

## SUSSEX COUNTY WATER QUALITY MANAGEMENT PROGRAM PLAN AMENDMENT AND REVISION PROCEDURES

**Effective Date: Nov. 26, 2014 (Date of NJDEP Approval Letter)**

**PURPOSE:** The purpose of this procedure is to provide for an efficient and cost effective mechanism governing the procedure to be utilized for the amendment of the Sussex County Water Quality Management Plan (SCWQMP) as necessary, so as to maintain the plan as a technically sound and legally defensible document for the implementation of Water Quality Management objectives.

**AUTHORITY:** Sussex County is a designated Area-wide Water Quality Management (WQM) planning agency under the New Jersey Water Quality Planning Act (N.J.S.A. 58:11A-1 et seq.) which authorized the New Jersey Department of Environmental Protection (hereinafter "NJDEP") and county and regional agencies designated by the Governor to conduct an area-wide WQM planning process. The Board of Chosen Freeholders of Sussex County (hereinafter "the Board") has been designated pursuant to this statute as the Water Quality Management Planning Agency for the Sussex County area (including portions of Morris County located in the Musconetcong watershed).

**SEVERABILITY:** If any section, subsection, provision, clause, or portion of these procedures is adjudged invalid by a court of competent jurisdiction, the remainder of these procedures shall not be affected thereby.

**DEFINITIONS:** The following words and terms as used in these procedures shall have the following meanings, unless the context clearly indicates otherwise:

1. "Adoption" - the adoption by the Governor or his designee of the SCWQMP or amendments or revisions thereof.
2. "Amendments" - changes to SCWQMP that may be proposed, and adopted pursuant to these procedures as defined at Section II below.
3. "Highlands Council" means the Highlands Water Protection and Planning Council established by N.J.S.A. 13:20-4.
4. "Highlands Planning Area" means that portion of the Highlands Region not included within the Highlands Preservation Area.
5. "Highlands Preservation Area" means that portion of the Highlands Region so designated by N.J.S.A. 13:20-7B.
6. "Revisions" - changes to the SCWQMP as that may be proposed and adopted pursuant to these procedures described at Section III.

7. "Sussex County Water Quality Management Plan Policy Advisory Committee (PAC) - Established by the Board to ensure broad based public and municipal involvement in the water quality management planning process.
8. "Sussex County Board of Chosen Freeholders (or Board)" - The area-wide planning agency designated in accordance with the provisions of the New Jersey Water Quality Planning Act (N.J.S.A. 58A:11A-4) and Section 208 of the Federal Water Pollution Control Act Amendments of 1972 (P.L. 92- 500; 33 U.S.C. 1251 et seq.).
9. "SCWQM Plan" - means the Sussex County Water Quality Management plan prepared pursuant to Section 208 and 303 of the Clean Water Act, (33 U.S.C. 1251 et seq.) and the Water Quality Planning Act (N.J.S.A. 58:11A-1 et seq.).

I. Instances When WQM Plan Amendment or Revision can be Proposed

A. The Board shall propose amendments to the SCWQMP, whenever such amendments are deemed necessary or desirable. In determining whether or not to propose such amendments, the Board may consider the recommendations of the PAC Board's water quality management staff. Amendments may be proposed for various reasons such as to implement or comply with applicable state or federal law or regulations; respond to new or changed circumstances; improve the economic, social or environmental impact of the WQM plan; and/or resolve issues identified through the consistency review procedures of the currently adopted New Jersey WQM Planning rules (N.J.A.C. 7:15-3.1 or 3.2). Pursuant to the WQM Planning rules N.J.A.C. 7:15-3.4(c), some amendments shall be processed only by the NJDEP. All other amendments shall be processed by the SCWQMA and submitted to the NJDEP as prescribed below for review under the Department regulatory procedures. Nothing contained herein shall be construed to limit the ability of the Board, or its designated representatives, to comment upon amendments or to suggest amendments in those areas specifically reserved unto the NJDEP.

