



## PINELANDS PRESERVATION ALLIANCE

Bishop Farmstead ♦ 17 Pemberton Road ♦ Southampton, NJ 08088  
Phone: 609-859-8860 ♦ [ppa@pinelandsalliance.org](mailto:ppa@pinelandsalliance.org) ♦ [www.pinelandsalliance.org](http://www.pinelandsalliance.org)

February 6, 2013

Elizabeth Semple  
Manager  
Division of Coastal and Law Use Planning  
Department of Environmental Protection  
401 East State Street  
PO Box 420, Mail Code 401-07C  
Trenton, NJ 08625

**Re: Public Comment on Proposed Atlantic County Future Wastewater Service Area Map**

Dear Ms. Semple,

Pinelands Preservation Alliance (PPA) submits the following comments on the proposed Future Wastewater Service Area (FWSA) map for Atlantic County, in accordance with the public notice published by the Department of Environmental Protection (DEP) on December 10, 2012.

As detailed below, DEP should not adopt the proposed Atlantic County FWSA map as proposed because it wrongfully includes all Pinelands Villages, regardless of circumstances, planning considerations or municipal consent, in expanded sewer service areas; and because it incorporates land into sewer service areas that is environmentally sensitive under the standards of the Water Quality Management Planning Rules at NJAC 7:15-5.24.

The issue of Pinelands Villages arises because the great majority of Villages in Atlantic County have never before been included in sewer service areas. The proposed FWSA would include *all* Villages in expanded sewer service areas without any basis in applicable Pinelands, Water Quality Management Planning (WQMP) or other land use regulations or municipal planning decisions and objectives.

**1. There Is No Legal Requirement that Pinelands Villages Be Included in Sewer Service Areas**

Neither the WQMP Rules nor the Pinelands Comprehensive Management Plan (CMP) require that Pinelands Villages be added to expanded sewer service areas in the current round of updated County Plans. The Pinelands CMP permits but does not require Villages to be sewerred. NJAC 7:50-5.27. In fact most have never been in sewer services areas throughout the Pinelands' 32 years of existence. The WQMP Rules do not require that *any* area not previously within a

sewer service area be added in the current revisions; instead, the Rules provide minimum standards any sewer service areas, including expansions, must meet in order to be approved.

With respect to the Pinelands CMP, detailed land use planning and zoning for Pinelands Villages is left to the discretion of the municipalities consistent with the broad standards of the CMP. Among those standards are that “the character and magnitude” of any proposed use “is compatible with existing structures and uses in the Village ....” NJAC 7:50-5.27. By adopting a sweeping inclusion of all Pinelands Villages in sewer service areas, without regard to their individual character or any individualized planning process for each Village, DEP would violate both the spirit and the letter of the CMP.

## **2. The Memorandum of Understanding Between the Pinelands Commission and DEP Does Not Provide a Lawful Basis To Add Pinelands Villages to Sewer Service Areas**

Both DEP staff and the Pinelands Commission have informed the Pinelands Counties that they must include all Pinelands Villages in the sewer service areas as part of their Water Quality Management Plans, citing the Memorandum of Understanding between the Pinelands Commission and DEP dated April 9, 2012. *See, e.g.*, Email from Paul Tyshchenko, Pinelands Commission, to Robert C. Brewer, Cumberland County, dated October 3, 2012 (attached); DEP public notice re Proposed Amendment to the Lower Delaware Water Quality Management Plan, dated November 5, 2012 (attached).<sup>1</sup> Consistent with this position, the public notice for the Atlantic County proposed FWSA states that some areas have been added to sewer service areas in the proposed map “based on ... the requirements of the Pinelands Comprehensive Management Plan.” (Public Notice, p. 2, attached). Counties, such as Ocean County, which did not put all Villages in sewer service areas in their initial submissions to DEP have been required to do so. In sum, both the Pinelands Commission and DEP read the Memorandum of Understanding as requiring DEP to add all Pinelands Villages to sewer service areas, and on this basis DEP in turn told the Counties they must include all Villages in the revised sewer service areas.

