

PUBLIC NOTICES

EDUCATION

(a)

STATE BOARD OF EDUCATION

Notice of Public Testimony Session Wednesday, April 21, 1993

Take notice that the following agenda items are scheduled for Notice of Proposal in the April 15, 1993 New Jersey Register and are, therefore, subject to public comment. Pursuant to the policy of the New Jersey State Board of Education, a public testimony session will be held for the purpose of receiving public comment on Wednesday, April 21, 1993 from 3:00 P.M. to 6:00 P.M. in the State Board Conference Room, Department of Education, 225 West State Street, Trenton, New Jersey.

To reserve time to speak call the State Board Office at (609) 292-0739 by 12:00 noon Friday, April 16, 1993.

Rule Proposals:

N.J.A.C. 6:28, Special Education; and

N.J.A.C. 6:3-9, School Ethics Commission.

Please Note: Publication of the above items are subject to change depending upon the actions taken by the State Board of Education at the March 3, 1993 monthly public meeting.

ENVIRONMENTAL PROTECTION AND ENERGY

(b)

OFFICE OF REGULATORY POLICY

Amendment to the Cape May County Water Quality Management Plan Public Notice

Take notice that on January 19, 1993, pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq. and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Cape May County Water Quality (WQM) Plan was adopted by the Department. A lawsuit filed in the Superior Court, Chancery Division, *Senico, et al. v. Township of Middle, et al.*, (Docket No. CPM-C-35-91), resulted in the New Jersey Department of Environmental Protection and Energy (DEPE) reopening its October 12, 1990 decision adopting the Middle Township Wastewater Management Plan as an amendment to the Cape May County Water Quality Management Plan (WQMP). The DEPE reopened only to that part of its decision that affected property located at Block 415.01, Lot 1; Block 432, Lots 1-5; and Block 433, Lots 11-13 located on the Delaware Bay in the Del Haven area of Middle Township, Cape May County.

Based on a *de novo* review of the proposed amendment and the comments on the amendment discussed herein, the Cape May County WQM Plan is formally amended to exclude the previously described property from the sewer service area of the Lower Township Municipal Utilities Authority sewage treatment plant (STP), to the extent that it falls within wetlands, wetland buffers, dune and beach areas and other applicable Special Areas and is inconsistent with the Coastal policies regarding these areas.

This decision has been taken to insure that the WQM Plan in question accurately addresses anticipated wastewater treatment needs for the area, pursuant to the Statewide Water Quality Management Planning rules, N.J.A.C. 7:15. The decision further implements and complies with applicable State law, N.J.A.C. 7:15-3.4(a), including, but not limited to, the requirements of the Department's Rules on Coastal Zone Management, N.J.A.C. 7:7E, as they apply to Middle Township's sewage collection system (the subject of CAFRA Permit No. 88-1062-5). This decision will be more fully discussed below.

This amendment proposal was noticed in the New Jersey Register on November 16, 1992 at 24 N.J.R. 4286(a). A public hearing was held on

December 17, 1992. Comments received are summarized below with the Department's responses.

COMMENT: The Senico/Linnington property in Middle Township, Cape May County identified as Block 415.01, Lot 1; Block 432, Lots 1-5; and Block 433, Lots 11-13 should remain designated as sewerable under the Cape May County WQMP for the following reasons:

When purchased, the property was designated as "sewerable" under the Cape May County WQMP and in June of 1988 the DEPE issued a consistency determination which indicated that the project was consistent with the Cape May County WQMP. The commenter states that the physical characteristics of the land have not changed since then, nor the relevant environmental laws.

The commenter states that the property was purchased in 1982 in reliance upon the fact that it was zoned "resort residential" by Middle Township and that single family detached dwellings were a permitted use in this area under the zoning ordinance. According to the content requirements of Wastewater Management Plans (WMPs) as specified in N.J.A.C. 7:15-5.18(b), wastewater service areas shall, to the maximum extent practicable, be identified in such a manner as to provide adequate wastewater service for land uses allowed in zoning ordinances or future land uses shown in municipal or county master plans that have been adopted and are in effect. The commenter claims that according to this rule, the State is required to provide adequate wastewater service for this project which is in conformance with both the Middle Township Zoning Ordinance and the Master Plan.