1. The procedure for amending the SCWQMP is found at Section II herein.

B. Other agencies, municipalities, or interested persons may petition the SCWQMA to amend or revise the SCWQMP.

C. The SCWQMA shall periodically review the areawide plan and prepare corrective revisions as described below. In determining whether or not to propose said revisions, the Board may consider the recommendations of the PAC and the Board's water quality management staff. Pursuant to N .J.A.C 7:15-3.5(b)(1), SCWQMA shall prepare revisions to the SCWQMP where such revisions are necessary to:

1. Correct, clarify or update erroneous, unclear, or outdated statements in the SCWQMP regarding:
  - a. Development and wastewater treatment facilities existing at the time of the most recently adopted SCWQMP or amendment affecting the site; or
  - b. Proposed projects, provided that all other NJDEP approvals were received, in full compliance with applicable regulations, at the time of the most recently adopted SCWQMP or amendment affecting the site;
2. Other revisions provide for substantive changes, pursuant to the WQM Planning rules at N.J.A.C. 7:15-3.5(b)4, in the SCWQMP where the DEP determines, based on its assessment that the project for which the revision is proposed complies with the sewer service area delineation criteria and environmental standards established in N.J.A.C. 7:15-5.24 as 5.25, as applicable, that no significant individual or cumulative impacts will occur to environmentally sensitive areas or other natural resources (such as water supplies) due to the proposed revision (individually or in combination with past revisions in the area), that the changes are consistent with N.J.A.C. 7:15-3.10, which requires coordination with the Highlands Council, and that certain directly affected municipal and county agencies and other interests as identified by the Department have been provided an opportunity to review and comment on the proposed revision.
3. The procedure for revising the SCWQMP is found at Section III herein.

D. Amendments and Revisions to the SCWQMP within Morris County

The Sussex County WQM Planning Area also includes portions of Morris County consisting of the following municipalities within the Musconetcong Watershed area: Netcong Borough, Mt. Arlington Borough, Roxbury Township and Jefferson Township. In accordance with N.J.A.C 5:17-5.4. , the NJDEP has assigned the Board of Chosen Freeholders of the County of Morris the responsibility for preparing the wastewater management plan for all municipalities located within Morris County. Any amendment or revision to the SCWQMP Plan that is located within Morris County is exempt from Parts II and III of these Procedures and shall be processed pursuant to 1 below. As such, an amendment or revision application to SCWQMP that is located within Morris County is not subject to approval by the Board and will be processed by the Procedures below at D.1 .

1. The NJDEP shall review, approve, or disapprove all proposed amendments and revisions in accordance with N.J.A.C. 7:15. All applicants shall submit the necessary application forms and information to the NJDEP, the County of

Morris Planning Department, and SCWQMA concurrently. The SCWQMA may provide comments on the proposed amendment or revision. Any comments shall be transmitted to the applicant, NJDEP, and Morris County, via mail or email.

E. Applications for plan amendments or revisions for projects located in the Highlands Preservation Area that require a Highlands Preservation Area Approval shall be governed by the application filing and related procedures set forth in the Highlands Water Protection and Planning Act rules at N.J.A.C. 7:38-11.6. However, for amendment application for proposals located within the Highlands Planning Area, if the NJDEP determines to proceed, then the amendment shall be processed in accordance with the Plan Amendment Procedure below. For proposed amendments located within the Highlands Planning and/or Preservation Area wholly within Morris County, the Procedures found at D1. apply.

## II. Plan Amendment Procedures

The procedure for amendment application and review by the SCWQMA to the SCWQMP follows. These procedures in no way modify or constrain the NJDEP review criteria or procedures pursuant to adopted rule or statute.

### A. Pre-application Conference

Any party seeking an amendment to the SCWQMP is strongly encouraged to submit a draft application to the SCWQMA staff, prior to formal submittal. To the maximum extent possible, the draft application should conform to the requirements of a formal amendment application as outlined in Section II.B. below. Upon receipt the SCWQMA staff will schedule one or more informal meetings with the applicant to identify areas where additional information may be required, and to ensure that the proposed amendment is consistent with the policies and procedures of the SCWQMA. In its review, the staff may use checklists or other criteria listing the information to be submitted as part of a complete application. The staff may consult with the PAC during the conference process. The staff will also assist the applicant in identifying the parties for notification and comments pursuant to section C.2. b. below. This procedure is strongly encouraged so as to streamline the application process.

### B. Submittal of Amendment Request to the SCWQMA

Requests for plan amendments shall be submitted in writing to the Sussex County Water Quality Management Agency, c/o Sussex County Planning Division, One Spring Street, Newton, New Jersey 07860. One digital copy on a CD and five printed copies of each such request shall be submitted to the

SCWQMA. The DEP and SCWQMA shall mutually notify one another in writing upon the receipt of any proposed amendment.