This position, however, has no basis in the WQMP Rules or in the Pinelands CMP – nor even in sound planning. In a letter dated August 27, 2012, Nancy Wittenberg, the Executive Director of the Pinelands Commission, agrees that the November 2012 Memorandum of Understanding did not change the law or rules governing Pinelands Villages in any way. As explained above, before the MOU, neither the Comprehensive Management Plan (CMP) nor DEP’s Water Quality Management Planning (WQMP) Rules law *require* that Villages be included in sewer service areas. That remains the case after the Memorandum of Understanding.

The fact that Wastewater Management Plans must be coordinated with the Pinelands Protection Act and CMP, NJAC 7:15-3.7, provides cannot justify an across-the-board expansion of sewer service areas to all Pinelands Villages because neither the Act nor the CMP require sewerage of Villages or give the Commission authority to require sewerage of Villages. Indeed, it is the express policy of the Pinelands program to allocate the decision whether or not to permit sewerage of Villages to municipal government, consistent with the CMP’s minimum standards

---

<sup>1</sup> For reasons not explained, DEP changed the language of its public notice on this point for the Atlantic County FWSA, published on January 7, 2013, from the more explicit language used in the Lower Delaware public notice. The Atlantic County notice is vaguer on the role of the Pinelands program. Still, it is clear from DEP’s actions that it is applying the same reasoning to the Atlantic County FWSA as it described in the Lower Delaware notice.

and permitted uses for Villages (such as maintaining the character and magnitude of existing uses).

Consequently, DEP should not approve WQMPs that include Villages which were previously not in sewer service areas and inform the Counties that they may apply to include specific Villages in expanded sewer service areas under the normal standards governing such expansions, including obtaining municipal consent. Indeed, since the inclusion of Villages in expanded sewer service areas in this case is based entirely on DEP's application of the Memorandum of Understanding, but that document cannot lawfully require the expanded sewer service areas, it would be unlawful for DEP to adopt the proposed FWSA.

### **3. Sewer Service Area Designation Conflicts with Lawful, Certified Municipal Zoning for Many Pinelands Villages**

All Pinelands Villages at issue have municipal zoning, which the Pinelands Commission has previously certified as complying with the Pinelands Comprehensive Management Plan (CMP). Many of these Villages have zoning that is inconsistent with installation of sewers.

For example, Buena Vista Township's zoning and land use ordinances governing its Pinelands Villages of Buena Vista are inconsistent with inclusion in sewer service areas in two ways. First, the permitted densities could not support sewer treatment, as the zoning mandates minimum lot areas of between 2.5 acres (PVR1 and PVRC Districts) and 10 acres (PV1). *See* Buena Vista Township Ordinance Section 115-77. Second, the Township's land use ordinance provision on Public Service Infrastructure permits centralized wastewater treatment and collection facilities only to service its Forest Area, Agricultural Production Area and Rural Development districts – *not* its Pinelands Villages. Ordinance Section 115-125. (Buena Vista does not have any Pinelands Regional Growth Area.)<sup>2</sup>

### **4. WQMP Rules Require Municipal Agreement To Expand a Sewer Service Area into a Pinelands Village, and Several Municipalities Have Not Given Such Consent**

The WQMP Rules require that municipalities consent to the expansion of sewer service areas within their jurisdiction. As noted above, one fundamental requirement the Rules place on DEP is that it "Coordinate and integrate WQM plans with related ... local comprehensive land use, functional and other relevant planning activities, programs and policies." NJAC 7:15-2.1(a)3. One way the Rules ensure this coordination is to require municipal consent to expansion of sewer service areas. Thus, the WQMP Rules require that wastewater management planning agencies provide DEP with "written statements of consent for wastewater management plans" from "the governing bodies" of each municipality affected. NJAC 7:15-5.22(b).

In this case, at least some of the affected Atlantic County municipalities affected by the proposed expansion of sewer services areas to cover all Pinelands Villages have not consented, but have objected to the expansion and provided cogent planning reasons for doing so. We are aware that Buena Vista, Mullica and Weymouth Townships and Estell Manor City have done so, and it is possible others have as well. In the absence of any planning or environmental process

---

<sup>2</sup> Pinelands rules would only permit sewers in Forest, Agricultural and Rural Development Areas to solve a public health problem.

or rationale for each Village in question, DEP may not simply ignore these municipal objections and sweep all Villages into new sewer service areas.

