

PUBLIC NOTICE

ENVIRONMENTAL PROTECTION

DIVISION OF COASTAL AND LAND USE PLANNING

Amendment to the Upper Delaware Water Quality Management Plan

Public Notice

Take notice that on **NOV 19 2013**, 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 Upper Delaware (WQM) Plan. This amendment adopts a new Wastewater Management Plan (WMP) for the Township of Lopatcong.

The notice of this amendment proposal was published in the New Jersey Register on March 19, 2012, at 44 N.J.R. 936(a), and The Express Times newspaper on the same date. In accordance with the WQM Planning rule amendment procedures at N.J.A.C. 7:15-3.4(g) the public comment period for the proposed amendment to the Upper Delaware WQM Plan closed on April 18, 2012, thirty days following the publication of the notice of amendment proposal.

This amendment, adopting a WMP for the Township of Lopatcong was submitted by the Highlands Water Protection and Planning Council (Highlands Council) on behalf of Lopatcong Township. In accordance with N.J.A.C 7:15-5.13(c), the Township of Lopatcong, as the responsible Wastewater Management Planning Agency, has submitted a WMP which covers its municipality only.

Lopatcong Township, located within the Highlands Region as delineated by the Highlands Water Protection and Planning Act, N.J.S.A. 13:20-1 et seq. (Highlands Act), has agreed to conform to the Highlands Regional Master Plan (RMP) developed and adopted by the Highlands Council in accordance with the Highlands Act and the Plan Conformance process adopted by the Highlands Council. The Highlands Council approved the Township's Petition for Plan Conformance and

the designation of the Lopatcong Township Highlands Center through Resolutions #2011-11 and #2012-3, respectively. One of the conditions for each municipality that agrees to conform to the RMP for the entire municipality is the development of a municipal WMP, or municipal chapter of a County WMP, as appropriate, in compliance with the RMP and N.J.A.C. 7:15.

This adopted municipal WMP identifies wastewater service designations as either Future Sewer Service Area (SSA) of the Phillipsburg Sewage Treatment Plant (STP), individual NJPDES permitted Ground Water Discharge locations, or Septic Areas (Planning Flows of 2,000 Gallons per Day (GPD) or Less).

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 modifications. 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.

The adopted Lopatcong Township WMP re-delineates SSA within the boundaries of Lopatcong Township consistent with the RMP and N.J.A.C. 7:15-5.24. As part of the adopted Lopatcong WMP, areas that were previously approved SSA that have never been connected to the Phillipsburg treatment system, and which have been identified as environmentally sensitive areas (ESAs), have been removed from SSA. Areas not designated as SSA are designated as "Septic Areas (Planning Flows of 2,000 Gallons per Day (GPD) or Less)."

Currently, the Phillipsburg STP (#NJ0024716) has a permitted capacity of 3.5 million gallons per day (MGD). The Phillipsburg STP currently discharges to the Lopatcong Creek, a designated

Category 2 (C2), Fresh Water 2, Trout Maintenance (FW2-TM) waterway as classified under the Surface Water Quality Standards, N.J.A.C. 7:9B. The Lopatcong Creek is also a Highlands Open Water pursuant to the Highlands Act and the RMP. In addition to Lopatcong Township, the Phillipsburg STP currently serves the Town of Phillipsburg and portions of the Borough of Alpha Borough, Greenwich Township, and Pohatcong Township within Warren County.

This adopted amendment designates SSA of the Phillipsburg STP to serve existing and new development within Lopatcong Township, consistent with the RMP. The adopted SSA allows for new proposed development within the Lopatcong Township Highlands Center as designated by the Highlands Council, including connection of existing septic systems that are located within the SSA. The Lopatcong Township WMP includes minor reductions of the previously approved SSA to eliminate conflict with ESAs and promotes consistency with the Highlands Act and the adopted RMP.

As part of this amendment, adjustments to the SSA delineation were made in order to more accurately reflect the existing tax parcel and municipal boundary lines of Lopatcong Township within the SSA. As a result of more accurate digital parcel mapping and Geographic Information Systems technology, this WMP re-delineates portions of the SSA to accurately identify lots currently served by the Phillipsburg STP and revises the SSA to correspond to the boundary lines of lots proposed for connection to the sewer system.

