

DEPARTMENT OF ENVIRONMENTAL PROTECTION AND ENERGY
OFFICE OF LAND AND WATER PLANNING

AMENDMENT TO THE TRI-COUNTY WATER QUALITY MANAGEMENT PLAN

Public Notice

Take notice that on **APR 20 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 Tri-County Water Quality Management Plan was adopted by the Department. This amendment, which was proposed by Scarborough Corporation, expands the sewer service area of the Bordentown Sewerage Authority (BSA) Blacks Creek Sewage Treatment Plant (STP) to include a portion of the proposed Clifton Mills development (Phase I) located at Block 93, Lot 1.01 in Bordentown Township. This area was specifically excluded from the sewer service area of the Blacks Creek STP by the Environmental Assessment (EA) prepared for the 201 Facilities Plan, adopted August 26, 1986, which was developed in accordance with federal requirements for wastewater treatment plants receiving grant or loan monies. The area of the amendment must demonstrate that no sewage generating structures will be placed in any environmentally sensitive areas prohibited by grant conditions placed on the Blacks Creek STP unless a waiver from the United States Environmental Protection Agency (EPA) is obtained.

This amendment was noticed in the New Jersey Register on June 18, 1990 and renoticed on January 7, 1991. Comments on this amendment were received during the public comment period and are summarized below with the Department's responses.

1. COMMENT: The area of the amendment was originally excluded from the sewer service area [of the Blacks Creek STP] for environmental reasons - wetlands, flood plains and steep slopes. The engineer for the developer knew of this condition in November of 1987, but never admitted to this during the public hearing period. Repeated attempts to advise the planning board that the area was excluded from sewer service because of its environmentally sensitive nature went unheeded.

RESPONSE: The Department has no knowledge of statements concerning the environmental sensitivity of the subject amendment site which were made at the local level during the preamendment process and can not comment on the actions or inactions of the project engineer, developer, or the Bordentown Township Planning Board at that time.

However, the Department does agree with the first part of the commenters statement because it has been and remains the

Department's position that a portion of the amendment area was originally excluded from the sewer service area of the Blacks Creek STP because the area was believed to be environmentally sensitive. This designation was made during the EA process which was required as part of the BSAs request for federal funding to upgrade and expand the Blacks Creek STP in 1986. Because this area was intentionally not included within the sewer service area of the Blacks Creek STP, this Water Quality Management Plan amendment was required to put the Clifton Mills development into the Blacks Creek STP sewer service area.

2. COMMENT: The Environmental Impact Statement (EIS) prepared [by the consultant] for the project [amendment] site stated that (1) there were no environmental problems with the land, (2) steep slopes would be preserved, (3) ground water run off would be equal or less than present, and (4) all wetlands impacts would be minor. Letters and plans concerning the project site contradict these statements. Regarding issue one, some statements claim the land is entirely within the sewer service area of the Blacks Creek STP while others claim the land is only partially within the sewer service area of this STP. On issue two, some plans called for construction on steep slopes rather than preservation. On issue three, flooding is now a problem on Georgetown Road. How can additional construction cause no increase in flooding? On issue four, the project was divided into two phases because of wetlands impacts. The original wetlands delineation submitted to the Army Corps of Engineers was too conservative and had to be expanded.

RESPONSE: Regarding issue one, the original EIS prepared by the consultants for the amendment site did not explain the environmental constraints which exist on the project site. However, during the amendment process, this issue was explained to the applicant(s) and their agents and subsequent plans under Department review required the applicants agents to properly acknowledge and identify environmentally sensitive areas and constraints on these areas on the amendment site. Additional information concerning the environmental sensitivity of the project site is contained in response five.

The Department also agrees there was some confusion at the local level regarding whether or not the amendment site was within the sewer service area of the Blacks Creek STP. Some of the confusion regarding the issue of the amendment areas exclusion from the sewer service area may have stemmed from a U.S.G.S. quadrangle (quad) mapping error in the area of the amendment. This mapping error incorrectly delineated the municipal boundary between Bordentown and Chesterfield Townships. The Department has maintained that the sewer service area boundary in Bordentown Township was incorrectly based on the municipal boundary error in the quad mapping. A formal Water

Quality Management Planning revision, based on the mapping error, could have been done to add a portion of the amendment site to the sewer service area of the Blacks Creek STP. The Department has informally considered this area in question to be sewer service area for quite some time, however, a formal request to change only this error in the BSA 201 Facilities Plan has never been made to the Department.