N.J.A.C. 7:15-5.18(b)6 indicates that "If, for particular locations, preliminary or final subdivision or site plan approvals under article 6 of the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., have allowed land development that would generate more wastewater than would the development allowed in the zoning ordinance or shown in the master plan, then for those locations the wastewater management plan shall be based on such approvals rather than on the zoning ordinance or the master plan."

On February 14, 1989, the Middle Township Planning Board granted preliminary subdivision approval for 13 lots on the basis that the plan fully conforms to the local zoning ordinance regulations. The approval, provided by the commenter, is conditioned upon the availability of sanitary sewer facilities "in the area and for the project." The commenter writes that "this rule clearly directs DEPE to provide for sewerability whenever a local planning board has granted preliminary subdivision approval for a project, even if that project would generate more wastewater than development allowed under the existing master plan or zoning ordinance."

The commenter notes that under N.J.A.C. 7:15-5.17, various environmental features must be mapped on a 208 plan. The commenter represents that the Senico/Linnington project proposes absolutely no construction within either freshwater wetlands as defined by N.J.S.A. 13:9B-1 et seq. or within coastal wetlands pursuant to N.J.S.A. 13:9A-1 et seq. In addition, the Senico/Linnington project does not need a waterfront development or a CAFRA permit, therefore, "the DEPE Coastal Management Rules, N.J.A.C. 7:7E, which govern the issuance of waterfront and CAFRA permits, are not applicable to this project."

The CAFRA and waterfront development permits for the Del Haven sewer collector system included a condition that the Township of Middle and the Municipal Utilities Authority (MUA) adopt similar resolutions to prohibit tie-ins to the approved sewer line from future development within the wetlands, wetlands buffers, dunes, beaches and other applicable special areas.

The commenter states that DEPE "has no authority to directly prohibit tie-ins from beach or dune areas, and therefore has illegally compelled the Township and the [MUA] to do so." The commenter further states that "absent the need for a CAFRA or waterfront development permit, DEPE's Dune Policy (N.J.A.C. 7:7E-3.16) is inapplicable to this project." In addition, the commenter notes that "the project was reviewed by the Middle Township Planning Board in accordance with the Middle Township Dune Review Ordinance, and was approved as conforming to Township standards."

RESPONSE: As the commenter notes, this property was originally included in a "proposed and existing sewerage area" on the Cape May County WQM Plan adopted September 4, 1980. In September, 1989, the Township of Middle was issued a Waterfront Development and CAFRA permit to construct a new sewage collection system. The permit

subject to several conditions including one that requires that prior construction, the Township of Middle and the Cape May County MUA must adopt resolutions to "prohibit tie-ins to the approved sewer line from future development within the wetlands, wetlands buffers, dunes, beaches, and any other applicable Special Areas." The condition further states that the "Middle Township Water Quality Plan amendment to the Cape May County Water Quality Management Plan will include delineations of the wetlands, wetlands buffers, dune and beach areas, and will exclude these areas from the Del Haven sewer service area." This condition resulted from a secondary impact analysis under N.J.A.C. 7:15-6.3. Pursuant to this rule, an applicant must demonstrate that the development induced by the project, or "secondary impacts," will, to the maximum extent practicable, "satisfy the Coastal Resource and Development Policies." *Ibid.*

Consistent with the above condition, Cape May County submitted to the State an amendment to the Middle Township WMP for adoption as an amendment to the Cape May County WQM Plan. The amendment was approved by the State after public notice consistent with Department regulations, on October 12, 1990.

However, as a result of a lawsuit filed in Superior Court, Chancery Division, *Senico, et al., v. Township of Middle, et al.* (Docket No. CPM-C-35-91), the Department reopened its October, 1990 decision to permit plaintiffs Senico and Linnington to comment on the amendment, but only with respect to that part of the Department's decision that affected plaintiffs' property located at Block 415.01, Lot 1; Block 432, Lots 1-5; and Block 433, Lots 11-13 in the Township of Middle. After notice, a public hearing was held on December 17, 1992. Pursuant to the court's order in the above case, the Department has now considered the additional comments summarized above, and has made a *de novo* determination that the Middle Township WMP is adopted as an amendment to the Cape May County WQM Plan with respect to the subject property. Specific responses to the comments received follow:

The fact that the property was originally located in a "proposed and existing sewer area" and that the Senico/Linnington property was found to be consistent with Cape May County's WQM Plan in 1988 cannot prevent the Department from adopting an amendment to the WQM Plan, if otherwise appropriate. Under the Statewide Water Quality Management Planning Regulations, N.J.A.C. 7:15, the Department may not authorize any project or activity through the grant of a permit before a formal consistency determination review has been completed. N.J.A.C. 7:15-3.1. The consistency determination is a written statement by the Department that a project or activity is consistent with an adopted WQMP. N.J.A.C. 7:15-1.5.

