

DEPARTMENT OF ENVIRONMENTAL PROTECTION  
DIVISION OF LAND USE PLANNING

ADOPTED AMENDMENT TO THE TRI-COUNTY WATER QUALITY  
MANAGEMENT PLAN

Public Notice

**Take notice** that on **APR 7 2011**, 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 Tri-County Water Quality Management (WQM) Plan was adopted by the Department of Environmental Protection (Department). This amendment, submitted on behalf of the Bordentown Waterfront Development Community, LLC, modifies the Bordentown Sewerage Authority (BSA) Wastewater Management Plan (WMP) to provide for the expansion of the existing BSA Black's Creek Sewage Treatment Plant (STP) sewer service area to include the Bordentown Waterfront Development Community Project.

This amendment allows for the construction of a proposed mixed use Bordentown Waterfront Community on property identified as Block 140, Lots 5, 6, 7, 8, 10 through 16 and 19 in Bordentown Township, Burlington County. As originally proposed in the New Jersey Register on July 6, 2010 at 42 N.J.R. 1433(b), the proposed project site description did not refer to Lots 7 and 16, Block 140. The two lots consist of a 23' wide right of way easement totaling 1.09 acres. While the lot and block numbers were not included within the project site description, this 1.09 acre parcel was included in the total estimation of the area to be developed for the project that was utilized in the analysis of the amendment.

The proposed project location, totaling approximately 68 acres, is bounded to the north by Stepan Chemical Company, to the west by the Delaware River and a tributary to the Delaware River, the south by vacant land in the Township of Mansfield and to the east by both the Conrail Camden to Amboy Mainline Pennsylvania Railroad and Burlington-Bordentown Road (County Route 662). The railroad line, which is utilized also by the River Line light rail system, crosses a portion of the site along the eastern boundary.

The proposed project is within the Waterfront Village Redevelopment Area Redevelopment Plan for Waterfront Village adopted by the Township of Bordentown on April 28, 2008.

The applicant proposes the construction of 674 residential units, containing a mixture of one, two and three-bedroom units (62 being age restricted one bedroom units), approximately 31,400 square feet of retail/commercial/office space, three pools, a boathouse community building (existing), a proposed fishing pier and waterfront access. As indicated by the applicant, the proposed Boathouse Community building and the three swimming pools are intended for the use of the residents of the Bordentown Waterfront Development. The total projected wastewater flow from the proposed development, calculated in accordance with N.J.A.C. 7:14A-23.3, is 138,210 gallon per day (gpd). Generated wastewater is to be treated at the Black's Creek Sewage Treatment Plant (STP), which is owned by the BSA. The project will require an approximately 8,000 foot force main sewer extension to connect to the Black's Creek STP collection system.

The expansion of the BSA sewer service area to accommodate the Bordentown Waterfront Development Community encompasses approximately 40 acres to

include the footprint of the development consisting of the existing boathouse and all proposed structures only.

The Bordentown Waterfront Development site lies partly within the coastal zone regulated under the Coastal Zone Management rules, N.J.A.C. 7:7E. The WQMP rules require at N.J.A.C. 7:15-3.6(a) that the "Rules on Coastal Zone Management shall provide the basic policy direction for water quality management planning." Pursuant to the Coastal Zone Management rules at N.J.A.C. 7:7E-5A.2, the growth rating for a site in the upland waterfront development area is determined by the region in which the site is located, and the growth rating assigned to that region. The portion of the Bordentown Waterfront Development site that is within the jurisdiction of the Coastal Zone Management rules is located within the Delaware River region, which is designated as a development region. Providing sewers to this site is consistent with that designation. However, determination of compliance with all requirements of the Coastal Zone Management rules is made through the necessary Waterfront Development Permit review.

This amendment was reviewed in accordance the Water Quality Management Planning Rules that set the environmental review standards to be applied to a site specific amendment at N.J.A.C. 7:15-5.24 and N.J.A.C. 7:15-5.25(h).

