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Environmental Impact™

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Lack of Water Quality Planning Could Halt Development

A recent N.J. Department of Environmental Protection (NJDEP) rule ***proposal*** relating to water quality planning could, if enacted, drastically alter developments utilizing either sewers or septic systems. The proposed changes would impact sewer service areas and the development of six (6) or more units with septic systems, would impose additional environmental assessment obligations, and would place greater authority in the hands of local planning agencies as to whether the additional development is worthy. Also, the entire process of assessing the risks and seeking plan amendments from the local planning agency could realistically take years, at great cost, unless localities actively update their plans.

Most of the State Could Be Impacted.

Under the federal Clean Water Act, Congress established a framework for the states to identify water quality issues and implement improvement plans on an area-wide basis. New Jersey has 12 such water quality planning areas, and 193 wastewater management planning areas, and the NJDEP's recent proposal suggests drastic changes to 10 of the 12 Water Quality Management Plans (WQMP) and 180 of the 193 Wastewater Management Plans (WMP), exclusive of the Highlands Preservation Area.

WMPs ensure that a treatment plant has the capacity to accommodate existing and future development, and do so by considering a variety of land use factors. Permitting entities then use the WMPs to ensure that proposed developments are consistent with the applicable WMP, so that both water quality and quantity are preserved. The proposed amendments will profoundly change development patterns if enacted.

The Impacts.

The proposed rules would *withdraw* sewer service area designations in the 180 failing WMP areas – irrespective of local zoning or a treatment plant's capacity – if:

- the area is located in Planning Areas 3, 4 or 5 (but not in Planning Areas 1 or 2), as defined by the State Development and Redevelopment Plan; and
- the area does not yet have sewers installed and connected to the collection & treatment system (with specific exceptions for public purpose projects, affordable housing projects, projects designed to protect public health, and certain projects for which the approval process is mostly complete).

These withdrawn sewer areas would then be redesignated, and only certain septic systems would subsequently be allowed.

More Impacts.

The situation in such redesignated areas would be compounded by a separate part of the proposal that alters the method by which septic systems are deemed acceptable without a more detailed environmental review and without an amendment to the WMP. Septic systems that discharge 2,000 gallons per day or more thereby trigger the NJDEP's onerous treatment works approval process. The proposed rules seek to alter the method of calculating the 2,000 gallons by aggregating each home in a proposed development to come up with a combined limit. Using the current minimum design flow of 350 gallons per day per house would mean, under the proposed rules, that a development of greater than six (6) homes would exceed the 2,000 gallon trigger – and require a thorough environmental analysis.

And More Impacts!

The impact could become exponential. A project exceeding the 2,000 gallons per day

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Threatened & Endangered Species: What If The NJDEP's Pre-Proposal Becomes a Reality

The NJDEP has been discussing additional threatened and endangered (T&E) species protections that would go far beyond the current program, and may issue a rule proposal in the waning days of the Codey Administration. Any proposed rules will likely track a written pre-proposal, which includes several potential items of concern.

The NJDEP's Findings Will Be Hard to Overturn.

The pre-proposal would reduce the ability to develop properties. In particular, the T&E species habitat designation found on the NJDEP's Landscape Maps would become the law because there would be **a rebuttable presumption of accuracy in the Landscape Maps**.

Those habitat areas are ranked in order of importance from 1 to 5, with 5 representing the best habitat. When suitable habitat is present on a Landscape Map, the rebuttable presumption would trigger restrictions on development. For example, a property having a habitat rank of 2 would require a developer to perform a species survey to determine what species are, or could be, using the property. If any T&E species were identified, there would be habitat conservation requirements that

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limit would also require an amendment to the Water Quality Management Plan which, in turn, would require (a) that the developer assess all water and environmental resource impacts to demonstrate no violation of groundwater quality standards, and (b) that the designated planning agency accept the assessment and submit an application to the NJDEP to amend the WQMP. To what extent local planning agencies – who have already resisted NJDEP calls to update WMPs for years – would exercise their discretion for residential development (translation: school-age children and possibly higher taxes) is unknown.

Lack of current plans, taken in conjunction with the NJDEP's edict, will create problems for any development in these areas.

Status.

Although the public backlash has caused an extension of the comment period for the proposed rules, public hearings are still scheduled and the proposal has not been withdrawn ◆

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would be imposed *before* any development could occur.

Permit Issues.

Much like other NJDEP land use regulation programs, the pre-proposal suggests a series of permits-by-rule and general permits. But these permits would be nearly impossible to obtain. The former are generally limited to "small" forest management and agricultural practices, while the latter will only apply in very specific circumstances, e.g., cleaning up a hazardous waste discharge.

Do Your Diligence.

Under the current wetlands rules, the NJDEP can impose stringent wetlands buffers even when a T&E species has not been sighted on a property but, instead, has been found as far as a mile away. Things will get worse if the T&E pre-proposal becomes law. But, because the pre-proposal does not have the force of law, the opportunity still remains to review potential sites under the pre-proposal to determine whether, for example, a development could be significantly altered in the future. We **strongly suggest** that such a review be completed before acquiring any property, as the loss of developable acreage if the T&E pre-proposal were enacted could be serious. ◆

More Watershed Buffers - The Proposed Surface Water Standards Propose 150-Foot Buffers

The NJDEP has, over the last few years, reduced the developable acreage of property abutting streams by re-classifying several waterbodies to the stricter Category One (C1) designation and by enacting 300-foot buffers that apply to C1 waterways. It is now looking not only to upgrade the classification of **additional** waterbodies to C1 but, more importantly, to impose additional restrictions under newly proposed Surface Water Quality Standards that would impose a 150-foot buffer applicable to more of the State's waterways, including non-trout waterbodies. The only waterbodies excepted from the rule proposal are those in State Planning Areas 1 and 2 and in designated centers (which would be given a 50-foot buffer).

The new buffers would apply to new or expanded development that would disturb one or more acres of land or would increase impervious surface by 1/4-acre or more. ◆

Worth Noting

Developer, Engineer, Consultant and Surveyor Fined: The NJDEP recently fined a developer and two professionals over $750,000 for allegedly falsifying information in a wetlands permit application. The professionals supposedly failed to identify wetlands and buffer zones in a site survey and in an application for a wetlands letter of interpretation. ◆

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