

[Second Reprint]

SENATE, No. 3156

STATE OF NEW JERSEY
214th LEGISLATURE

INTRODUCED DECEMBER 8, 2011

Sponsored by:

Senator PAUL A. SARLO

District 36 (Bergen, Essex and Passaic)

Senator STEVEN V. OROHO

District 24 (Sussex, Hunterdon and Morris)

Assemblyman ALBERT COUTINHO

District 29 (Essex and Union)

Assemblyman LOUIS D. GREENWALD

District 6 (Camden)

Assemblyman ALEX DECROCE

District 26 (Morris and Passaic)

Assemblywoman ALISON LITTELL MCHOSE

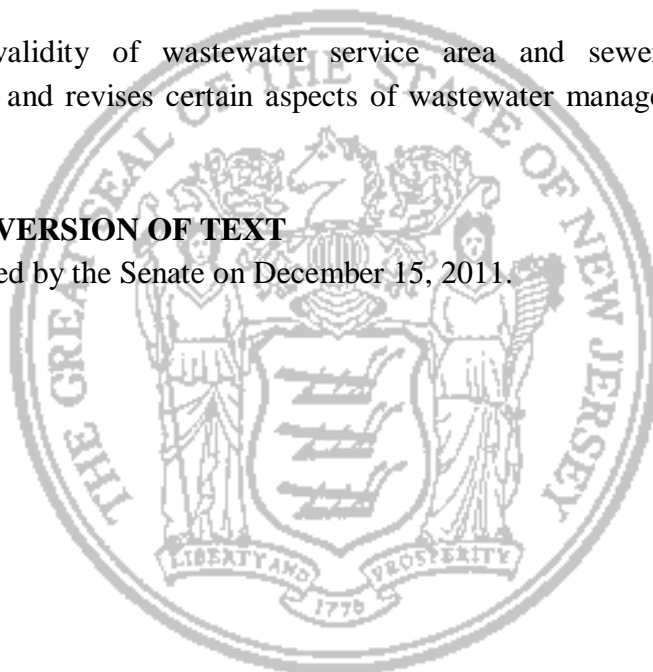
District 24 (Sussex, Hunterdon and Morris)

SYNOPSIS

Extends validity of wastewater service area and sewer service area designations, and revises certain aspects of wastewater management planning process.

CURRENT VERSION OF TEXT

As amended by the Senate on December 15, 2011.



(Sponsorship Updated As Of: 1/10/2012)

1 AN ACT concerning the wastewater management planning process.

2

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

5

6 1. The Legislature finds and declares that:

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

12 b. Pursuant to rules and regulations adopted by the Department
13 of Environmental Protection, and subsequent revisions thereto,
14 county wastewater management plans were required to be submitted
15 to the department by April 7, 2011, or where a municipal
16 government assumed responsibility from the county, by July 7,
17 2011;

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24 withdrawn;

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26 areas are withdrawn, certain development projects and activities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

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

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

41 g. Site specific amendments or revisions to wastewater
42 management plans and water quality management plans are
43 sometimes required to allow environmentally sound development
44 projects or activities to be deemed consistent with the applicable

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SEG committee amendments adopted December 12, 2011.

²Senate floor amendments adopted December 15, 2011.

1 water quality management plan, so that the Department of
2 Environmental Protection may issue permits and approvals for
3 development projects or activities; and

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

11

12 2. As used in this act:

13 “Commissioner” means the Commissioner of Environmental
14 Protection.”

15 “Department” means the Department of Environmental
16 Protection.

17 “Individual subsurface sewage disposal facility” means a system
18 for the disposal of sanitary sewage into the ground, which is
19 designed and constructed to treat sanitary sewage in a manner that
20 will retain most of the settled solids in a septic tank and discharge
21 the liquid effluent to a disposal field.