N.J.A.C. 7:15-5.24 prohibits the inclusion of any contiguous area of 25 acres or more that is identified as environmentally sensitive in a sewer service area. The rule defines environmentally sensitive areas as those areas that are designated as threatened and endangered species habitat by the Landscape Project, Natural Heritage Priority Sites, wetlands and buffers to Category One waters. There are no Natural Heritage Priority Sites or Category One waters located on or adjacent to the site.

Based upon a site inspection, the site has received a Letter of Interpretation from the Department that verifies that most of the site is not freshwater wetlands, with the exception of a linear feature running roughly parallel to the railroad tracks and a wetland fringe along the waterfront. No sewage generating development is proposed within the delineated wetlands.

As indicated in the proposal notice for this amendment, the undeveloped waterfront portion of the site was identified as Rank 4 habitat as an American bald eagle foraging area. Pursuant to N.J.A.C. 7:15-5.24(b)1 and as referenced in the proposal notice discussion of identification of environmentally sensitive areas, threatened and endangered species habitat is designated by the Department through the "Landscape Project" (see 41 N.J.R. 1433). The bald eagle (*Haliaeetus leucocephalus*), also known as the American bald eagle, is an endangered species pursuant to N.J.A.C. 7:25-4.13. The Division of Fish and Wildlife (DFW) has agreed to an eagle foraging buffer. This eagle foraging buffer, depicted on the submitted site plans that are part of the file that was made available for review as part of this amendment process, is 300 feet wide, measured outward from the mean high tide water line of the Delaware River that borders a portion of Block 140, Lot 14. This foraging buffer has been verified by DFW and is excluded from the proposed SSA. Additional habitat conservation measures, which will limit access and activities within the eagle foraging buffer, have been identified by the DFW. These restrictions will be implemented by the Department through the Waterfront Development permitting process.

An additional consideration under N.J.A.C. 7:15-5.24(d) is the exclusion of areas subject to Federal 201 grant limitations. The BSA is subject to such limitations which restrict connection of new sewage generating structures located within

environmentally sensitive areas including wetlands, floodplains and threatened and endangered species habitat. Much of the Bordentown Waterfront Development site west of the railroad is identified as subject to that restriction (BSA construction grant No.C-34-0607-02). The Department advised the applicant to seek written approval from the Regional Administrator of the United States Environmental Protection Agency (USEPA) for a waiver from the special grant condition that restricts sewer connections to serve new development in environmentally sensitive areas.

On March 12, 2009 the Regional Administrator of USEPA issued a grant condition waiver for the Bordentown Waterfront Development site. In its determination, the USEPA approved a partial waiver for Block 140, Lots 7, 8, 10 thru 16 and 19 conditioned upon approval and receipt of all necessary permits required by the Department. The USEPA noted that the sewer connection restriction will remain in effect for the remaining wetlands on this parcel. Any modification to this project resulting in disturbance to wetlands (including the addition of stormwater control structures and access roads) will require a resubmittal of this application to the USEPA for a revised determination.

N.J.A.C. 7:15-5.25(h) requires a demonstration that adequate sewage treatment and water supply capacity exists to serve the project which is the subject of a proposed amendment and that the nonpoint source pollution control requirements of the rules are met.

The Black's Creek STP (NJ0024678) has a permitted capacity of 3.0 million gallons per day (MGD) and discharges to Black's Creek, a designated Category 2, (C2), Fresh Water 2 (FW-2) waterway as classified under the Surface Water Quality Standards, N.J.A.C. 7:9B. Bordentown Sewer Authority recently

completed an updated wastewater management plan for its existing and proposed sewer service area. Based on the updated wastewater management plan, the future demand for wastewater treatment was estimated to be 2.44 MGD at full build-out. Therefore, the Black's Creek STP has 0.56 MGD (560,000 gpd) of excess capacity. The Bordentown Waterfront Development project will generate a projected 138,210 gpd of wastewater. Therefore, the projected wastewater generated from the proposed project can be met without the need to expand the Black's Creek STP. Accordingly, availability of adequate sewage treatment capacity has been demonstrated.