All such requests to the SCWQMA for amendment shall include, but not be limited to:

1. A detailed description of the basis and demonstrated need for the proposed amendment.
2. Documentation substantiating the party's position and a detailed analysis addressing potential impacts to water quality within the planning area.
3. A resolution of support or endorsement from the municipal governing body for the proposed plan amendment.
4. All other information necessary to comply with the requirements of N.J.A.C. 7:15-1 et seq.

#### C. Amendment Review Procedure

##### 1. Completeness Screening

The SCWQMA staff shall review all requests to determine if said request may be deemed to be complete. The staff may consult with the PAC during this completeness screening period. In conducting this screening, the SCWQMA staff may use checklists or other criteria listing the information to be submitted as part of a complete application. In the event the staff deems the request to be incomplete, it shall be returned to the applicant for modification. Any action by the SCWQMA staff declaring an application to be incomplete shall suspend all other time limits contained herein. Upon resubmission or the submission of additional or supplemental information by an applicant, the 90 day time period for review will begin again, as noted in Section II.C.4.c. "Time Limits for Review".

##### 2. Substantive Staff/PAC Review Procedure

- a. STAFF REVIEW: Upon submission of a complete amendment, a 90-day time period for review shall commence. Substantive review of the proposed amendment shall be conducted by the SCWQMA staff and in consultation with the NJDEP staff. Said SCWQMA review shall include but not be limited to: need; content; consistency with the Sussex County WQM planning goals, policies and applicable checklists; technical feasibility.

- b. PAC REVIEW: The WQM PAC shall also review the proposed amendment for the purpose of allowing public input during staff review. Said PAC review of the proposed amendment shall require the presence of a quorum. The PAC recommendations are not binding on the Board. The PAC, by majority vote, may designate and require that the applicant provide notice of the pending application for Plan Amendment to any governmental units, agencies or other parties or persons which may have an interest in the application. Said notice shall be sent with a copy of the application and inform the recipient of the on-going SCWQMA and PAC review. The notice shall also indicate that all interested parties may appear before the PAC or may provide written comments to the SCWQMA and the PAC.
  - c. ADDITIONAL INFORMATION DURING REVIEW PERIOD: During the review period, the SCWQMA staff and the PAC may recommend that the SCWQMA staff require that an applicant submit additional documentation concerning any aspect of the proposed plan amendment. Any such request will automatically end the 90 day time period for review. Upon re-submission, the 90 day time period for review will begin again at 90 days.
  - d. RECOMMENDATION TO THE FREEHOLDERS: Upon completion of the substantive review set forth above, the staff shall recommend approval or rejection of the proposed amendment to the Board, the designated WQM area-wide planning agency. The staff recommendation shall specifically include a recommended list of affected governmental entities, sewerage authorities and BPU-regulated sewer or water utilities from whom the Board will require endorsements to be requested. The staff report shall include a statement of reasons underlying its recommendations.
3. Initial Freeholder Review, Decision and Resolution:
- a. Within the 90 day Review Period, upon consideration of the proposed amendment, the Board shall adopt a resolution either, i) disapproving the proposed amendment, ii) allowing an amendment application to proceed to public notice, or iii) requiring additional information or changes. A resolution disapproving a proposed plan amendment shall provide for timely notice to the applicant and shall be considered to be a final action for purposes of appeal under Section 9 of this procedure.
  - b. If the Board decides not to proceed further with the amendment application, the amendment request is disapproved and shall be returned to the applicant.

- c. If the Board decides to proceed with the amendment, the Board resolution shall:
  - 1) require that the SCWQMA staff forward a certified copy of the resolution to the NJDEP, together with the staff's recommendations, and report.

#### 4. Formal Submittal to NJDEP

- a. Within 15 days of the Board's approval a proposed amendment, the SCWQMA staff shall submit the amendment to DEP, together with background information for that amendment and resolutions from the municipality, PAC and the Board.
- b. The NJDEP requires the Initial Freeholder Resolution be submitted with the application for an amendment to the area-wide WQM Plan as part of its administrative and/or technical completeness determination and shall only proceed to public notice if deemed appropriate, and not until such time as the Board's certified resolution is received. The Department shall have the opportunity to complete its review of any proposed amendment pursuant to N.J.A.C. 7:15 and applicable statutes, and make its decision to proceed.
- c. Time Limits for Review:
  - 1. Non-Highlands Preservation Area Application: Unless specifically provided otherwise herein, the SCWQMA staff review, PAC review, Board review to the point of adoption of the initial Board resolution as contained in sections C. 1., 2. and 3. above shall be completed within 90 days from the date that a complete application is received.
  - 2. Pursuant to NJAC 7:15-3.4(g)2, once an official application received from the County is deemed administratively complete, within 90 days the NJDEP will either disapprove the application, request addition information or decide to proceed to public notice.