The Department's regulations, however, specifically provide that a WQM Plan may be amended after a consistency determination has been issued and discuss the consequences to a project that has, by the amendment, become "inconsistent." Recognizing that a consistency determination may be needed for more than one permit, the Department's regulations state that "[i]f a project or activity requires two or more Department permits, and if the Department makes a finding [of "consistent"] for one of those permits, that finding shall be valid for the remaining Department permits." N.J.A.C. 7:15-3.2(c)(6)(i). However, the regulations give unequivocal notice that where "[t]he project or activity has become inconsistent, because of an amendment made to the WQM plan or this chapter after the initial finding," the consistency determination will not be valid for any subsequently applied for permit applications. *Ibid.*

Here the commenters Senico and Linnington received a consistency determination. However, before they could apply for their sewer extension permit, the project became inconsistent because the WQMP was changed. The regulations plainly establish that the prior issuance of a consistency determination will not prevent a WQM Plan from being amended in a manner that causes a project to become "inconsistent." The regulations do permit the applicant, however, to address this change by applying for an additional amendment to the WQMP pursuant to N.J.A.C. 7:15-3.4.

The Department agrees that the proposed amendment of a water quality management plan must meet, among other things, the requirements contained in N.J.A.C. 7:15-5.18. It is the Department's determination, however, that those requirements are met in this case. N.J.A.C. 7:15-5.18 requires each WMP to include a description of a wastewater service area and treatment works necessary to meet "anticipated needs" through "cost-effective, environmentally sound" management. N.J.A.C. 7:15-5.18(a). In order to address anticipated needs, wastewater service areas and treatment works must "to the maximum extent practicable,"

be identified in such a manner as to provide adequate wastewater service for land uses allowed in adopted zoning ordinances and future land uses as shown in municipal master plans in effect. N.J.A.C. 7:15-5.18(b)1 and 2. The regulations also allow for consideration of local site plan or subdivision approvals where they would allow development generating more wastewater than that permitted by zoning. N.J.A.C. 7:15-5.18(b)6.

In the present case, the project on the subject property was found by the local planning board to have complied with zoning requirements. Indeed, a subdivision approval was granted on February 14, 1989, subject to the availability of sanitary sewer facilities "in the area and for the project". When Middle Township accepted the CAFRA permit, it did so conditioned upon its issuing an ordinance that prohibits the permitted facility to tie-in to new development in dunes, wetlands, transition areas and other environmentally sensitive areas. It should be noted that the CAFRA permit condition and the Township ordinance implementing it were challenged in the same court action that resulted in the re-opening of the Department's decision to adopt Middle Township's amended WMP as an amendment to the Cape May County WQM Plan. The court dismissed all counts except that addressing the notice requirements for amending the Cape May County WQM Plan as they related to the plaintiffs in that action. Given this, it is clear that the subject project does not comply with local planning ordinances or the resolution of the MUA regarding tie-ins to the new treatment facility. It is, therefore, not necessary to anticipate the need for wastewater treatment for development on this property. It should be further noted that the subdivision approval was always contingent upon the availability of sewerage not only "in the area" but specifically "for the project."

Moreover, even if the project was consistent with local ordinances, the Department's regulations recognize that local planning decisions will not necessarily reflect "anticipated wastewater management needs." This is because other overriding interests, such as State law, will limit development, notwithstanding consistency with local law. Thus, N.J.A.C. 7:15-5.18 sets forth specific exceptions where wastewater management plans may be inconsistent with local zoning and master plans. These include instances where it is "not practicable," N.J.A.C. 7:15-5.18(b), where the wastewater management plan "relate[s] to the New Jersey Coastal Zone," and thus is subject to the requirements of N.J.A.C. 7:15-3.6, N.J.A.C. 7:15-5.18(b)7, and for other "compelling reasons," N.J.A.C. 7:15-5.18(b)8. N.J.A.C. 7:15-3.6 states that "the Department's rules on Coastal Resources and Development, N.J.A.C. 7:7E, . . . shall provide the basic policy direction for WQM planning in the New Jersey Coastal Zone . . ." This is reiterated in the rules on Coastal Zone Management which state that "[t]his chapter shall provide the basic policy direction for the following planning actions undertaken by DEP in the Coastal Zone," including "areawide water quality management ("208")." N.J.A.C. 7:7E-1.2(h).