It may be argued that DEP or a County may expand a sewer service area without the municipality's consent in a case where the area in question is failing to meet state or Pinelands water quality standards due to excessive or concentrated septic effluent, as conversion to a sewer treatment system would solve a water quality violation. In the present case, however, no agency has made such a determination for all – or even, so far as know, for any – of the Pinelands Villages in question – much less justified inclusion of entire Villages in expanded sewer service areas based on such a rationale.

#### **5. The Map Under Consideration Provides Insufficient Information To Evaluate or Justify Approval**

While the WQMP Rules require that Wastewater Management Plans (WMPs), including sewer service area maps, provide substantial information to justify each plan, DEP proposes to approve revised sewer service areas in isolation from any such information – at least, no such information has been provided to the public. This lack of information makes it impossible for the public to evaluate the maps, or for DEP to approve the maps as meeting regulatory requirements or the sound planning objectives, which these requirements are designed to achieve. Since sewer service area maps are a part of the whole WMP, such maps cannot be justified in isolation from the WMP. DEP and the County have not even posted the Township resolutions objecting to the expansion of their sewer service areas! The lack of information also makes it impossible to know what information is in the record of decision on which DEP will base its approval decision, and therefore what information one needs to address in comments such as these.

Atlantic County is just one example of a planning agency that is providing only the bare sewer service area mapping for public review and comment. See [www.nj.gov/dep/wqmp/wmpnotices.html#wmp20130107atlantic](http://www.nj.gov/dep/wqmp/wmpnotices.html#wmp20130107atlantic) and [www.aclink.org/GIS/mainpages/static\\_display.asp?gis\\_var=ssa](http://www.aclink.org/GIS/mainpages/static_display.asp?gis_var=ssa).

The WQMP Rules require, for example, that WMPs include sewer service area mapping that will “provide adequate wastewater service for ... [l]and uses allowed in zoning ordinances that have been adopted and are in effect under SNJSA 40:55-D-62” or must “identify relevant zoning ordinances on which the wastewater management plan is based specifying the type, density, and intensity of land use allowed in each district.” NJAC 7:15-5.18(b). The Rules also state that DEP will only adopt a wastewater management plan, plan update or plan amendment “if the applicant demonstrates compliance with the requirements in this section for existing and future wastewater treatment needs, *water supply demands*, and *nonpoint sources of pollution*.” NJAC 7:15-5.25(a) (emphases added). No such information is provided to the public in the Atlantic County submission subject to the current public comment and approval process.

With respect to water supply, for example, the Rules require that DEP “will only adopt a WMP, WMP update or WMP amendment if water supply needs associated with the environmental build-out are demonstrated to be met with existing, new or expanded water supplies that do not conflict with the most current New Jersey State Water Supply Plan, regional water supply plans, or TMDLs adopted as WQM plan amendments ....” NJAC 7:15-5.25(f).

The Rules provide specific information requirements to make such demonstrations. Again, no such information is provided in support of the proposed Atlantic County FWSA.

In Public Law 2011, C. 203, the Legislature overrode certain provisions of the WQMP Rules. The Legislature, however, did not permit DEP to approve any expansion of sewer service areas in isolation from all the information and planning requirements set forth in the Rules, or to adopt any new sewer service area maps that violate the environmental standards of the Rules. The Legislature did give DEP the authority to keep land in sewer service areas “notwithstanding that existing treatment works may not currently have the assured capacity to treat wastewater from such land without infrastructure improvements or permit modifications.” Section 5. The Act, however, did not require DEP to do so, and it did not even *permit* DEP to take such action without regard to water supply demands or nonpoint sources of pollution. Yet the Atlantic County map is presented for approval without any of the information or justification this Rule requires for DEP approval. Public Law 2011, C. 203 cannot be used as an excuse for this failure.

