



## Water Quality Management Planning Rules Adopted

On July 7, 2008, the New Jersey Department of Environmental Protection (the "DEP") adopted the Water Quality Management Planning Rules proposed on May 21, 2007. Various changes were made to the initial Rule Proposal in conjunction with the adoption of these Rules, which may be found at 40 N.J.R. 4000(a).

### REQUIREMENTS FOR NEW WATER QUALITY MANAGEMENT PLANS

Each County Board of Chosen Freeholders is now the agency with responsibility for preparing and amending Wastewater Management Plans ("WMPs"). (N.J.A.C. 7:15-5.4). The municipal role is to provide basic information to the county including ordinances, maps, septic management plans and employment and population projections. (N.J.A.C. 7:15-5.8). Each municipality will be addressed as a separate chapter in the WMP and the DEP will make the decision to adopt, return or disapprove the WMP on a chapter-by-chapter basis. (N.J.A.C. 7:15-5.14(b)).

Upon municipal request, the DEP may assign WMP responsibility to that municipality, provided that the county has not submitted, or indicates that it does not intend to submit, a WMP. A municipality which receives this assignment has 90 days to submit its WMP. (N.J.A.C. 7:15-5.13).

County-wide WMPs are required to be submitted by April 7, 2009, which is the date that is nine months from the July 7, 2008, adoption of the Rules. If this deadline is not extended and is missed, "wastewater service areas are withdrawn". (N.J.A.C. 7:15-5.23(c)). The quoted language means that only development projects involving less than 2,000 gallons per day of flow to a public sewage system or five or less septic systems will be permitted, until such time as a WMP is approved.

The most significant new requirement for WMPs, applicable throughout the entire state, is that development on septic systems will be limited to properties where the lot sizes are large enough to allow achievement of two mg/l of nitrate in groundwater on a HUC 11 basis. (N.J.A.C. 7:15-5.25(e)1.) In many areas, this will result in minimum lot sizes of five (5) acres or greater.

Additionally, the Rules require WMPs to include:

- A build-out analysis of the entire watershed under existing zoning;
- Down-zoning in sewer service areas where an expansion of existing facilities would be required to provide full sewer service;

- Prohibition of sewer service to any site that is shown as a Rank 3, 4 or 5 on the NJDEP Landscape Map, unless it can be demonstrated that the site does not provide habitat for Threatened and Endangered Species. Furthermore, there is language that states if species of concern are identified within the site, the NJDEP will preclude development;
- Exclusion of any environmentally sensitive area from a sewer service area if the environmentally sensitive area is greater than 25 acres and has been mapped as Threatened and Endangered Species habitat pursuant to the Landscape Maps; is designated as a Natural Heritage Priority site; is a C-1 water buffer; has wetlands; is in a riparian zone; or has steep slopes;
- Application of antidegradation standards to surface and groundwater quality;
- Preparation of nonpoint source pollution loading;
- Municipal adoption of ordinances regulating septic system maintenance; and
- Planning for unrealistic sewage flows, given the new definition for Equivalent Dwelling Unit ("EDU") of 500 gpd.

### DEADLINES TO AVOID WITHDRAWAL OF WASTEWATER SERVICE AREA DESIGNATION

Here are the deadlines for complying with the new Rules:

1. If a municipality submitted a wastewater management plan prior to July 7, 2008, that plan will be evaluated pursuant to the prior rules and, if approved by the DEP, will be good for six years. (N.J.A.C. 7:15-5.2(b)).
2. Existing wastewater management plans will remain in effect for nine months from July 7, 2008, that is, until April 7, 2009. (N.J.A.C. 7:15-5.2(c)).
3. Where a county, as required on behalf of its constituent municipalities, submits a draft WMP by April 7, 2009, the prior wastewater service area designations will remain in place until the draft WMP is disapproved or adopted. (N.J.A.C. 7:15-5.2(d)).

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## PROTECTION FROM LOSS OF WASTEWATER SERVICE AREAS

There are three situations where new development can proceed before a new WMP is approved.

First, if a county submits a WMP by April 7, 2009, existing wastewater service areas will remain in place until the new WMP is approved or disapproved. This will allow N.J.P.D.E.S. and Treatment Works Approval permits to be issued for sewer facilities and septic systems to be approved until such time as the DEP decision on the WMP is issued.

The second situation is where a county fails to timely submit a WMP, or where the WMP is disapproved, resulting in the withdrawal of wastewater service area designations. In that case, development projects with certain approvals will be able to proceed where:

1. A sewer line is installed and the property is connected to sewer infrastructure. (N.J.A.C. 7:15-8.1(a)); or
2. The project qualifies as in-fill development requiring only a connection to a sewer line in the street frontage, provided that the sewer line, lot and improvements are in existence as of the date of withdrawal. (N.J.A.C. 7:15-8.1(b)1.)
3. The project has either a preliminary or final site plan approval or subdivision approval or a municipal construction permit which also have a T.W.A. or N.J.P.D.E.S. permit (if the project requires one) and none of these approvals have expired. (N.J.A.C. 7:15-8.1(b)2).
4. It is a project with a site-specific WQM plan amendment or revision, which approval is good for six years from the date of adoption. (N.J.A.C. 7:15-8.1(b)3).
5. It is a project that requires an industrial treatment works approval which does not process wastewater or sanitary sewage. (N.J.A.C. 7:15-8.1(b)4).

The third situation where new development can proceed is where there has been a withdrawal of the wastewater service area pursuant to the new Rules. In that event, the following projects will be "deemed consistent" with the general wastewater service area designation for planning flows of 2,000 gallons per day or less and can proceed:

1. Nonresidential development discharging to groundwater with planning flows of 2,000 gallons per day or less. (N.J.A.C. 7:15-8(b)(c)1).

2. Residential development with fewer than six dwelling units, with the number of dwelling units calculated in consideration of development on adjacent owned properties, etc. (N.J.A.C. 7:15-8.1(c)2).
3. Development projects utilizing individual or other subsurface sewage disposal systems which also have either a valid approval for 50 or more realty improvements; or either preliminary or final site plan approval or subdivision approval or a municipal construction permit as well as a permit to construct the septic system. (N.J.A.C. 7:15-8.1(c)3).
4. Repair or minor expansions of existing groundwater discharge facilities involving no more than 2,000 gallons per day of total discharge. (N.J.A.C. 7:15-8.1(c)4).
5. Public schools, where the required planning board response was provided before July 7, 2008. (N.J.A.C. 7:15-8.1(a)).

## CONCLUSION

Developers and Landowners should work to protect projects from the moratorium-like effect of these new rules. Counties should be encouraged to submit complete WMPs before July 7, 2009. To help accomplish that objective, Developers and Landowners should seek to obtain the following approvals prior to April 7, 2009:

1. Preliminary or final site plan or subdivision approval;
2. If the project requires either a TWA or a N.J.P.D.E.S. Permit, those approvals should also be obtained by April 7, 2009;
3. If the project involves six or more septic systems, permits to construct all septic systems should be obtained by April 7, 2009.

For more information on the new Water Quality Management Planning Rules and how they may have an impact upon your business or property, contact:

- Guliet Hirsch, Esquire, of our Land Use Group in our Flemington office at 908-788-9700; or
- Robert Bucknam, Esquire, Chairman of the Land Use Group in our Haddonfield office at 856-354-3025.

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