22 ²“Net environmental benefit” means a situation in which the
23 quantitative or qualitative benefit to a natural resource or other
24 related environmental good, for which the department has
25 responsibility, substantially outweighs any detriment to that natural
26 resource or environmental good that would result from a site
27 specific amendment to a wastewater management plan or water
28 quality management plan, and there is an adequate geographic and
29 resource nexus between the environmental offset and the natural
30 resource or other environmental good that is being benefited by the
31 site-specific amendment. A net environmental benefit may include
32 legally binding mitigation if the mitigation exceeds that which is
33 otherwise required by law. A net environmental benefit shall not
34 apply to the waiver of any numeric or narrative standards that are
35 protective of the public health.]²

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

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

42 “Site specific amendment” means an amendment to a wastewater
43 management plan or a water quality management plan which
44 permits a proposed development project or activity having a
45 wastewater planning flow of less than 20,000 gallons per day, or
46 being less than 100 acres in size, to become consistent with the
47 applicable wastewater management plan or water quality
48 management plan. A site specific amendment shall not include

1 amendments or changes to the Statewide Water Quality
2 Management Plan or changes to incorporate a total maximum daily
3 load.

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

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

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

22 “Water quality management plan” means a plan prepared
23 pursuant to sections 208 and 303 of the federal Clean Water Act of
24 1977, Pub.L.95-217, 33 U.S.C. ²[S.1251] s.1251² et seq., and the
25 “Water Quality Planning Act,” P.L.1977, c.75 (C.58:11A-1 et seq.).

26 ²["Water quality management planning agency" means an
27 agency designated by the Governor to conduct areawide water
28 quality management planning pursuant to section 4 of the "Water
29 Quality Planning Act," P.L.1977, c.75 (C.58:11A-4).]²

30

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

39

40 4. Notwithstanding any other law, or rule or regulation adopted
41 pursuant thereto, to the contrary, on or before the 180th day after
42 the date of enactment of this act or such longer time as the
43 commissioner may determine, each wastewater management
44 planning agency, which has not submitted a wastewater
45 management plan prior to the date of enactment of this act, shall
46 prepare and submit to the department at least that portion of a
47 wastewater management plan designating a sewer service area,
48 which shall be in substantial compliance with the department’s

1 regulatory criteria. The department may adopt the entire plan or a
2 portion thereof, and upon adoption, the plan or portion thereof shall
3 take effect. Any preexisting sewer service area designation or
4 wastewater service area designation shall remain in effect until such
5 time as the department adopts the new plan or portion thereof
6 establishing sewer service area designations or other wastewater
7 service area designations, as the case may be.

8
9 5. The department, in consultation with the applicable
10 wastewater management planning agency, may approve the
11 inclusion of land within a sewer service area notwithstanding that
12 existing treatment works may not currently have the assured
13 capacity to treat wastewater from such land without infrastructure
14 improvements or permit modifications.

15
16 6. a. Following submission of that portion of the wastewater
17 management plan designating a sewer service area, pursuant to
18 section 4 of this act, the department shall review any application
19 submitted for a site specific amendment or revision to the
20 wastewater management plan or water quality management plan.

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

25 c. ²[If an applicant demonstrates to the department a net
26 environmental benefit and that a site specific amendment is
27 consistent with the goals of the “Water Quality Planning Act,”
28 P.L.1977, c.75 (C.58:11A-1 et seq.), the department may approve a
29 site specific amendment to a wastewater management plan or water
30 quality management plan, notwithstanding whether the site specific
31 amendment substantially complies with the department’s regulatory
32 criteria. The department may require the applicant to submit
33 additional information necessary to determine whether the site
34 specific amendment would result in a net environmental benefit. If
35 the net environmental benefit includes a mitigation measure, the
36 mitigation measure shall be legally binding. The determination of a
37 net environmental benefit pursuant to this subsection shall be at the
38 discretion of the department, and the provisions of this subsection
39 shall not create in any person the right to obtain a site specific
40 amendment based upon a net environmental benefit.