In the matter presently before the Department, a condition to the CAFRA permit for the wastewater treatment facility, required by the secondary impact analysis contained in the Department's Rules on Coastal Zone Management, specifically, N.J.A.C. 7:7E-6.3, and upheld by the court, prohibits the facility to tie-in to development in sensitive environmental areas. Therefore, pursuant to N.J.A.C. 7:15-5.18(b), (b)7 and (b)8, the Department finds that there is no "anticipated need" for development in these areas. The "proposed and existing sewer area" for the Del Haven area may thus be redrawn to remove these sensitive environmental areas.

To the extent the subject property contains wetlands, wetlands buffers dunes, beaches and other applicable special areas, it will be taken out of the sewer service area of the Lower Township MUA STP. It should be noted, however that, if the property could be shown to fall outside these areas, it shall remain in the service area. Moreover, as stated above, the CAFRA permit condition is based on the policies in the Coastal Management Rules which otherwise prevent development which causes secondary impacts to sensitive areas. It is thus implicit in the condition that if a project could be shown not to represent the kind of secondary impact that the regulations and the condition was intended to prevent, the project would not fall within the condition's prohibition. For example, development that is found by the Department's Land Use Regulation Element not to be inconsistent with the Coastal policies regarding transition areas or dunes would not be prohibited.

The Department's determination to remove the above areas from the sewer service area is also consistent with the amendment procedures contained in the regulations. The procedures permit amendments to WQM plans where "necessary or desirable." N.J.A.C. 7:15-3.4(a). More specifically, a plan may be amended to "implement or comply with

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applicable State or Federal Law," to "respond to new circumstances," or to "improve the ... environmental impact of WQM plans." *Ibid.* The terms of the CAFRA permit, in particular the condition prohibiting tie-ins to development in sensitive environmental areas, has been challenged and upheld in court and, contrary to the commenter's assertions, was required by State law if the new treatment facility was to be built. It is therefore necessary to remove these areas from the "proposed and existing sewerage area" in order to "implement" and "comply" with "applicable State ... Law," to respond to the "new circumstances" brought on by the change in legal requirements and to improve the "environmental impact" of Cape May County's WQM plan by bringing it into compliance with the requirements of the State's Rules on Coastal Zone Management.

Finally, the Department has determined, upon reopening its prior decision, that the supplemental plans to the Middle Township Wastewater Management Plan mapping, approved by the Department as part of its original decision to adopt the proposed amendment (plan by Elson T. Killam Associates, Inc., dated September 6, 1988, last revised November 3, 1989), does not clearly reflect the terms of the CAFRA permit condition and this decision. In particular, the Department has determined that, among other things, the plan does not clearly exclude all dune and beach areas on the Senico/Linnington property from the sewer service area as required by both the previously approved and the present plan amendment. A revised plan, consistent with this decision, must be submitted to the Department by the County within 30 days of this decision.

(a)

OFFICE OF REGULATORY POLICY Amendment to the Monmouth County Water Quality Management Plan Public Notice

Take notice that on February 2, 1993, 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 (N.J.A.C. 7:15-3.4), an amendment to the Monmouth County Water Quality Management Plan was adopted by the Department. This amendment to the Monmouth County Water Quality Management (WQM) Plan proposed by the Township of Colts Neck, adopts a Wastewater Management Plan (WMP) for the Township. The WMP addresses wastewater management planning for the Township. The Township will retain WMP responsibility for the municipality.

The WMP delineates the site of Saddlebrook at Colts Neck as part of the sewer service area of the Manasquan River Regional Sewerage Authority (MRRSA). Wastewater from this site will be collected by MRRSA and treated at the Ocean County Utilities Authority's Northern Water Pollution Control Facility. The WMP delineates the areas served by existing NJPDES-permitted on-site treatment facilities and delineates proposed areas to be served by on-site treatment facilities discharging to groundwater. The remainder of the Township is designated as being served by individual subsurface sewage disposal systems.