**6. DEP Has No Authority To Adopt Maps that Include Environmentally Sensitive Areas in Sewer Service Areas**

DEP has declared that, contrary to the express requirements of the WQMP Rules, it will not remove land from sewer service areas that meets the Rules’ standards as environmentally sensitive “in recognition of the nature and scope of the New Jersey Pinelands Commission’s (Commission) regulation and oversight of land use and development within the Pinelands Area ....” This vague reference to the Commission’s “regulations and oversight” provides no lawful basis to violate the express requirements of the duly adopted WQMP Rules.

Moreover, the WQMP Rules are, in this respect, fully consistent with the provisions of the Pinelands CMP, because nothing in the provisions or objectives of the CMP mandates the sewerage of land that meets the WQMP Rule criteria as environmentally sensitive. There is no conflict in the regulations of the two agencies, so, again, DEP has no basis for ignoring the requirements of the WQMP Rules in this case.

In the case of Atlantic County, the proposed FWSA map includes areas that are indisputably environmentally sensitive under NJAC 7:15-5.24(b). Such areas include not only numerous wetlands, but also areas with Landscape Map ranks of 3 and above. For example, the area along Avenue of the Pines in Hamilton Township and either side of English Creek Road in Egg Harbor Township have a Landscape rankings of 4, State Endangered.

Thank you for considering these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Carleton Montgomery". The signature is fluid and cursive, with a large, stylized initial "C" and "M".

Carleton Montgomery  
Executive Director

## Theresa Lettman

---

**From:** Carleton Montgomery  
**Sent:** Friday, February 15, 2013 12:24 PM  
**To:** Theresa Lettman  
**Subject:** FW: Villages and Sewers

---

**From:** Paul Tyshchenko [<mailto:Paul.Tyshchenko@njpines.state.nj.us>]  
**Sent:** Monday, July 30, 2012 11:28 AM  
**To:** Brown, Rick; Duffy, Matthew; Peterson, John  
**Cc:** Argaman, Avi; DuMont, H.David; Purdie, Bill; Semple, Elizabeth  
**Subject:** Re: Corrections to the new SSA mapping needed to make it compliant with NJAC 7:15-5.24. shapefiles attached

Dear Messrs. Peterson and Duffy:

The Commission has completed its review of the attached shapefile (Atlantic\_County\_SSA\_PAClip). We have included our comments in the attributes of the shapefile in a field we have labeled "PinesNotes." In addition to these specific shapefile-related comments, we have the following general SSA/FWSA-policy comments:

(1) **all areas certified by the Commission as Regional Growth Areas, Pinelands Towns, or Pinelands Villages must be included**, in their entirety and without any exceptions, within the County's SSA/FWSA;

(2) **areas not within a certified Regional Growth Area, Pinelands Town, or Pinelands Village can be included within the County's SSA/FWSA if, and only if, they are currently covered by an existing NJPDES permit;** and,

(3) the mapping of NJPDES permitted-sites must strictly conform to NJDEP's mapping of these sites. No area may be mapped as a NJPDES permitted-site unless NJDEP has included such land/structure(s) within its mapping of the site.

If the County is interested in meeting to discuss these matters, the Commission has the space and the necessary technology to host a meeting here at our offices in New Lisbon. Please let me know if you are interested in such a meeting, if you require any additional information, or if you have any questions regarding our comments. Thank you kindly.