The proposed project will receive its potable water supply from Bordentown City, through its public utility, Bordentown Water Department (BWD) (mistakenly identified as Bordentown Township in the proposal notice) under permit number (PWSID 0303001). BWD has a current allocation of 118 million gallons per month or 3.8 million gallons per day. At present, BWD has an unused allocation of approximately 13.84 million gallons per month, or 446,000 gallons per day. The potable water demand for the Bordentown Waterfront Development project is well within the existing permitted water allocation for BWD. As both the Hamilton Township water supply wells and the location of the discharge of the treated wastewater to the Delaware River via the Black's Creek are both located within the Watershed Management Area (Assiscunk, Crosswicks, and Doctors), no regional inter basin transfer would occur and the depletive use analysis continues to be satisfied.

The proposal notice indicated incorrectly that full build-out of the BSA sewer service area would likely exceed the current water supply permitted allocation, but because the water supply is drawn from the Delaware River, it is not anticipated that water supply will be a limiting factor in the future. As indicated

above, the water supply wells are actually located in Hamilton Township. However, the Department has reviewed build-out analyses conducted in support of modification of BSA's water allocation permit to increase the diversion from 96 million gallons per month (mgm) to 118 mgm, and as part of the BSA WMP adopted on November 19, 2009 (see 41 N.J.R. 2727(a)). Both build-out analyses demonstrated that water supply will not be a limiting factor in the future.

The nonpoint source analysis consists of three requirements: avoidance of steep slopes, avoidance of riparian corridors and compliance with the Stormwater Management rules, N.J.A.C. 7:8. The only steep slopes that exist on the property are located within the eagle foraging buffer, near the water's edge. Since this area will not be disturbed, compliance with this criterion is met. Applications for freshwater wetlands (N.J.A.C. 7:7A), stream encroachment/flood hazard (N.J.A.C. 7:13) and waterfront development (N.J.A.C. 7:7 and N.J.A.C. 7:7E) permits have been filed with the Division of Land Use Regulation (DLUR). The DLUR through the regulatory oversight of the rules applicable to these permit applications will determine compliance with the riparian corridor and stormwater management requirements of the nonpoint source analysis. Therefore, the requirements of N.J.A.C. 7:15-5.25(h) will be met through the DLUR permitting process.

This amendment proposal was noticed on July 6, 2010 at 42 N.J.R. 1433(b). The Department received comments during the comment period.

The following people submitted written comments on this amendment:

**Number –Commenter Name, Affiliation**

1. Mr. Mark Miller, Bordentown Township resident.
2. Mr. Michael Gross, Attorney for the Applicant

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.

**Comment:** It is appropriate that a public hearing be held to increase transparency of the development's impact and ramification of allowing the project to proceed through the Tri-County WQMP amendment process. This is appropriate given this private development is being subsidized with \$250,000 in Federal grant money. (1)

**Response:** The Department only received a single request for a non-adversarial public hearing. The commenter has detailed his concerns with various aspects of the proposed amendment as summarized in this notice. The Department determined there was not significant interest in holding a public hearing and that conducting a public hearing as part of the amendment process was unlikely to result in receiving new information that was not previously provided during the written comment period. Consequently, the hearing request on this proposed amendment was denied.

**Comment:** As a result of the increased stormwater from the proposed impervious cover within 40 acres along the banks of the Delaware River, flooding problems may be exasperated. There are going to be significant issues with respect to the high ground water table and area required for stormwater management. Documentation for stormwater management and all potential impacts due to increased impervious cover from this proposed development has not been reviewed or made available to the public as part of this proposed amendment. Therefore, this proposed amendment does not meet the criteria of the WQM



Planning rules as N.J.A.C. 7:15-5.25(h)4 does not support the use of another permitting process to document the sufficiency of stormwater management, nor riparian zone protection requirements.