(b)

OFFICE OF REGULATORY POLICY Amendment to the Lower Raritan/Middlesex County Water Quality Management Plan Public Notice

Take notice that the New Jersey Department of Environmental Protection and Energy (NJDEPE) is seeking public comment on a proposed amendment to the Lower Raritan/Middlesex County Water Quality Management (WQM) Plan. This amendment will redefine the sewer service area boundary between Stony Brook Regional Sewerage Authority and Middlesex County Utilities Authority and will increase current and future population and flow projections. This will amend the South Brunswick Wastewater Management Plan.

This notice is being given to inform the public that a plan amendment has been proposed for the Lower Raritan/Middlesex County WQM Plan. All information related to the WQM Plan and the proposed amendment

PUBLIC NOTICE

is located at the Middlesex County Planning Board, 40 Livingston Avenue, New Brunswick, New Jersey 08901, and the NJDEPE, Office of Regulatory Policy, CN-423, 401 East State Street, 3rd Floor, Trenton, New Jersey 08625. It 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 Middlesex County Planning Board at (908) 745-3016 or the Office of Regulatory Policy at (609) 633-7021.

Middlesex County will hold a public hearing on the proposed WQM Plan amendment. The public hearing will be on Thursday, April 15, 1993 at 8:00 P.M., in the Freeholders' Meeting Room, 11th Floor, of the Middlesex County Administration Building located on John F. Kennedy Square, New Brunswick, New Jersey. Interested persons may submit written comments on the amendment to Mr. William J. Kruse of the Middlesex County Planning Board at the County Planning Board address cited above. A copy of the comments should be sent to Mr. Barry Chalofsky at the NJDEPE address cited above. All comments must be submitted within 15 days following the public hearing. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by the County Board of Chosen Freeholders with respect to this amendment request. In addition, if the amendment is adopted by Middlesex County, the NJDEPE must review the amendment prior to final adoption. The comments received in reply to this notice and to the public hearing will also be considered by the NJDEPE during its review. Middlesex County and the NJDEPE thereafter may approve and adopt this amendment without further notice.

(c)

OFFICE OF REGULATORY POLICY Amendment to the Upper Raritan Water Quality Management Plan Public Notice

Take notice that on February 1, 1993, 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 (N.J.A.C. 7:15-3.4), an amendment to the Upper Raritan Water Quality Management Plan was adopted by the Department. This amendment, requested by the Borough of Peapack and Gladstone, adopts a Wastewater Management Plan (WMP) for the Borough of Peapack and Gladstone. The WMP allows abandonment of the Peapack Sewage Treatment Plant (STP) with flows being conveyed to the Environmental Disposal Corporation (EDC) STP in Bedminster Township. The EDC STP sewer service area and a Groundwater Discharge Area for facilities with design flows of less than 2,000 gallons per day are identified.

This amendment proposal was noticed in the New Jersey Register on November 16, 1992. Comments on this amendment were received during the public comment period and are summarized below with the DEPE's responses.

COMMENT: The Township of Bedminster commented that proximity of the Bedminster/Far Hills Pumping Station and Force Main facilities should indicate the merging of the Peapack and Gladstone and Bedminster/Peapack Transmission facilities into a regional transmission system as the most cost-efficient and environmentally correct means of wastewater management for the region. Bedminster feels the Department should require a regional wastewater transmission system.

RESPONSE: The Borough of Peapack and Gladstone does not disagree that a combined transmission system could be more advantageous if suitable contractual arrangements can be reached. However, at this time conditions proposed by Bedminster are unsatisfactory to Peapack and Gladstone. The Department relegates specific contractual arrangements regarding the technical construction details to the effected parties. The Department hopes that all the parties involved can arrive at a solution that is advantageous to all parties, however, approval of the planning concept need not be withheld pending these negotiations.

COMMENT: Bedminster Township commented regarding several technical and capacity design considerations of the Peapack and Gladstone transmission facilities.

RESPONSE: Technical and capacity design considerations will be addressed during the final design of the facilities in accordance with NJDEPE guidelines. Some of the design capacities cited merely reflect the maximum allowed under the contract between Peapack and Gladstone and EDC.

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