

DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF COASTAL AND LAND USE PLANNING

ADOPTED AMENDMENT TO THE UPPER DELAWARE WATER QUALITY
MANAGEMENT PLAN

Public Notice

Take notice that on MAY. 7 - 2012, 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 at N.J.A.C. 7:15-3.4, an amendment to the Upper Delaware Water Quality Management Plan was adopted by the Department of Environmental Protection (Department). This amendment, submitted on behalf of EAI Investments, L.L.C. c/o Robertson Douglas Group, will expand the Phillipsburg Sewage Treatment Plant (STP) sewer service area to include the proposed Hamptons at Pohatcong development on Block 93, Lots 4 & 5 in Pohatcong Township. The Hamptons at Pohatcong development proposes the construction of 242 residential units clustered on 45 acres of the available 170 acres. The proposed residential units consist of six one-bedroom units, 26 two-bedroom units, and 210 three-bedroom units. Of the 210 three-bedroom units, 122 units are planned as single family residential houses, 76 units are planned to be developed as townhouses in fourteen multi-unit buildings, while the remaining 12 three-bedroom units are proposed to be included, along with the one-bedroom and two-bedroom units, in two multiunit buildings, which are proposed as affordable housing. The total projected wastewater flow for the Hampton's at Pohatcong development, calculated in accordance with N.J.A.C. 7:14A-23.3, is 69,750 gallons per day (GPD). The Hamptons at Pohatcong is an inclusionary affordable housing project that has been, and continues to be, the subject of court

oversight in a case titled, EAI Investments, L.L.C. v. Township of Pohatcong, Docket Nos.: HNT-L-507-90; HNT-L-1244-01; HNT-L-625-04.

A proposed amendment for this property was previously noticed on July 7, 2008 (see 40 N.J.R. 4240(a)), and a public hearing was held on December 3, 2008. The previous amendment application proposed the construction of 396 residential units and an associated recreational park area. The total projected wastewater flow for that project was 120,950 GPD. The proposed Hamptons at Pohatcong development that is the subject of this adopted amendment has been significantly reduced from the previous proposal in response to comments received during the public comment period at that time.

The Phillipsburg STP is currently permitted (NJPDES Permit NJ0024716) for 3.5 million gallons per day (MGD). As indicated in the prior notice of July 7, 2008, based on the Department's information, Pohatcong was allocated 540,000 GPD of the Phillipsburg STP's total permitted flow. However, on June 3, 2010, in response to a Department request for confirmation that Lopatcong Township transferred 20,000 GPD of its Phillipsburg STP capacity to Pohatcong Township, a representative of Lopatcong Township advised the Department that Lopatcong Township did not assign 20,000 GPD of its allocation to Pohatcong Township. Based upon information available to the Department at the time of proposal, the Department determined that Pohatcong Township is allocated between 520,000 GPD and 540,000 GPD of the total permitted flow at the Phillipsburg STP.

Based upon the Department's review of Pohatcong Township's build-out analysis of undeveloped tracts within the current sewer service area under current zoning, Pohatcong Township's remaining available capacity within its allocation appeared to be insufficient to service the proposed Hamptons at Pohatcong project. The

inclusion of the current Hamptons at Pohatcong project in the sewer service area would have resulted in a projected capacity shortfall of between 6,600 GPD and 26,600 GPD based on current zoning.

Pohatcong Township is presently participating in the Highlands Regional Master Plan (RMP) conformance process. See, Resolution 2011-23, New Jersey Highlands Water Protection and Planning Council Approval of the Petition for Plan Conformance for the Township of Pohatcong, Warren County dated August 3, 2011 and the following web link:

www.highlands.state.nj.us/njhighlands/planconformance/pohatcong.htm.

One of the conditions applicable to each municipality that agrees to conform to the RMP is the development of a municipal Wastewater Management Plan (WMP), in compliance with the RMP and N.J.A.C. 7:15.

Based on the above, the Department expects that resolution of the capacity shortage in Pohatcong will be achieved as part of the development of the WMP consistent with the RMP, through rezoning properties or otherwise removing properties from the sewer service area, or both. Furthermore, the Department has reviewed updated and revised data supplied by the Highlands Council which the Council acquired as part of the development of the Pohatcong Municipal WMP. That data indicates that there is adequate capacity to accommodate the proposed Hamptons at Pohatcong project, and serve the future needs of Pohatcong Township, within an allocation of 520,000 gpd.