Sincerely,  
Paul W. Tyshchenko  
Principal Planner  
Pinelands Commission

P.O. Box 359  
15 Springfield Road  
New Lisbon, NJ 08064

P: (609) 894-7300, ext. 194  
F: (609) 894-7333

Place Ad Call: 1-855-345-3338

PUBLIC NOTICE

ENVIRONMENTAL PROTECTION  
DIVISION OF COASTAL AND LAND USE PLANNING

Proposed Amendment to the  
Lower Delaware Water Quality Management Plan

Take notice that the New Jersey Department of Environmental Protection (Department) is seeking public comment on a proposed amendment to the Lower Delaware Water Quality Management (WQM) Plan. This amendment proposal, submitted on behalf of the Cumberland County Board of Chosen Freeholders as the responsible Wastewater Management Planning Agency, would adopt a future wastewater service area (FWSA) map for Cumberland County. This map has been prepared pursuant to P.L. 2011, c. 203, enacted on January 17, 2012, which permits the Wastewater Management Planning Agency to prepare and submit to the Department at least that portion of a wastewater management plan (WMP) designating sewer service area (SSA), which shall comply with the Department's regulatory criteria. If adopted, this map, titled "Future Wastewater Service Areas, Cumberland County New Jersey," will supersede all wastewater service area mapping currently contained in the WQM Plan for areas within Cumberland County, including that which was adopted into the WQM Plan as part of approved WMPs. The map identifies areas to be served by sewage treatment facilities/sewer systems as well as areas to be served by septic systems with design flows of equal to or less than 2,000 gallons per day. The proposed map modifies the previously approved SSAs to eliminate environmentally sensitive areas (ESAs) that are not currently connected to sewer systems, as well as removes areas from sewer service based on local planning initiatives. Additional new areas have been proposed for sewer service based on local planning initiatives. This proposed amendment only modifies the wastewater service area mapping portions of the above referenced WQM Plan.

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 modification. Therefore, amendments to update a SSA may be approved if such actions are compliant with the applicable sections of the Water Quality Management Planning Rule (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.

In accordance with N.J.A.C. 7:15-5, ESAs have been assessed to determine what areas are appropriately included in the proposed SSAs. 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 species as identified on the Landscape Project Maps of Habitat for Endangered, Threatened or Other Priority Species, Natural Heritage Priority Sites, Category One (C1) special water resource protection areas, and wetlands, alone or in combination. These ESAs are not included in the proposed 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, versions 2.1 and 3.0, as applicable. Areas identified by the Landscape Project as being suitable habitat for threatened and endangered species are not included in the proposed SSAs except as provided under N.J.A.C. 7:15-5.24(e) through (h), or unless a site has undergone a site specific Habitat Suitability Determination prepared in accordance with N.J.A.C. 7:15-5.26 that found the site to be not suitable habitat, or, pursuant to N.J.A.C. 7:15-5.24(g)2, the Department determined the ESAs are not critical to a population of endangered or threatened species the loss of which would decrease the likelihood of the survival or recovery of the identified species.

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 proposed 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 C1 waters and their tributaries are not included in the proposed SSAs, except as provided under N.J.A.C. 7:15-5.24(e) through (h). The required buffer width is applied to both sides of a stream measured from the top of 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. C1 waters and their tributaries are afforded a 300-foot buffer. In addition, as required under N.J.A.C. 7:15-5.20(b)3, the proposed FWSA 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, the Stormwater Management rules, and the Water Quality Management Planning rules. Most development within these riparian zones is limited by these regulatory programs.

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 proposed 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(d), areas with Federal 201 grant limitations that prohibit the extension of sewers to serve development in these areas are excluded from the proposed SSA either where local mapped information exists delineating these areas, or through a narrative from a reliable source where mapping does not exist. Where a narrative approach has been used, it is noted as text on the proposed FWSA. 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 document and compliance is required.

As provided under N.J.A.C. 7:15-5.24(e) through (h), limited ESAs have been included in SSAs. Where applicable, Department wetland, flood hazard, and state open water permits or jurisdictional determinations have been utilized to determine the extent of the SSA on individual lots.

In recognition of the nature and scope of the New Jersey Pinelands Commission's (Commission) regulation and oversight of land use and development within the Pinelands Area, the Department shall not require that environmentally sensitive areas, delineated at N.J.A.C. 7:15-5.24(b), be removed from an existing or proposed sewer service areas within a Regional Growth Area, Pinelands Town, Pinelands Village, or substantially developed portions of a Military and Federal Installation Area. For purposes of implementing the Department's WQMP rules at N.J.A.C. 7:15, a Memorandum of Understanding between the Department and the Commission has been executed in which the Department recognizes the management area designations and boundaries established by the Commission for lands located within the Pinelands Area.

