

CHAPTER 203

AN ACT concerning the wastewater management planning process.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. The Legislature finds and declares that:

a. The “Water Quality Planning Act,” P.L.1977, c.75 (C.58:11A-1 et seq.) establishes a continuing water quality management planning process and requires that opportunities for meaningful public participation be provided during all phases of the process;

b. Pursuant to rules and regulations adopted by the Department of Environmental Protection, and subsequent revisions thereto, county wastewater management plans were required to be submitted to the department by April 7, 2011, or where a municipal government assumed responsibility from the county, by July 7, 2011;

c. The department’s rules and regulations also provide that, if a county or municipal government fails to submit a wastewater management plan in compliance with the applicable deadlines, wastewater service areas in wastewater management plans, and sewer service areas in water quality management plans where no wastewater management plan has been prepared, must be withdrawn;

d. In areas where wastewater service areas or sewer service areas are withdrawn, certain development projects and activities will be deemed inconsistent with the applicable water quality management plan, which could preclude the issuance of permits or approvals for development projects or activities by the department;

e. There may be unacceptable, adverse environmental and planning impacts from the non-discretionary and mandatory withdrawal of wastewater service areas, including sewer service areas;

f. The withdrawal of wastewater service areas, including sewer service areas, would have significant negative economic impacts in many areas of the State, which could intensify the current economic recession by delaying or precluding beneficial development projects and activities that generate jobs, act as sources of fee generating activities for sewerage treatment authorities and other public and private utilities, and act as a source of State tax and other revenues;

g. Site specific amendments or revisions to wastewater management plans and water quality management plans are sometimes required to allow environmentally sound development projects or activities to be deemed consistent with the applicable water quality management plan, so that the Department of Environmental Protection may issue permits and approvals for development projects or activities; and

h. It therefore is in the public interest that wastewater service areas, including sewer service areas, not be withdrawn except in conjunction with the promulgation of wastewater management plans prepared with appropriate public participation, and that the Department of Environmental Protection proceed with the timely review and approval of site specific amendments or revisions to wastewater management plans and water quality management plans.

2. As used in this act:

“Commissioner” means the Commissioner of Environmental Protection.

“Department” means the Department of Environmental Protection.

“Individual subsurface sewage disposal facility” means a system for the disposal of sanitary sewage into the ground, which is designed and constructed to treat sanitary sewage

in a manner that will retain most of the settled solids in a septic tank and discharge the liquid effluent to a disposal field.

“Revision” means “revisions” as defined by the department’s Water Quality Management Planning rules at N.J.A.C.7:15-1.5.

“Sewer service area” means the land area identified in an areawide water quality management plan from which wastewater generated is designated to flow to a domestic treatment works or industrial treatment works.

“Site specific amendment” means an amendment to a wastewater management plan or a water quality management plan which permits a proposed development project or activity having a wastewater planning flow of less than 20,000 gallons per day, or being less than 100 acres in size, to become consistent with the applicable wastewater management plan or water quality management plan. A site specific amendment shall not include amendments or changes to the Statewide Water Quality Management Plan or changes to incorporate a total maximum daily load.

“Wastewater management plan” means a written and graphic description of existing and future wastewater related jurisdictions, wastewater service areas, and selected environmental features and treatment works, and includes a wastewater management plan update.

“Wastewater management planning agency” means a governmental unit that has responsibility to prepare, submit, and periodically update a wastewater management plan pursuant to the department’s rules and regulations and provide comments on proposed amendments and revisions to the wastewater management plan.

“Wastewater service area” means a sewer service area, a general service area approved for wastewater facilities with planning flows of less than 20,000 gallons per day which discharge to groundwater, and a general service area for wastewater facilities with planning flows of less than 2,000 gallons per day which discharge to groundwater, as designated in any wastewater management plan or water quality management plan.

“Water quality management plan” means a plan prepared pursuant to sections 208 and 303 of the federal Clean Water Act of 1977, Pub.L.95-217, 33 U.S.C. s.1251 et seq., and the “Water Quality Planning Act,” P.L.1977, c.75 (C.58:11A-1 et seq.).

3. Notwithstanding any other law, or rule or regulation adopted pursuant thereto, to the contrary, any wastewater service area designation in a wastewater management plan, and any sewer service area designation in a portion of a water quality management plan where no wastewater management plan was ever prepared, shall not be withdrawn and shall remain in effect for 180 days after the date of enactment of this act or such longer time as the commissioner may determine.

4. Notwithstanding any other law, or rule or regulation adopted pursuant thereto, to the contrary, on or before the 180th day after the date of enactment of this act or such longer time as the commissioner may determine, each wastewater management planning agency, which has not submitted a wastewater management plan prior to the date of enactment of this act, shall prepare and submit to the department at least that portion of a wastewater management plan designating a sewer service area, which shall comply with the department’s regulatory criteria. The department may adopt the entire plan or a portion thereof, and upon adoption, the plan or portion thereof shall take effect. Any preexisting sewer service area designation or wastewater service area designation shall remain in effect until such time as the department adopts the new plan or portion thereof establishing sewer service area designations or other wastewater service area designations, as the case may be.

5. 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 modifications.