41 d.]²The department may require an applicant for a site specific
42 amendment or revision to a wastewater management plan or water
43 quality management plan to submit to the department any additional
44 documentation necessary to determine compliance with regulatory
45 criteria. There shall be a presumption that an applicant shall not be
46 required to submit engineered subdivision or site plans to the
47 department, absent the existence of a demonstrated need therefor.
48 If the department finds a demonstrated need that requires the

1 submission of engineered subdivision or site plans, the department
2 shall provide to the applicant, in writing, an explanation of the need
3 and a detailed description thereof.

4

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

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

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

25 c. On or before the 180th day after an application for a site
26 specific amendment is deemed complete, the department shall
27 review the application for compliance with regulatory criteria.
28 Notwithstanding the provisions of any law, or rule or regulation
29 adopted pursuant thereto, to the contrary, upon a determination of
30 compliance with regulatory criteria, ²【or the finding of a net
31 environmental benefit pursuant to subsection c. of section 6 of this
32 act,】² the department shall publish notice of the application in the
33 DEP Bulletin no more than 30 days after receipt of confirmation
34 that the designated wastewater management planning agency is
35 prepared to proceed to the public comment period portion of this
36 process. Publication of notice in the DEP Bulletin shall be
37 immediately followed by a 30-day public comment period on the
38 application.

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

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

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

1 (3) return the application for a site specific amendment to the
2 applicant for any changes deemed by the department to be
3 necessary and substantial. If based upon the return of the
4 application by the department the applicant submits a revised
5 application, the department shall review the revised application in
6 the same manner ²as² set forth in this section.

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

12 (1) adopt the amendment as proposed;

13 (2) adopt the proposed amendment with changes; or

14 (3) disapprove the proposed amendment.

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

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

19
20 8. If a wastewater management planning agency submits only
21 that portion of the wastewater management plan that provides for
22 the designation of a sewer service area, the remaining lands shall be
23 eligible for the installation of individual subsurface sewage disposal
24 facilities in the following manner:

25 a. A proposed development or activity having a wastewater
26 planning flow of greater than 8,000 gallons per day and less than
27 20,000 gallons per day that results in a discharge to groundwater
28 shall be processed by the department as a site specific amendment,
29 and may be approved if it meets the technical requirements for
30 eligibility for a New Jersey Pollutant Discharge Elimination System
31 Discharge to Ground water permit issued pursuant to the "Water
32 Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.) and
33 rules and regulations adopted pursuant thereto.

34 b. A proposed development or activity having a wastewater
35 planning flow of greater than 2,000 gallons per day and less than
36 8,000 gallons per day that results in a discharge to groundwater
37 shall be processed by the department as a revision to the applicable
38 wastewater management plan or water quality management plan,
39 and may be approved if it meets the technical requirements for
40 eligibility for a New Jersey Pollutant Discharge Elimination System
41 Discharge to Ground water permit issued pursuant to the "Water
42 Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.) and
43 rules and regulations adopted pursuant thereto.

44 c. The department shall approve, conditionally approve, or
45 disapprove an application for a site specific amendment or revision
46 pursuant to this section on or before the 90th day following the date
47 that the application is deemed complete, provided, however, that
48 this time period may be extended for 30 days by the mutual consent

1 of the applicant and the department. If the department fails to take
2 action on an application for a site specific amendment or revision
3 pursuant to this section within the period specified in this
4 subsection, the application shall be deemed approved.

5
6 9. Nothing in this act shall preclude a wastewater management
7 planning agency from preparing and submitting, or the department
8 from accepting, other portions of a wastewater management plan in
9 addition to those portions that provide for the designation of a
10 sewer service area pursuant to the "Water Quality Planning Act,"
11 P.L.1977, c.75 (C.58:11A-1 et seq.).

12
13 10. Sections 1 through 5 inclusive, and 9 of this act shall take
14 effect immediately, and sections 6, 7, and 8 shall take effect ²~~120~~
15 ~~days~~ on the 120th day² after the date of enactment of this act;
16 however, the Department of Environmental Protection may take
17 such anticipatory actions as are necessary in advance of the
18 effective date of sections 6, 7, and 8 to ensure the timely
19 implementation of those sections on the effective date thereof. This
20 act shall expire ¹~~three~~ two¹ years after the date of enactment.