As depicted in the FWSA map, the County proposed to include Block 582, Lots 1, 10, and part of 1.10 in the FWSA. The Department has noted on the FWSA map that Block 582, Lots 1, 10, and part of 1.10 have been removed from the proposed FWSA pursuant to N.J.A.C. 7:15-5.24(b)1. A site specific Habitat Suitability Determination was prepared in accordance with N.J.A.C. 7:15-5.26, and upon review and a site visit, the Department determined that the site largely features suitable habitat for one or more Threatened and Endangered Species within the areas proposed for recreational and residential development. This final determination was mailed to the Cumberland County Department of Planning and Development with copy to the City of Millville and the landowner's consultant on May 1, 2012.

This preliminary notice represents the Department's determination that the County's proposed SSA, revised by the Department as outlined above, is in compliance with the regulatory criteria for identifying SSAs pursuant to N.J.A.C. 7:15-5.24 and 5.25. In accordance with P.L. 2011, c. 203, the Department is now accepting site specific amendment and revision applications. Information regarding applications for these amendments and revisions can be found at <http://www.nj.gov/dep/wqmp/applications.html>.

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 does not provide any implied approval for any other aspects of any project or needed permits and approvals.

This notice is being given to inform the public that an amendment has been proposed for the Lower Delaware WQM Plan. All information related to the WQM Plan and the proposed amendment is located at the Department, Division of Coastal and Land Use Planning, 401 East State Street, P.O. Box 420, Mail Code 401-07C, Trenton, New Jersey 08625. The Department's file is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling the Division of Coastal & Land Use Planning at (609) 984-6888.

A public hearing on the proposed amendment will be held on December 11, 2012 from 6:30 P.M. to 8:30 P.M., or close of testimony, whichever comes first, at the Cumberland County Extension 4H Center, 291 Morton Avenue, Rosenhayn, New Jersey 08352.

Interested persons may submit written comments on the amendment to WQM Program Docket, Division of Coastal and Land Use Planning, at the Department address cited above, with a copy sent to Mr. Robert Brewer, Cumberland County Department of Planning & Development, 790 East Commerce Street, Bridgeton, NJ 08302. All comments must be submitted within 15 days following the public hearing. All comments submitted prior to the close of the comment period shall be considered by the Department in reviewing the amendment request.

Elizabeth Semple, Acting Director  
Division of Coastal and Land Use Planning  
Department of Environmental Protection  
Date 10/8/12

Cost \$262.14  
(2643762) 11/5/2012 1t

S.J. TIMES  
MON. - 11/5/12

**PUBLIC NOTICE**  
**ENVIRONMENTAL PROTECTION**  
**DIVISION OF COASTAL AND LAND USE PLANNING**  
**Proposed Amendment to the Atlantic County Water Quality Management Plan**  
**Public Notice**

Take notice that the New Jersey Department of Environmental Protection (Department) is seeking public comment on a proposed amendment to the Atlantic County Water Quality Management (WQM) Plan. This amendment proposal, submitted on behalf of the Board of Chosen Freeholders of Atlantic County as the responsible wastewater management planning agency, would adopt a future wastewater service area (FWSA) map for Atlantic County. This map has been prepared pursuant to P.L. 2011, c. 203, enacted on January 17, 2012, which permits the wastewater management planning agency to prepare and submit to the Department at least that portion of a wastewater management plan (WMP) designating sewer service areas, which shall comply with the Department's regulatory criteria. If adopted, this map, titled "Future Wastewater Service Areas (FWSA), Atlantic County New Jersey," will supersede all wastewater service area mapping currently contained in the WQM Plan for areas within Atlantic County, including that which was adopted into the WQM Plan as part of approved WMPs.

The proposed FWSA map identifies areas to be served by sewage treatment facilities/sewer systems as well as areas to be served by septic systems with design flows of equal to or less than 2,000 gallons per day. The proposed map modifies the previously approved sewer service areas to eliminate environmentally sensitive areas that are not currently connected to sewer systems, as well as removes areas from sewer service based on local planning initiatives. Additional new areas have been proposed for sewer service based on local planning initiatives and the requirements of the Pinelands Comprehensive Management Plan. This proposed amendment only modifies the wastewater service area mapping portions of the above referenced WQM Plan.

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 sewer service area notwithstanding that existing treatment works may not currently have the assured capacity to treat wastewater from such land without infrastructure improvements or permit modification. Therefore, amendments to update a sewer service area may be approved if such actions are compliant with the applicable sections of the Water Quality Management 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, anti-degradation, 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.