In accordance with N.J.A.C. 7:15-5.24, ESAs have been assessed to determine what areas must be excluded from the adopted SSA. Pursuant to N.J.A.C. 7:15-5.24, ESAs 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 (Landscape Project), 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 Landscape Project (version 3.0). Areas identified by the Landscape Project as being suitable habitat for threatened and

endangered species 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)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 the 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 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 Upper Delaware 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 applicable mapping. Pre-existing grant conditions and requirements (from Federal and State grants or loans for sewerage facilities), which provide for restriction of sewer service to ESAs, are unaffected by adoption of this amendment and compliance is required.

In addition to the ESAs 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 Upper Delaware WQM planning area.

As provided under N.J.A.C. 7:15-5.24(e) through (h), limited ESAs 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. 7:15-5.25(c), the adopted WMP incorporates an environmental build-out analysis to identify future projected flow from the existing and future SSA within Lopatcong Township. This build-out analysis was conducted for parcels that are either undeveloped or underdeveloped within the existing and future SSA for the Township of Lopatcong only. The environmentally constrained areas excluded in projecting wastewater flow from the future SSA included wetlands, preserved open space, and documented flood prone areas or protected riparian corridor areas where development would be limited. Wastewater flow projection calculations were based upon the current municipal zoning and included potential development of all remaining parcels of vacant land, underdeveloped residential and commercial property, and any existing parcels currently served by individual subsurface sewage disposal systems that are located within the future SSA. The wastewater flow was projected applying the appropriate criteria listed at N.J.A.C. 7:14A-23.3. The total projected wastewater flow for undeveloped and underdeveloped portions of Lopatcong Township within existing and future

SSA was determined to be 0.712 MGD. This projected flow is used to assess whether sufficient capacity exists at the Phillipsburg STP to accommodate future need as further described below.

The notice of the proposed amendment, published in the New Jersey Register on March 19, 2012, at 44 N.J.R. 936(a), erroneously identified the total projected build-out flow as 0.706 MGD. The correct total projected build-out flow listed in the proposed Lopatcong Township WMP at the time of public notice was 0.712 MGD. Although the notice of the proposed amendment misidentified the projected build-out flow, the Department has determined that the correction noted herein impacts neither the value of the proposal notice nor the outcome of the wastewater capacity analysis, as discussed below.

Pursuant to N.J.A.C. 7:15-5.25(d) an analysis was performed to assess the current available wastewater capacity at the Phillipsburg STP. As noted previously, the Phillipsburg STP (#NJ0024716) has a permitted capacity of 3.5 MGD. The existing wastewater flow to the Phillipsburg STP was calculated to be 2.33 MGD. The existing wastewater flow was calculated as the average of the monthly metered flow reported to the Department from January 2010 through December 2010 received from all municipalities currently served by the Phillipsburg STP. This flow volume subtracted from the current Department-recognized Phillipsburg STP permit capacity of 3.5 MGD resulting in a potential available capacity for the entire service area of 1.17 MGD.

As this amendment adopts a new WMP for the Township of Lopatcong only, flow projections have not been completed for the other municipalities served by the Phillipsburg STP; including portions of the Town of Phillipsburg, Alpha Borough, Greenwich Township, and Pohatcong Township as part of this WMP. A complete build-out analysis for the Phillipsburg STP is to be fully assessed as part of the Phillipsburg Township WMP currently under development. Further, as a result of the Highlands Act, and subsequent plan conformance with the RMP, the previously approved Phillipsburg STP SSA has been significantly reduced in the five municipalities included within the Phillipsburg STP service area, limiting the potential for future wastewater flow.

Taking into account these reductions in potential future wastewater flow for the area served by the Phillipsburg STP, the above calculated projected wastewater flow of 0.712 MGD to serve the future needs of Lopatcong Township is well within the potential available capacity of 1.17 MGD, and the permitted capacity of 3.5 MGD, of the Phillipsburg STP. Consistent with P.L. 2011, c. 203, the Department has determined, in consultation with the Township of Lopatcong that adopting this amendment based upon the information available at this time is appropriate. A partial capacity analysis of the Phillipsburg STP representing currently available information is presented in the adopted WMP for Lopatcong Township.

As indicated above, the Department has concluded that the projected wastewater flow to serve the future needs of Lopatcong Township is within the potential available capacity and the permitted capacity of the Phillipsburg STP. Accordingly, no expansion of this facility is required at this time.