Regarding issue two, the Department considers steep slopes to be an environmentally sensitive area however, N.J.A.C. 7:15 does not prohibit development on steep slopes. In addition, the BSA 201 Facilities Plan, while it excluded steep slopes from the wastewater flow calculations of the Blacks Creek STP, did not specifically contain a grant condition prohibiting development on steep slopes. The issue of added sewer service area from a steep slope area must be addressed by a "constraints analysis". (See response to comment five for more information about the constraints analysis.)

Please be aware, conditions within the Bordentown Township Land Development Ordinance, Section 25:401D, regulate development on slopes greater than 25% and these conditions must be met for any development proposed in these steep slope areas. Also, the Burlington County Soil Conservation District has approved a soil erosion control plan for the project area. This plan requires during construction in the steep slope area, sediment barriers and other soil erosion control measures to minimize erosion. In addition the plans identified, after seeding, mulching to prevent soil erosion.

Regarding issue three, the Department believes the commenter was referring to surface water run off rather than ground water run off as there are no proposals to recharge ground water on or from the project site. We will therefore address surface water run off concerns.

The Burlington County Engineers Office (Land Development Section) placed conditions concerning surface water run off and potential flooding in their preliminary site plan approval. These conditions do not allow any changes to be made to the contour of the land which would direct additional surface drainage to any County roads, unless proper and adequate additional drainage facilities are provided by the developer. Furthermore, no changes can be made in the contour of the land which would arrest or impede existing drainage from a County road, or undermine or flood a County facility. As a result of these conditions, existing stormwater run off and flooding problems should be reduced or eliminated as stormwater detention basins decrease the speed of stormwater run off from this area and diminish the potential for flooding.

With regards to issue four, the Department did not review the original wetlands delineation submitted to the Army Corps of Engineers (ACOE), therefore we can not comment on the validity of this application. However, the applicant was required to demonstrate, as part of this amendment proposal, that impacts to freshwater wetlands would not violate State or Federal laws regarding wetlands protection. On March 7, 1989, the applicant was issued a Freshwater Wetlands Exemption Letter. This letter indicated that the project site was exempt from the requirements of the Freshwater Wetlands Protection Act (N.J.S.A. 13:9B- et seq. and N.J.A.C. 7:7A-2.7(d)1) based on prior approvals the site had received. This meant that the ACOE January 4, 1989 jurisdictional letter was valid. The ACOE jurisdictional letter verified, based on a site inspection, that the wetlands line delineated on the project site plans was correct, and approved nationwide permits for a minor road crossing through wetlands and discharge of fill material into less than one acre of isolated or headwater wetlands.

When the entire project site (Phases 1 and 2) received preliminary township approval, some units were proposed to be located in the one acre of fill area allowed by the ACOE permit. However, the EPA had placed a grant condition on the sewer service area of the Blacks Creek STP. This grant condition prohibited development from any sewage generating structures placed within wetlands which existed at the time funds were given to the Blacks Creek STP to upgrade and expand. A waiver from the EPA would be required to connect any homes within the acre of fill area allowed by the ACOE permit to the Blacks Creek STP.

Because of the grant condition placed on the Blacks Creek STP and the EPA waiver requirement for any sewage generating development in wetlands, the applicant decided to proceed with final township approval for Phase 1 only of the project site, which contained 311 of the total 525 units planned, and had no direct impacts on wetlands. When Phase 2 plans are prepared for final township approval, the applicant will have to obtain either a mapping revision from the Department's Wastewater Assistance Element or an EPA waiver, if development in the wetlands areas is still proposed. In either case, it is possible that the applicant will be required to obtain a freshwater wetlands permit for Phase 2 of the development, since the original site plan approval of the project site will no longer be valid.

3. COMMENT: The original traffic study advised that no decline in the level of service of Georgetown Road would occur. A second study was prepared which identified that road widenings would need to occur and a new traffic signal would be necessary at the intersection of Georgetown Road and State Route 206. The developer placed an insufficient amount of money in a fund for the intersection improvement.