In accordance with N.J.A.C. 7:15-5, environmentally sensitive areas have been assessed to determine what areas are appropriately included in the proposed sewer service areas. 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 (C1) special water resource protection areas, and wetlands, alone or in combination. These environmentally sensitive areas are not included in the proposed sewer service area 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, versions 2.1 and 3.0, as applicable. Areas identified by the Landscape Project as being suitable habitat for threatened and endangered species are not included in the proposed sewer service areas except as provided under N.J.A.C. 7:15-5.24(e) through (h), or unless a site has undergone a site specific Habitat Suitability Determination prepared in accordance with N.J.A.C. 7:15-5.26 that found the site to be not suitable habitat, or pursuant with N.J.A.C. 7:15-5.24(g)2, the Department determined the environmentally sensitive areas are not critical to a population of endangered or threatened species the loss of which would decrease the likelihood of the survival or recovery of the identified species.

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 proposed sewer service area, 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 proposed sewer service areas, except as provided under N.J.A.C. 7:15-5.24(e) through (h). The required buffer width is applied to both sides of a stream measured from the top of 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, are afforded a 300-foot buffer. In addition, as required under N.J.A.C. 7:15-5.20(b)3, the proposed FWSA 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, the Stormwater Management rules, and the Water Quality Management Planning rules. Most development within these riparian zones is limited by these regulatory programs.

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 proposed sewer service area, 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(d), areas with Federal 201 grant limitations that prohibit the extension of sewers to serve development in these areas are excluded from the proposed sewer service area either where local mapped information exists delineating these areas, or through a narrative from a reliable source where mapping does not exist. Where a narrative approach has been used, it is noted as text on the proposed FWSA map. Pre-existing grant conditions and requirements (from Federal and State grants or loans for sewerage facilities) which provide for restriction of sewer service to environmentally sensitive areas, are unaffected by adoption of this document and compliance is required.

As provided under N.J.A.C. 7:15-5.24(e) through (h), limited environmentally sensitive areas have been included in sewer service areas. Where applicable, Department Wetland, Flood Hazard, and state open water Permits or Jurisdictional Determinations have been utilized to determine the extent of the sewer service area on individual lots.

This preliminary notice represents the Department's determination that the County's proposed sewer service area is in compliance with the regulatory criteria for identifying sewer service areas pursuant to N.J.A.C. 7:15-5.24 and 5.25. In accordance with P.L. 2011, c. 203, the Department is now accepting site specific amendment and revision applications. Information regarding application for these amendments and revisions can be found at <http://www.nj.gov/dep/wqmp/applications.html>.

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 does not provide any implied approval for any other aspects of any project or needed permits and approvals.

This notice is being given to inform the public that a plan amendment has been proposed for the Atlantic County WQM Plan. All information related to the WQM Plan, and the proposed amendment is located at the Department, Division of Coastal and Land Use Planning, 401 East State Street, P.O. Box 420, Mail Code 401-07C, Trenton, New Jersey 08625. The Department's file is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling the Division of Coastal & Land Use Planning at (609) 984-6888. A public hearing on the proposed amendment will be held on Thursday, February 7, 2013, from 6:00 P.M. to 8:00 P.M. at the Anthony 'Tony' Canale Training Center, 5033 English Creek Avenue, Egg Harbor Township, New Jersey, or close of testimony, whichever comes first.

Interested persons may submit written comments on the amendment to WQM Program Docket, Division of Coastal and Land Use Planning, at the Department address cited above, with a copy sent to Mr. John Peterson, Atlantic County Department of Regional Planning and Development, P.O. Box 719 Rt. 9 and Dolphin Avenue, Northfield, NJ 08225. All comments must be submitted within 15 days following the public hearing. All comments submitted prior to the close of the comment period shall be considered by the Department in reviewing the amendment request.

Elizabeth Semple, Manager  
Division of Coastal and Land Use Planning  
Department of Environmental Protection  
Printer's Fee: 153.72  
Pub. Date: 01-07-2013

Order No. 1265889