



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Division of Watershed Management
PO Box 418
Trenton, New Jersey 08625-0418
Tel: (609) 984-0058
Fax: (609) 633-0750

JON S. CORZINE
Governor

MARK N. MAURIELLO
Acting Commissioner

Paul Shives
Stafford Township Administrator
260 Bay Avenue
Manahawkin, NJ 08050

JUL 29 2009

Re: Cedar Run Dock Road
Stafford and Eagleswood Townships, Ocean County
Stafford Township Wastewater Management Plan
Ocean County Water Quality Management Plan
P.I. No. 435448
Activity No. AMD080001

Dear Mr. Shives:

This letter is to notify you of the Department of Environmental Protection's (Department) decision not to adopt the above referenced Water Quality Management Plan (WQMP) amendment.

The plan amendment proposed to change the sewer service area designation for areas along Cedar Run Dock Road from "Proposed Sewer Service Area to Existing Development Only" to "Proposed Sewer Service Area". This amendment would similarly have changed the sewer service area designations along the portion of Cedar Run Dock Road that extends into Eagleswood Township. The amendment was proposed as a Department-initiated action in response to a potential settlement of litigation between the Department and Mr. John Yoder, the owner of Block 133, Lot 89 in Stafford Township. This amendment would have also modified the Stafford Township Wastewater Management Plan (WMP). There is a WMP update for Stafford Township currently under separate review by the Department. The decision not to proceed with the proposed amendment does not impact the review of that WMP plan update.

Department decision-making, pursuant to the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., must be consistent with N.J.A.C. 7:15-1.3(a), which sets forth the purposes of the Water Quality Management Planning Rules, N.J.A.C. 7:15. These purposes include the following:

1. Implement the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq.; the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., and the Department's enabling legislation, N.J.S.A.13:1D-9 et seq. (N.J.A.C. 7:15-1.3(a)1);

2. Establish policies, procedures and standards which, wherever attainable, help to restore, enhance and maintain the chemical, physical and biological integrity of the waters of the State... help to protect public health, to safeguard fish and aquatic life and scenic and ecological values ...(N.J.A.C. 7:15-1.3(a)2);
3. “Conserve the natural resources of the State, promote environmental protection, and prevent the pollution of the environment of the State” ...(N.J.A.C. 7:15-1.3(a)4);
4. Ensure that projects and activities affecting water quality are developed and conducted in a manner consistent with this chapter and adopted WQM Plans...(N.J.A.C. 7:15-1.3(a)7);
5. Coordinate and integrate WQM (Water Quality Management) plans with related Federal, State, regional and local comprehensive land use, functional and other relevant planning activities, programs and policies” ...(N.J.A.C. 7:15-1.3(a)8); and
6. “Encourage, direct and aid in coordinating State, regional and local plans and programs concerning conservation and environmental protection, including plans and programs concerning sewerage facilities, in accordance with a unified Statewide Plan formulated, approved and supervised by the Department. ... (N.J.A.C. 7:15-1.3(a) 12).

Pursuant to the Water Quality Management Planning Rules at N.J.A.C. 7:15-3.6, the Coastal Zone Management Rules at N.J.A.C. 7:7E provide the basic policy direction for Water Quality Management Planning in the New Jersey Coastal Zone defined at N.J.A.C. 7:7E-1.2(b).

The Department bases its decision on a comprehensive evaluation of the numerous environmental impacts associated with the proposed amendment, with due consideration given to the unique diversity of significant natural resources present on and adjacent to the Cedar Run Dock Road area. The Department has considered the concerns and issues of interested parties, both proponents and opponents of the proposed WQMP amendment. After examining the numerous issues associated with the proposed amendment, the Department has determined that the change in sewer service area designation needed for this proposal would violate the objectives of the Water Quality Planning Act (N.J.S.A. 58:11A), and the stated purposes, as listed above, of the Water Quality Management Planning Rules (N.J.A.C. 7:15). Further, the proposed change would result in a density of development that is incompatible the Coastal Zone Management Rules at N.J.A.C. 7:7E, and with the environmental resources and land use planning objectives in the area. The Department’s decision to not adopt the proposed amendment is consistent with local planning objectives in regard to the Cedar Run Dock Road area. The Stafford Township Planning Board and governing body have formally recognized the environmentally sensitive conditions present and do not support increased development of the area. Stafford Township’s 2007 Master Plan review process changed the zoning ordinance in the Cedar Run Dock Road area’s Recreation-Marine-Commercial zone to eliminate single-family homes as an acceptable pattern of new development.