Governor Christie, through the formation of the new Passaic River Flood Commission in April 2010, has demonstrated his concern for flooding issues. As flooding issues have become rampant over the last decade, the New Jersey Flood Mitigation Task Force, as recently as June 2010, is working to restrict development in the Delaware River Basin to minimize flooding problems. To allow for the planning of a high intensity use of 40 acres on the banks of the Delaware River appears to be inconsistent with Governor Christie's flood prevention initiatives.

Full review of the proposed project in its entirety for consistency with stormwater requirements, riparian corridor protection and flood control should be conducted prior to adoption of the Tri-County WQMP amendment. Otherwise, the Department is providing the applicant with de facto approval for needed permits that may not be obtainable for the proposed project. (1)

**Response:** The proposed project has obtained the required Department approvals from the DLUR for freshwater wetlands (N.J.A.C. 7:7A), and waterfront development (N.J.A.C. 7:7 and N.J.A.C. 7:7E) permits. The DLUR reviewed the proposed project for compliance with the Flood Hazard Area Control Act rules (N.J.A.C. 7:13) as a component of the Waterfront Development Permit (WDP) application for Upland and In-Water activities. In addition, under the WDP, all proposed on-site stormwater management design plans have been reviewed and determined compliant with the standards of the Stormwater Management rules at N.J.A.C. 7:8.

Pursuant to N.J.A.C. 7:15-5.25(h), proposed projects provide site specific documentation to demonstrate compliance with environmental standards specified elsewhere in this section, including stormwater management requirements at N.J.A.C. 7:8. The site plans provided to the Department as part of the WDP application included several stormwater management basins, associated stormwater discharges and other disturbances, such as proposed channel restoration, stream bank stabilization and disturbances for a public access walkway within the established riparian buffer zone. In reviewing the proposed WQMP amendment, the Department recognized that, as part of the review of the WDP application, the applicant would be required to provide additional information and analyses regarding how the proposed project activity is to comply with the Flood Hazard Area Control Act Rule (N.J.A.C. 7:13). The WQM planning rule does not preclude the utility of the DLUR permitting process to verify this compliance.

With reference to the Department's analysis of stormwater and flood hazard aspects of the proposed project, additional opportunity for the public to comment has been provided as part the permit review process conducted by the Department's DLUR for the permits issued under the following permit numbers: 0300-08-0007.1, FWW080001, FWW080002, FWW080003, FWW080004, FWW080005, FWW080006, FWW080008, FWW080009 and 0300-08-0007.3, WFD100001 and WFD100002. As required, confirmation that the WFD permit application was submitted and under review was notice in the Department's "DEP Bulletin", Volume 34; Issue No. 10 on May 26, 2010 (pg.43).

The Department has assured compliance with all flooding, stormwater management and riparian zone protection requirements pursuant to N.J.A.C. 7:15-5.25(h) as part of the DLUR permit application review process. As noted both in

the proposal notice and below, the adoption of an amendment does not exempt the proposed project activities from obtaining all applicable Department permits, including, but not limited to, stormwater management, water quality and quantity analysis; exact locations and designs of outfalls and basins; development in wetlands, flood prone areas, or other environmentally sensitive areas which are subject to regulation and therefore adoption of the amendment does not constitute any de facto approval for required permits.

**Comment:** The Department's administrative record for the WQMP amendment includes a proposal from 2008 that includes 751 residential units in addition to the non-residential development that incorporates a footprint greater than the 674 residential unit development that is consistent with the DLUR waterfront development application. It is unclear as to which proposal is actually being approved at this time, since the WQMP amendment process appears to be deferring, without regulatory authority, to the waterfront development permit process for stormwater management approvals. (1)

**Response:** The initial 2008 amendment application submitted to the Department did indicate that the proposal was to include 751 residential units in addition to the non-residential development. However, as a result of the review process, the design was revised. As indicated above and in the proposal notice, the proposed project to be allowed by the adoption of the WQMP amendment is the construction of 674 residential units, containing a mixture of one, two and three-bedroom units (62 being age restricted one bedroom units), and approximately 31,400 square feet of retail/commercial/office space, three pools, a boathouse community building (existing), a proposed fishing pier and waterfront access.