Pursuant to N.J.A.C. 7:15-5.25(e), an analysis to evaluate the groundwater impacts and septic system density on a HUC 14 watershed basis resulting from potential development of those areas outside of the Future SSA has been conducted as part of this amendment. The evaluation was conducted in compliance with the RMP requirements which apply the Nitrate Dilution Model, developed by the Department, on a HUC 14 basis in both the Planning and Preservation Areas. Further, the analysis used the nitrate targets for the respective land use capability zones as identified in the adopted RMP: 2 mg/l within the Community Zone, 1.87 mg/l within the Conservation Zone, and 0.72 mg/l within the Protection Zone. These nitrate targets are equivalent to, or more stringent than, the requirements at N.J.A.C. 7:15. Utilizing these targets, the model estimates the minimum lot size necessary to comply with the ground water quality standards within the HUC-14. This analysis identified the potential for 38 new dwellings to be served by septic systems in the Highlands Planning Area and 1 new dwelling to be served by septic systems in the Highlands Preservation Area in Lopatcong Township. The approval of development served by septic systems in the Preservation Area will be regulated by the Highlands Water Protection and Planning Act rules (N.J.A.C. 7:38), as applicable.

Further, any project must have approval under the septic system density provisions of the Highlands Checklist Ordinance pursuant to Highlands Council approval of its Petition for Plan

Conformance. Approval pursuant to these provisions of the Highlands Checklist Ordinance would comply with the septic system density requirements of N.J.A.C. 7:15. Consequently, the Department concluded that groundwater quality will be protected.

Development activities that are exempt from the Highlands Act are required to comply with N.J.A.C. 7:15. Development activities located in the Highlands Preservation Area and governed by the Highlands Act are required to apply for a Highlands Preservation Area Approval from the Department, pursuant to the Highlands Water Protection and Planning Act rules.

Pursuant to N.J.A.C. 7:15-5.25(f), a water supply analysis for Lopatcong Township was performed to demonstrate that the water supply needs associated with existing and future development do not conflict with the current New Jersey State Water Supply Plan, which was last adopted in August 1996.

The water supply analysis identified Aqua NJ (Phillipsburg) (PWSID #2119001) as the Department-regulated public water utility serving Lopatcong Township. The current approved water allocation capacity for Aqua NJ (Phillipsburg) is 178 million gallons per month (MGM). Based on the RMP, the available Highlands Region capacity for Aqua NJ (Phillipsburg) is 36.214 MGM. As presented in the Lopatcong Township WMP, the build-out analysis based on the RMP identifies that the total estimated future public water demand is 0.639436 MGM resulting in potential water supply capacity for the municipality of 1.207 MGM. The Department water supply analysis for this water purveyor indicates that the current permitted water allocation for Aqua NJ (Phillipsburg) is sufficient to meet the future needs of Lopatcong Township. There are no significant water supply issues identified in the State Water Supply Plan for the planning areas impacting Lopatcong Township. Consequently, the water supply analysis satisfies the Department's criteria for adopting this WMP.

To comply with the nonpoint source pollutant loading/hydromodification analysis required at N.J.A.C. 7:15-5.25(g)1, Lopatcong Township has submitted and obtained approval of its Stormwater Management Plan and Stormwater Control Ordinance from Warren County. Lopatcong Township adopted its Stormwater Control Ordinance (Chapter# 199-06) on March 2,

2006. As required, the adoption of this ordinance by Lopatcong Township ensures compliance with the performance standards of the Stormwater Management rules, N.J.A.C. 7:8.

Municipalities conforming to the Highlands RMP are required to adopt either a Highlands Land Use Ordinance or a Highlands Checklist Ordinance, either of which will achieve implementation of the Nonpoint Source Pollutant Analysis required at N.J.A.C. 7:15-5.25(g)2 through 6. Lopatcong Township adopted a Highlands Checklist Ordinance consistent with the RMP on August 7, 2013, (Ordinance No. 13-08) amending the Township Land Use Ordinance to update submission requirements for development applications. As a result of the adoption of Lopatcong Township's Highlands Checklist Ordinance, the Department's Nonpoint Source Pollutant Analysis, and Riparian Corridor and steep slopes protection requirements have been met.