RESPONSE: N.J.A.C. 7:15 does not address traffic issues or financial obligations of developers to the municipality, county or state regarding the development of roadways or intersections. Therefore, the Department can not comment on the sufficiency of funds for traffic improvements required by local municipalities.

The developer has informed the Department that as part of their final subdivision and site plan approvals for Phase 1 of the proposed development the Bordentown Township Planning Board has required the applicant to contribute a "fair share" in the amount of \$45,000 to the Township for off-site traffic improvements.

4. COMMENT: What will the impact of stormwater run off be for the areas neighboring the amendment site? This area (the valley of Laurel Run) currently floods during storms. This fact was denied in a letter from the project engineer to the planning board.

RESPONSE: The Department has no knowledge of statements made between the developer and the planning board concerning whether or not the area adjacent to the project site is subject to flooding and can not comment on the actions of the project engineer. However, as discussed in the response to comment two, issue three, stormwater run off in areas neighboring the amendment site should be reduced based on the soil erosion control plan developed for the amendment site.

5. COMMENT: The project engineer states in a letter, dated May 8, 1988, to the Bordentown Sewerage Authority that there are no EPA grant conditions with wetland prohibitions on the Blacks Creek STP. However, the Environmental Assessment prepared for the Blacks Creek STP dated August 29, 1986 states on page 5 that environmentally sensitive areas are excluded from the sewer service area and on page 16, places a grant restriction on development in wetlands.

RESPONSE: Again, the Department has no knowledge of and can not comment on statements made by the project engineer to the BSA. Never-the-less, as stated in the response to comment one above, a portion of the project site was believed to have environmentally sensitive areas and was excluded from the sewer service area of the Blacks Creek STP when the EA for the BSA 201 Facilities Plan was developed. This EA was based on topographic mapping and U.S. Fish and Wildlife Service Wetlands mapping (which was based on aerial photography). A constraints analysis was prepared for the Blacks Creek STP which excluded the environmentally sensitive areas identified on the broad scale mapping from the sewer service area of this STP.

On site field investigations of the amendment area revealed

that the area of environmental sensitivity was smaller than that area originally identified in the EA.

As part of the amendment process, a new constraints analysis was prepared which demonstrated that no wastewater flows to be generated by the amendment site would usurp wastewater flows which the Blacks Creek STP was given grant monies from the EPA to serve. In addition, the amendment site had to demonstrate that no sewage generating structures would be placed in wetlands, the only environmentally sensitive area for which a specific grant condition was placed on the Blacks Creek STP.

6. COMMENT: The Bordentown Township Master Plan was amended to allow the development of one piece of property in this area. This amendment was the result of discussions between the landowner and the Township regarding the number of units required to make the development economically feasible instead of basing the decision on the carrying capacity of land with known environmental constraints. The local government gave final site plan approval without placing any environmental constraints on the developer regarding the proposed construction in flood plains, steep slopes and wetlands.

RESPONSE: The Department can not require local governments to prepare Township Master Plans based on land carrying capacity or environmental constraints and does not get involved in local economic decisions. Rather, the Department seeks to guide municipalities in the least environmentally destructive means to implement development plans devised at the local level. On site investigations of parcels proposed for development reveal environmental constraints which must be addressed as part of Department review and approval of many aspects of each development.

7. COMMENT: All public records have recognized that a portion of this land is environmentally sensitive, including an April 18, 1990 letter from [then] DEP[E] Commissioner Yaskin which stated "the applicant has chosen to pursue development on an area that had already been identified as environmentally constrained for several different reasons." Review of the project files brought no new information which indicated that the land had changed. This development ignores the environmental "history" of the project site and pursues only a desire for economic gain. The Water Quality Management Plan should not be changed for this development.

RESPONSE: The Department agrees that a portion of the project site is environmentally sensitive or constrained but has no authority to deny amendments based on this. The applicant has demonstrated by qualifying for an ACOE nationwide permit and an EPA mapping revision, and by preparing a new constraints analysis

for the Blacks Creek STP, that no regulated environmental impacts will be adversely affected by approval of this amendment.

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