**Comment:** The proposed amendment notice was not clear as to whether the identified Rank 4 American bald eagle foraging area was the result of the endangered species habitat designation by the Landscape Project. In addition, the proposed amendment notice stated "additional habitat conservation measures and restrictions which will limit access and activities within the eagle foraging buffer will be implemented by the Department through the Waterfront Development permitting process." However, this notice failed to define this buffer or the restrictions to be implemented. Without the knowledge of these proposed buffers and their restrictions, to be established through another permitting process, it is impossible for the public to fully consider the impacts of the proposed development. (1)

**Response:** Pursuant to N.J.A.C. 7:15-5.24(b)1 and as referenced in the proposal notice discussion of identification of environmentally sensitive areas, threatened and endangered species habitat is designated by the Department through the "Landscape Project" (see 41 N.J.R. 1433). The bald eagle is a State endangered species pursuant to N.J.A.C. 7:25-4.13. As indicated above, the established eagle foraging area buffer is a distance 300 feet wide, measured outward from the mean high tide water line of the Delaware River bordering a portion of Block 140, Lot 14. The habitat conservation measures and restrictions referred to in the proposed amendment notice were based on specific direction provided by the Department's Endangered and Non-game Species Program (ENSP) and have been reflected in the site design plans submitted to the DLUR with the WDP application and on the site plans submitted as part of the WQMP amendment file available during the public comment period.

These plans identify, as established by ENSP, the onsite 300 feet wide buffer. The primary restriction that no development shall occur within the eagle foraging

buffer is reflected on the site plans. In addition, the eagle foraging buffer is excluded from the proposed SSA as illustrated on the "Map of Eagle Foraging Areas, Lots 11-19, Block 140, Bordentown Waterfront Community, Overall site Plan dated January 17, 2008 and last revised April 4, 2008". This plan was on file and available for public review at that time the proposal was noticed to the public. Additional restrictions have been reflected in the site plan submitted with the WDP application. Through that review process, a marina with several docking slips that extended out into the river, which were originally proposed and were determined inconsistent with this eagle habitat conservation, have been eliminated from the WDP application site plans. Furthermore, to discourage increased human activity in close proximity to the eagle foraging buffer, the WDP site plans reconfigured the placement of a proposed pool with other outdoor amenities to be located on the far side of the boathouse/community center farthest from the eagle foraging buffer to be restored in the area.

**Comment:** The public notice identifies that at full build out, the BSA sewer service area will exceed that allocated water supply currently available, therefore the water supply analysis is flawed. (1)

**Response:** As indicated above, the proposal notice indicated incorrectly that at full build-out the BSA sewer service area would likely exceed the current water supply permitted allocation, and went on to indicate that, because the water supply is drawn from the Delaware River, it is not anticipated that water supply will be a limiting factor in the future. The Department has reviewed build-out analyses conducted in support of modification of BSA's water allocation permit to increase the diversion from 96 million gallons per month (mgm) to 118 mgm, and as part of the BSA WMP adopted on November 19, 2009. The amendment proposal for this WMP was noticed in the New Jersey Register on July 6, 2009 at

41 N.J.R. 2727(a). The adoption notice was published on December 21, 2001 at 41 N.J.R. 4833(c). Both build-out analyses demonstrated that water supply will not be a limiting factor in the future

**Comment:** The public notice lacked information regarding public access to the proposed New Jersey Transit Riverline station and any available parking associated with this station. Potential impact due to the new impervious cover for proposed transit parking has not been specially conducted as part of this proposed amendment. The development of this proposed transit stop is not a prudent use of tax revenue as it has the potential to produce local impacts due to increased traffic disruptions and have the undesirable affect of increased rail travel time schedules due to this added proposed rail stop that would be within a short distance of two existing depots located in Roebling Township and Bordentown City. (1)