This amendment proposal was noticed in the New Jersey Register on June 16th, 2008 at 40 N.J.R. 3755(a). A public hearing on the proposed WQMP amendment, was held on October 16,

2008 in the Stafford Township Municipal Building. The Department and the Ocean County Department of Planning received comments during the comment period. Comments which are not relevant to the proposed amendment are not addressed in the following section of this letter.

List of Commenters

1. Paul Shives, Stafford Township Administrator
2. William Bennett, property owner
3. Theresa Lettman, Pinelands Preservation Alliance
4. Helen Henderson, American Littoral Society
5. Fred Kerr, resident
6. Sue Cummings, resident
7. Ray Fisk, resident
8. William DeCamp, Save Barnegat Bay
9. Lucille Bates-Wickward, property owner
10. Stephen Lang, resident
11. Gabriel Castroville
12. Dorothy Blair
13. Larry Liggett, NJ Pinelands Commission
14. John and Jeanne Schiffer
15. John Bordwick, property owner
16. Mr. and Mrs. Kenneth C. Leonard, Jr.
17. Margit Meissner-Jackson, Sierra Club-Ocean County Group
18. Elaine Kennedy – Eagleswood Township Clerk
19. Carl Block, Stafford Township Mayor
20. William and Lynda Johnson, residents
21. Seychelle Leonard, resident
22. Steve Atzert, U.S. Fish and Wildlife Service
23. Bill McLennan, resident
24. Reeves Hornsby, resident

1. **Comment:** The Department put undue pressure on Stafford Township to consent to the proposed Water Quality Management Plan Amendment (amendment). We thought that the Department would not be able to process the Township's Wastewater Management Plan (WMP) if the Township did not consent to the amendment.(1,6,7,10)

Response: The Department did not intend to imply, that the proposed amendment was linked to the Township's WMP and the WMP review and approval process. The amendment notice incorrectly stated that the proposed amendment was a result of an application submitted on behalf of Stafford Township. The amendment proposal was a Department-initiated action proposed as a potential settlement of litigation between the Department and Mr. John Yoder. As it is standard procedure in the amendment process to have an "applicant" for an amendment responsible for ensuring publication of the amendment notice in the newspaper, and to request consents for said amendments, the

Department asked Stafford Township to act as an “applicant” in this respect. The Department regrets any misperceptions that may have arisen as a result of this request.

2. **Comment:** There was insufficient documentation concerning this amendment available from the Department for review. (3,8)

Response: The public notice used standard template language, and incorrectly inferred that there was a complete application and supporting documentation to review at the Ocean County Department of Planning’s office. Once the Department became aware of this error, it made every effort to provide the commenters with the information that they requested. The Department regrets any inconvenience that may have been caused by the incorrect notice language.

3. **Comment:** This amendment process was inadequate because it did not give the public the opportunity to obtain the information necessary to prepare effectively for the hearing and make an informed judgment on the reason(s) behind the Department’s amendment proposal and proposed settlement with Mr. Yoder. (5,6,7,10)

Response: This proposed amendment was a Department-initiated action proposed as a potential settlement of litigation. The settlement meetings which led to this action were confidential, and not subject to public disclosure. However, the Department provided full public notice of the proposed amendment and the public was afforded a full opportunity for comment, including a public hearing on the proposed amendment.

4. **Comment:** What changed between September 30, 2005, when the Department denied a request for a change in the sewer designation for this same site, and June 16, 2008 when the Department gave notice of its intent to grant what is essentially the same recycled request? (5,6,7,8,10,16,19,20,21,22,23)

Response: The Department considered a change to the Wastewater Management Plan in part to determine the feasibility of settling a lawsuit brought against the Department by a property owner on Cedar Run Dock Road. Good government requires the Department to consider every avenue of settlement in such situations. Information gathered from the public through the public hearing, and letters submitted supported the Department’s final decision. The environmental sensitivity of the area did not change.

5. **Comment:** During a October 23, 2007 site visit, the Department’s Land Use Regulation Program (LURP), found that there were only a very small number of lots that were vacant and potentially buildable under Department permitting requirements. It is requested that the Department indicate which lots fall into this category and/or indicate if a particular lot I own meets the above described criteria. (2,5,6,9,10,16,23)

Response: The site visit referred to by the commenters was a preliminary, informal assessment of the potential impact of the proposed amendment. The LURP did not make any formal judgment or determination about any individual property. As development of each property remains subject to all appropriate local and state permitting requirements, a

complete permit application to the Department's LURP is required for the Department to determine if a particular property can receive Department permits for development.