This amendment has been reviewed in accordance with Executive Order 109 (2000) and N.J.A.C. 7:15-5.18.

The project has been reviewed for compliance with the Stormwater Management rules, N.J.A.C. 7:8, including the water quality, runoff water quantity, nonstructural stormwater management strategies, and groundwater recharge components of the Stormwater Management rules. The Stormwater Management rules, at N.J.A.C. 7:8-5.5(h), require the establishment of a 300' Special Water Resource Protection Area (SWRPA) along all waters designated Category One (C1) at N.J.A.C. 7:9B and perennial or intermittent streams that drain into or upstream of the Category One waters as shown on the USGS Quadrangle Maps of in the County Soil Surveys, within the associated HUC-14 drainage. An on-site stream has been identified on the Warren County Soil Survey as a stream which drains into Lopatcong Creek, a C1 stream, within the same HUC-14. No encroachment into the SWRPA associated with this stream is proposed.

The Department Landscape Project Mapping, which identifies Threatened and Endangered Species habitat, does not identify any Rank 3, 4, or 5 habitat areas on the project site.

The proposed project will receive water from Aqua New Jersey, Inc. under an existing water allocation permit (WAP990001) and discharge back to the Delaware River through the Phillipsburg STP; therefore, no unacceptable impacts from depletive or consumptive water use are anticipated.

This amendment proposal was noticed in the New Jersey Register on January 17, 2012 at 41 N.J.R. 184(a).

The following people submitted written comments on this amendment:

Number –Commenter Name, Affiliation

1. Neil Yoskin, Esq., Attorney representing the Applicant
2. Dennis M. Toft, Esq., Attorney representing Warren Business Park

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.

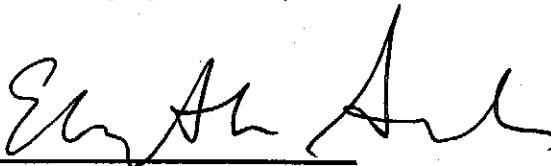
Comment: The statements contained in the proposal notice indicating the projected capacity shortfall of between 6,600 GPD and 26,600 GPD as a result of inclusion of the Hamptons at Pohatcong project in the sewer service area to be resolved through the Townships of Pohatcong's participation in the Highlands Regional Master Plan (RMP) conformance process and the Department's requirement that Pohatcong Township take action through these processes before it adopts this amendment, are inaccurate and incorrect. The Hamptons at Pohatcong project, as a judicially approved Mount Laurel inclusive site, has been afforded sewer capacity on an exclusive and prioritized basis, therefore not dependent on any further actions required by Pohatcong Township. (1)

Response: The Department is aware of the court oversight under EAI Investments, L.L.C. v. Township of Pohatcong which affords the proposed project sewer capacity on a priority basis. As indicted above, the Department expects that resolution of the capacity shortage in Pohatcong will be achieved as part of the development of a Municipal WMP consistent with the RMP. The Department has reviewed updated and revised data supplied by the Highlands Council acquired as part of the development of the Municipal WMP that indicates that there is adequate capacity to accommodate the proposed Hamptons at Pohatcong project, and serve the future needs of Pohatcong Township, within an allocation of 520,000 gpd.

Comment: Russo Acquisitions, LLC, owner of Warren Business Park located on Block 78, Lot 1, Pohatcong Township, opposes the adoption of this amendment. Specifically, Warren Business Park objects to the potential removal of its property from the sewer service area or to any reduction in the allocated capacity to the property that could result from the adoption of this amendment. (2)

Response: The Department acknowledges the stated objection. As indicated above, the Township, in conjunction with the Highlands Council, has proceeded with the development of a Municipal WMP consistent with the RMP. As proposed to the Department, this draft WMP recognizes Block 78, Lot 1 as future sewer service area. Moreover, this parcel has a Highlands Center designation included as a TDR receiving zone for additional affordable housing needs. Consequently, based on review by the Department, the adoption of this amendment should not impact the status of this parcel as sewer service area to the Phillipsburg STP.

Approval of this amendment does not eliminate the need for any permits, approvals or certifications required by any Federal, State, County, or municipal review agency with jurisdiction over this project/activity.



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

5/7/12

Date