To satisfy the riparian corridor analysis, it is necessary that riparian areas in the WMP area be protected, pursuant to N.J.A.C. 7:15-5.25(g)2-5. Adoption of the Highlands Checklist Ordinance ensures the protection of the riparian corridors along all perennial and intermittent streams and lakes within Lopatcong Township. Pursuant to the Highlands Regional Master Plan and the Highlands Checklist Ordinance, Highlands Open Water buffers extend to 300 feet from the top of the stream bank (or centerline of a first order stream where no bank is apparent). This requirement applies to all Highlands Open Waters within the Highlands Region in Lopatcong Township, regardless of stream classification in the Surface Water Quality Standards at N.J.A.C. 7:9B. Such buffers will be regulated through the Highlands Checklist Ordinance adopted by the Township, applicable to both the Planning and Preservation Areas. The Highlands Checklist Ordinance is equivalent to, or more stringent than, the Department's riparian zone standard, the Flood Hazard Control Act rules (N.J.A.C. 7:13), and WQM Planning rules (N.J.A.C. 7:15). In addition, the Highlands Open Water buffers are not proposed to be served by sewers. Consequently, the Department's Riparian Corridor protection requirements have been met.

Additionally, as required, the Highlands Checklist Ordinance addresses steep slopes for gradients 10 percent or greater. This protection is more stringent than the requirements at N.J.A.C. 7:15-5.25(g)6 which require protection of steep slopes for gradients 20 percent or greater. Consequently, the Department's steep slope protection requirements at N.J.A.C. 7:15-5.25(g)6 have been met.

This amendment proposal was published in the New Jersey Register on March 19, 2012, at 44 N.J.R. 936(a). A comment on this amendment was received from Erica Van Auken, Campaign and Grassroots Coordinator, New Jersey Highlands Coalition. A summary of the comment and the Department's response follows:

Comment: The commenter recognizes that, as proposed in the WMP, a portion of the Lopatcong Township Designated Highlands Center is within the SSA and will allow for approved and future anticipated development projects. However the commenter points out that some of the Designated Highlands Center parcels are located within areas constrained by many Highlands RMP resources features, including Prime Groundwater Recharge Areas and Wellhead Protection Areas. The commenter urges Lopatcong Township to proceed with the Center development cautiously and with consideration given to ensuring the integrity of these resources on which said development would rely. The commenter, therefore, recommends that the Department wait to approve the WMP until Lopatcong Township has completed full conformance to the RMP.

Response: Lopatcong Township has requested a WQM Plan amendment pursuant to legally established amendment adoption procedures. As summarized above, this amendment has been reviewed in accordance with N.J.A.C. 7:15-5.18, N.J.A.C. 7:15-5.24, and N.J.A.C. 7:15-5.25, and has satisfied all applicable environmental analyses. On that basis, the amendment may be adopted.

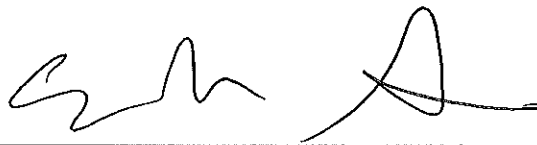
The issues identified by the commenter are beyond the scope and authority of the WQM planning process. These issues would more appropriately be addressed during the Highlands Council and local planning processes. The WQM planning process focuses on determining the extent of sewer service in relation to treatment facility location, capacity, and the protection of water and water related resources. Approval and 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 rules. The determination of full conformance to the RMP requirements is the responsibility of the Highlands Council.

In addition to the specific comment addressed above, in response to the Lopatcong Township request for consent to the proposed amendment, the Honorable James R. Kern, III, Mayor of the Township of Pohatcong, submitted a written statement to the Department. The Mayor stated that due to an on-going dispute between Pohatcong and Lopatcong Townships over sewer allocation to the Phillipsburg STP, Pohatcong Township is only willing to provide a resolution of consent to the proposed amendment provided Lopatcong Township confirms it has in fact transferred 20,000 GPD of its existing sewer allocation to the Township of Pohatcong.

The Phillipsburg STP is a municipally-owned public utility which provides service under contracts to Lopatcong Township, Pohatcong Township, Alpha Borough, Greenwich Township, and Phillipsburg Town. As such, any contractual flow allocation to any particular project or between subjected municipalities, authorities and/or private parties is not guaranteed by this amendment, not determined by the Department, and not enforced by the Department. Therefore, the Department has adopted this amendment notwithstanding the statement from Mayor Kern. A complete build-out analysis for the Phillipsburg STP is to be fully assessed as part of the Phillipsburg Township WMP currently under development.

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

The adopted WMP 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

11/19/13
Date