6. **Comment:** I had a building lot on Cedar Run Dock Road in Stafford Twp NJ (711). I was granted a CAFFRA permit and then it was revoked because the NJDEP would not let me tie into the sewer. Now I find out that the NJDEP will let the new owner, John Yoder tie into the same sewer. Why was I discriminated against? Why wasn't I allowed to hook up? The NJDEP cost me three years of run around and a lot of money. (11)

Response: For the reasons stated previously in this letter as well as those in response to the comments received, the Department has decided not to adopt the proposed amendment. Therefore, no sewer connection to the property will be authorized.

7. **Comment:** Property owners that had vacant land were not included in the original permit for the Cedar Run Dock Road sewer line and it is not fair to exclude them from connecting to the sewer system, provided that their vacant lots comply with all other local and state regulations. (2,14,15)

Response: The restrictions on connections to the sewer line were part of the Department's original CAFRA permit 1530-92-0028 for the line which was issued on January 19, 1993 and the subsequent Treatment Works Approval 93-7635-4 issued by the Department's Division of Water Quality on May 26, 1993. An administrative condition on these permits limits sewer service to existing residential and commercial development on specific lots only. These restrictions on the availability of sewer services to existing development only within Limited Growth Regions were incorporated into the Stafford Township Wastewater Management Plan to be consistent with the policies of the Coastal Zone Management Program. Pursuant to N.J.A.C. 7:15-3.6, the Coastal Zone Management Rules at N.J.A.C. 7:7E provide the basic policy direction for Water Quality Management Planning in the New Jersey Coastal Zone defined at N.J.A.C. 7:7E-1.2(b).

8. **Comment:** I request that the NJDEP adopt the proposed amendment. The Register announced that the proposal was recommended as part of a settlement, but it is unfair to characterize what is at stake as a single legal case. Government should not foreclose any property owner's attempt to benefit from the use of his/her property. I will not be able to plead my case to the many authorities who control the permit processes on matters associated with development along Cedar Run Dock Road, unless the amendment is passed. None of the authorities served me with notice about the impending loss of privileges that have occurred. Such notices were sent only to property owners with existing improvements. There has been no due process accorded to other owners. DEP created this problem and has known of the plight of vacant lot owners for a long time. Now that it proposes to rectify a portion of the problem, DEP must adopt the amendment. (2)

Response: The restrictions on connecting to the sewer line have been in place since 1993 at which time notice was provided to affected property owners. The Cedar Run Dock Road area is an environmentally sensitive location that is not suitable for the density of

development that could result from the presence of sewer availability. The current sewer line in Cedar Run Dock Road was constructed solely to remedy a public health problem which was created or exacerbated by existing development in this environmentally sensitive area.

9. **Comment:** The Cedar Run Dock Road area is located within the Pinelands National Reserve and is designated as a Forest Area. The NJ Pinelands Commission's Comprehensive Management Plan states that centralized wastewater treatment and collection facilities shall be permitted to serve the Forest Area only where a public health problem has been identified and the extended facility shall only accommodate wastewater from existing residential, commercial, and industrial development. (3,6,13,17,18)

Response: The Department acknowledges that the Cedar Run Dock Road area that is the subject of this proposed WQMP amendment is located within the Pinelands National Reserve. Based upon further review of all relevant issues, the Department is not proceeding with the adoption of the amendment proposal.

10. **Comment:** The new WQMP rules at N.J.A.C. 7:15-5.24 prohibit the approval of sewer service to this area as it is located in a Coastal Environmentally Sensitive Planning Area, PA5. (4,17,18)

Response: The currently existing sewer line and CAFRA restrictions along Cedar Run Dock Road do not allow connections from new development, due to the environmentally sensitive nature of the area. The current designation of Sewer Service Area to Existing Development Only addresses this issue. This restriction of connecting only existing development is contained in the Department's CAFRA permit (number 1530-92-0028) and TWA permit 93-7635-4.

11. **Comment:** By settling with Mr. Yoder, the NJDEP will be opening up Barnegat Bay and Little Egg Harbor to unlimited development. The Yoder v. NJDEP case will create a legal precedent in the State that could ultimately allow anyone with money to hire a lawyer the ability to build in environmentally sensitive areas all around New Jersey. (4,6,17,21)

Response: The Department has determined that it will not be adopting the proposed WQMP amendment to modify the restrictions to sewer hookups in the Wastewater Management Plan.

12. **Comment:** The wildlife that used to be present in the Cedar Run Dock Road vicinity is no longer there. (10,24)

Response: The Department is concerned with the issue of diminished wildlife. The rules on Coastal Zone Management require the Department to consider how development will affect preservation of wildlife habitat. Through the review of all applicable issues, the Department has decided not to adopt the proposed amendment.

