary steps to modify the zoning. The

commenter states that Frankford Township should be required to modify the zoning prior to proceeding with a WQM Plan amendment. (2)

Response: The proposed amendment has been requested by Frankford Township to accommodate future development within the parcels identified as the proposed Frankford Town Center. The Department reviewed the amendment application pursuant to the current WQM Planning rules (N.J.A.C. 7:15). The rules require that the wastewater projects, or build out analysis, be based on existing zoning. As part of the application submittal the Township confirmed that existing commercial and LI municipal zoning was to be utilized in the build out analysis for Phase 2 and 3. Questions pertaining to the executed Developer's Agreement, or any necessary zoning changes or variances necessary to implement the Developer's Agreement, are not before the Department and are beyond the scope of this amendment.

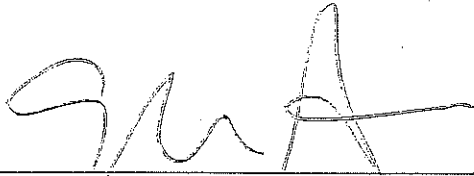
4. Comment: The commenter contends that Frankford Township, without notice to Lorterdan, has changed the proposed project gallonage and allocation. The WQM Plan application supplied to Lorterdan indicated a total proposed gallonage of 210,394 gpd for the development of the site, while the total of the three Phases as proposed in the Public Notice did not equal this flow volume.

Response: As discussed above, the projected wastewater flow calculated for each of the three Phases is a total flow projection to assess the need for future treatment plant capacity to a proposed DGW facility. This notice discusses the error made in the notice of proposal and specifies above that the total projected flow for the proposed development of this site is 210,394 gpd.

5. Comment: The commenter contends that as the area that Lorterdan has originally anticipated developing is currently zoned LI, there is significantly less gallonage allocated for that area than will be needed for a realistic commercial and/or residential project. The WQM Plan application also reflects only a projected population increase of 72 people through the final build out, a population growth which in no way suggests plans for creating and developing a viable town center that provides for a residential component. (2)

Response: As stated above, wastewater flow projection for Phase 1 of the proposed development is based on approved site plans. The population increase of 72 persons, as indicated in the amendment application, was an estimated persons per unit and projected based only on the known residential units approved under the Phase 1 site plan. As there were no approved site plans for Phase 2 or 3 at the time of the application, currently approved municipal commercial zoning was utilized to perform the build out analysis.

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 any project/activity. Approval of this amendment does not provide any implied approval for any other aspects of any project or needed permits and approvals.



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

7/25/13

Date