**Response:** The site plans submitted to the Department as part of the WDP application did included 100 proposed transit parking spaces located on Block 140, Lot 6 along the western boundary of the railway tracks. The site plans entitled, "NJDEP Waterfront Development Permit Bordentown Waterfront Community Block 140, Lots 5-8, 10-16, 18, 19 Bordentown Township, Burlington County, New Jersey", prepared by Birdsall Services Group, and dated April 14, 2010 were part of the water quality management plan amendment file available for public review at the time of the proposal notice. The review of the impact of all proposed impervious areas on flooding and compliance with the Stormwater Management rules has been conducted by the Department as part to the necessary permit approval process.

The issues identified by the commenter concerning the potential impacts of the proposed transit stop on local traffic, rail travel time and available public parking

are largely beyond the scope and authority of the WQMP process. These issues would more appropriately be reviewed during the local planning process. Questions concerning the use of tax revenue and the effect on local transportation are issues concerning public access to the proposed New Jersey Transit Riverline station, available parking, or potential local impacts due to increased traffic would also be dealt with through the local and State transportation planning review process. The WQM planning process focuses on wastewater management planning such as determining the extent of sewer service in relation to treatment facility location and capacity and the protection of water and water related resources. Adoption of this amendment by the Department is based upon the review of all relevant information and in consideration of the requirements of the WQM planning program.

**Comment:** The section of the proposed notice that indicated a revised grant condition waiver from the Regional Administrator of USEP would be necessary if any modification to this project scope resulted in disturbance to on-site wetlands is objected to. Grant Condition 2B contained in the October 7, 1986 Grant Award letter, stated: "...no sewer hook-up or other connections to the sewage facilities included in the scope of this grant will be allowed or permitted so as to allow the discharge of wastewater from any building, on any parcel of land within wetlands, which land parcel as of the date of this FNSI/EA [Finding Of No Significant Impact/ Environmental Assessment] was undeveloped (i.e., upon which no building, facility or other construction had been erected or placed) unless approved in writing by the Regional Administrator."

Therefore, we request that only modification resulting in sewerage generating structures on wetlands should require a resubmittal of the application to the

USEPA for the revised determination and request that any approval of this amendment include that condition. (2)

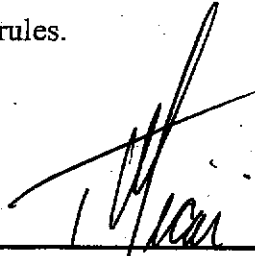
**Response:** The language cited in the proposed notice was quoted verbatim from the March 12, 2009 grant condition waiver letter issued by the USEPA Regional Administrator for the Bordentown Waterfront Development site. The waiver letter specifically stated; "the sewer connection restriction will remain in effect for the remaining wetlands on this parcel. Any modification to this project resulting in disturbance to wetlands (including the addition of stormwater control structures and access roads) will require a resubmittal of this application to the Environmental Protection Agency".

This requirement has been directly placed in the issued partial grant waiver letter by the USEPA. Any dispute as to the interpretation of the Grant Condition 2B resulting in the need for a resubmittal of the grant waiver application must be resolved through USEPA appeal procedures. Therefore, the Department defers to their authority and enforcement of this condition. Consequently, the stated requirement that any modification to this project resulting in disturbance to wetlands (including the addition of stormwater control structures and access roads) will require a resubmittal of this application to the Environmental Protection Agency for a revised determination shall remain as part of the adopted amendment.

This proposed amendment represents only one part of the permit process and other issues may need to be addressed prior to final permit issuance. Additional issues which may need to be addressed may include, but are not limited to, the following: stormwater management, antidegradation; effluent limitations; water quality analysis; 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.



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Thomas Mical, Director  
Division of Land Use Planning  
Department of Environmental Protection

4/7/11

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Date