13. **Comment:** The Township Planning Board and governing body have formally recognized the environmentally sensitive conditions present and do not believe that there should be any further development in this area. The zoning classification on Cedar Run Dock Road, which is "Recreation Marine Commercial" has not changed but the permitted uses in the zone have been changed to eliminate single-family homes. This was based on the sensitive environmental conditions in the area that were documented as part of the Master Plan Review Process. (1,19)

Response: The Department acknowledges that local approvals are an important part of the development process and that any action by the Department does not obviate the need for local approvals. The Department recognizes the efforts of Stafford Township in developing planning, zoning, and environmental protection policies in regard to the Cedar Run Dock Road area. The Department's decision to not adopt the proposed amendment is consistent with local planning objectives.

14. **Comment:** What gives the DEP the right to destroy miles and miles of wetlands and deny the taxpayers the right to connect to this sewer line? DEP denies taxpayers their right to connect to the sewer line to keep big business on top. (12)

Response: The Department is not aware of the details of the commenters allegations regarding miles of destroyed wetlands. The sewer line in Cedar Run Dock Road was installed to address an existing public health problem caused by failing septic systems from existing homes. Restrictions on the connection to the sewer line were imposed so as to not promote inappropriate dense development in these environmentally sensitive areas. The environmentally sensitive nature of this area was recognized by both the Department and Stafford Township. The Township's 2007 Master Plan review process changed the zoning ordinance for this portion of the Township to eliminate single family homes as an acceptable pattern of new development, based on the environmentally sensitive conditions that were documented as part of the Township's master plan review.

15. **Comment:** How can Block 133, Lot 89 be developed when it was illegally back-filled to increase the dimensions in order to prepare for the sewer line? (10)

Response: The Department has not determined whether any individual lot can be developed. This determination can only be made through the Department's Land Use Regulation Program's permitting process subsequent to the submission of a complete permit application. The Department is not proceeding with the adoption of the amendment proposal, and will forward the commenter's statement to the Bureau of Coastal and Land Use Compliance and Enforcement for further investigation of alleged illegal filling.

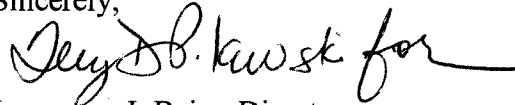
16. **Comment:** Increased road surface contamination has contributed to degrading the quality of the runoff running into the wetlands on either side of the road. (5)

Response: The Department acknowledges that road surface contamination can contribute to runoff that degrades water quality. Surface water runoff from existing

roadways is not a subject that is under the purview of this proposed amendment. Compliance with the Stormwater Management Rules at N.J.A.C. 7:8 is a requirement of local municipalities.

Please place the program interest number and the activity number found above at the top of all written correspondence submitted to the Department. If you have any questions concerning the above or require further assistance, please contact Terry Pilawski, Bureau Chief at (609) 984-6888.

Sincerely,



Lawrence J. Baier, Director
Division of Watershed Management

- c: Pieter Waldenmaier, Ocean County Department of Planning
- Bernadette Park, Stafford Township Clerk
- Carl Block, Stafford Township Mayor
- Elaine Kennedy, Eagleswood Township Clerk
- Richard Warren, Ocean County Utilities Authority
- Sandra Justis, CMX Engineering
- Lisa Daglis, D.A.G, Division of Law
- Larry Liggett, NJ Pinelands Commission
- Chris Dolphin, Land Use Regulation
- Joanne Davis, Land Use Regulation
- Vivian Fanelli, Land Use Regulation
- Tracy Shevlin, Financing and Construction Permits
- Deborah Bechtel, Watershed Regulation
- Avi Argaman, Watershed Regulation
- Phyllis Singleton, Watershed Regulation
- Margit Meissner-Jackson, Sierra Club-Ocean County Group
- ~~Theresa Lettman, Pinelands Preservation Alliance~~
- Helen Henderson, American Littoral Society
- William DeCamp, Save Barnegat Bay
- Steve Atzert, U.S. Fish and Wildlife Service
- Robert Rue, Esquire, LLC
- John Yoder, Property owner

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John Bordwick, Property owner
Susan Cummings, Resident
Steve Melnychuck, Resident
James Wanamaker, Resident
Fred Kerr, Resident
Ray Fisk, Resident
Stephen Lang, Resident
Seychelle Leonard, Resident
William and Lynda Johnson, Residents
Bill McLennan, Resident
Reeves Hornsby, Resident
Dorothy Blair
John and Jeanne Schiffer
Gabriel Castroville
Mr. and Mrs. Kenneth Leonard