6. a. Following submission of that portion of the wastewater management plan designating a sewer service area, pursuant to section 4 of this act, the department shall review any application submitted for a site specific amendment or revision to the wastewater management plan or water quality management plan.

b. An application for a site specific amendment or revision to a wastewater management plan or water quality management plan may be submitted by or on behalf of any party, including, but not limited to, any county, municipality or individual landowner.

c. The department may require an applicant for a site specific amendment or revision to a wastewater management plan or water quality management plan to submit to the department any additional documentation necessary to determine compliance with regulatory criteria. There shall be a presumption that an applicant shall not be required to submit engineered subdivision or site plans to the department, absent the existence of a demonstrated need therefor. If the department finds a demonstrated need that requires the submission of engineered subdivision or site plans, the department shall provide to the applicant, in writing, an explanation of the need and a detailed description thereof.

7. The department shall review an application for a site specific amendment to a wastewater management plan or water quality management plan located in a sewer service area in the following manner:

a. On or before the 60th day after receipt of an application for a site specific amendment to a wastewater management plan or water quality management plan, the department shall complete a review of the application for administrative and technical completeness. The application shall be deemed complete after the 60th day following the date of receipt by the department unless the department notifies the applicant in writing that additional information is required. Upon receipt of such additional information, the department shall complete its administrative and technical review, unless the department has advised the applicant in writing that deficiencies remain and that additional information is required.

b. Any application for a site specific amendment pending before the department on the effective date of this section shall be deemed complete, unless the department notifies the applicant in writing on or before the 60th day after the effective date of this section that additional information is required.

c. On or before the 180th day after an application for a site specific amendment is deemed complete, the department shall review the application for compliance with regulatory criteria. Notwithstanding the provisions of any law, or rule or regulation adopted pursuant thereto, to the contrary, upon a determination of compliance with regulatory criteria, the department shall publish notice of the application in the DEP Bulletin no more than 30 days after receipt of confirmation that the designated wastewater management planning agency is prepared to proceed to the public comment period portion of this process. Publication of notice in the DEP Bulletin shall be immediately followed by a 30-day public comment period on the application.

d. If any data, information, or arguments submitted during the public comment period or in response to a request for a written statement of consent appear to raise substantial new questions concerning a proposed plan amendment, the department may:

(1) reopen or extend the public comment period for not more than 30 additional days in order to provide interested persons opportunity to comment on the information or arguments submitted;

(2) request additional information from the applicant within 30 days after conclusion of the public comment period; or

(3) return the application for a site specific amendment to the applicant for any changes deemed by the department to be necessary and substantial. If based upon the return of the application by the department the applicant submits a revised application, the department shall review the revised application in the same manner as set forth in this section.

e. On or before the 65th day after the conclusion of the public comment period, or receipt of additional information from the applicant, or receipt of the wastewater management planning agency's final decision, or other required agency review, whichever comes later and as may be applicable, the department shall:

(1) adopt the amendment as proposed;

(2) adopt the proposed amendment with changes; or

(3) disapprove the proposed amendment.

f. The department and applicant may consent in writing to an extension of any time period established in this section.

g. The department shall publish notice of the final action on an application for a site specific amendment in the DEP Bulletin.

8. If a wastewater management planning agency submits only that portion of the wastewater management plan that provides for the designation of a sewer service area, the remaining lands shall be eligible for the installation of individual subsurface sewage disposal facilities in the following manner:

a. A proposed development or activity having a wastewater planning flow of greater than 8,000 gallons per day and less than 20,000 gallons per day that results in a discharge to groundwater shall be processed by the department as a site specific amendment, and may be approved if it meets the technical requirements for eligibility for a New Jersey Pollutant Discharge Elimination System Discharge to Groundwater permit issued pursuant to the "Water Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.) and rules and regulations adopted pursuant thereto.

b. A proposed development or activity having a wastewater planning flow of greater than 2,000 gallons per day and less than 8,000 gallons per day that results in a discharge to groundwater shall be processed by the department as a revision to the applicable wastewater management plan or water quality management plan, and may be approved if it meets the technical requirements for eligibility for a New Jersey Pollutant Discharge Elimination System Discharge to Groundwater permit issued pursuant to the "Water Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.) and rules and regulations adopted pursuant thereto.

c. The department shall approve, conditionally approve, or disapprove an application for a site specific amendment or revision pursuant to this section on or before the 90th day following the date that the application is deemed complete, provided, however, that this time period may be extended for 30 days by the mutual consent of the applicant and the department. If the department fails to take action on an application for a site specific

amendment or revision pursuant to this section within the period specified in this subsection, the application shall be deemed approved.

9. Nothing in this act shall preclude a wastewater management planning agency from preparing and submitting, or the department from accepting, other portions of a wastewater management plan in addition to those portions that provide for the designation of a sewer service area pursuant to the “Water Quality Planning Act,” P.L.1977, c.75 (C.58:11A-1 et seq.).

10. Nothing in this act shall be construed to:

a. modify the provisions of the “Pinelands Protection Act,” P.L.1979, c.111 (C.13:18A-1 et seq.), or the comprehensive management plan for the pinelands area or any rule or regulation adopted pursuant to P.L.1979, c.111 and section 502 of the “National Parks and Recreation Act of 1978” (Pub.L. 95-625); or

b. apply to the revocation of designated sewer service areas and the expiration of any associated treatment works approvals in the impacted areas within the Highlands preservation area pursuant to section 42 of the “Highlands Water Protection and Planning Act,” P.L.2004, c.120 (C.58:11A-7.1).

11. Sections 1 through 5 inclusive, and 9 and 10 of this act shall take effect immediately, and sections 6, 7, and 8 shall take effect on the 120th day after the date of enactment of this act; however, the Department of Environmental Protection may take such anticipatory actions as are necessary in advance of the effective date of sections 6, 7, and 8 to ensure the timely implementation of those sections on the effective date thereof. This act shall expire two years after the date of enactment.

Approved January 17, 2012.