#### 5. Procedures for Public Comment/Hearings on Proposed Amendments

- a. NOTICE for PUBLIC COMMENT: Any Board resolution allowing an application to proceed shall indicate that public notice is to be provided which includes all pertinent project information and allows for a 30 day public comment period and that any interested persons may request that a

public hearing be scheduled. Interested persons may request that a non-adversarial public hearing be held; such requests shall be submitted in writing to the Board and the DEP within 30 days of the date of the public notice. Any Notice (if required) published in accordance with this section shall state that a copy of the proposed amendment shall be available for public inspection at a designated location.

The notice for public comment, to be prepared by the NJDEP, setting forth the decision to proceed, shall be published by the applicant and at the applicant's expense, once in one (1) newspaper which are in general circulation within the planning area. The public notice will be mailed by the applicant to the designated planning agency and each party who was requested to issue a written statement of consent for the amendment. Further, the notice shall also be published in the New Jersey Register or if applicable, the NJDEP Bulletin by the NJDEP. The public comment period shall be established for 30 days from, whichever is later: the date of the publication in the newspaper, NJDEP Bulletin or if applicable the New Jersey Register date of the notice. If, following the end of the 30 day public comment period, significant interest is received in writing, as determined by the Department, in holding a public hearing, then a public hearing will be held and notice of the prescheduled hearing date is required as provided in the procedures at 5.b. below.

**REQUEST STATEMENTS OF CONSENT:** The NJDEP shall identify and enumerate the specific governmental entities, sewerage agencies, and BPU regulated sewer or water utilities that may be affected by, or otherwise have a substantial interest in the proposed amendment. The NJDEP shall require in writing that the applicant, at his or her expense, submit by certified mail, return receipt requested, a copy of the proposed amendment and a copy of the public notice to those affected parties, requesting they provide a written statement of consent on the proposed amendment within 60 days of their receipt of the request. The applicant shall submit to the NJDEP proof that all such parties have been notified. A statement of consent shall include a statement that the party concurs with, or does not object to, the proposed amendment. Tentative, preliminary, or conditional statements shall not be considered to be endorsements. All endorsements by a governmental unit shall be in the form of a resolution by that unit's governing body.

b. **NOTICE of Public Hearing if Required:** If there is significant interest, as determined by the Department, in holding a public hearing, then a notice of the scheduled public hearing shall be published. The SCWQMA staff, after



approval from NJDEP and after consultation with the Clerk of the Board, shall determine the date for the public hearing to be held by the Board. Once the date for such public hearing has been scheduled, a public notice, prepared by the NJDEP, setting forth the decision to proceed with the non-adversarial public hearing and the date of the public hearing during which it is to be considered for further public comment and testimony, shall be published by the applicant and at the applicant's expense, once in one (1) newspaper which are in general circulation within the planning area. The public notice of the Public Hearing will be mailed to the designated planning agency and each party who was requested to issue a written statement of consent for the amendment and each party which requested a hearing to be held. Further, the notice shall also be published in the New Jersey Register by the NJDEP or if applicable, the NJDEP Bulletin by the NJDEP. The notice shall be published at least thirty (30) days prior to the time fixed for the public hearing, and provide that the record for receiving public comment shall be re-open for an additional fifteen (15) days after the public hearing. Any Notice published in accordance with this section shall state that a copy of the proposed amendment shall be available for public inspection at a designated location. The notice shall also state that at the time of the aforementioned public meeting, all persons interested therein may appear and shall be given an opportunity to be heard.

6. Honoring Public Hearing Requests:

At the time and place fixed for the public hearing, if one is *requested to be held* and an arranged hearing date has been set forth in a published notice, any interested member of the public shall be given an opportunity to be heard concerning the proposed amendment either at the schedule hearing and or may submit within the public comment period (15 days following schedule hearing), any written comments or documentation desired to be considered by the Board and the NJDEP can be submitted. The public hearing may be recorded at the expense of the applicant. At the applicant's expense a verbatim transcript of the hearing shall be prepared and provided to the County and the NJDEP.

If any data, information or arguments submitted during the public comment period, in response to a request for endorsement/written statements of consents, testimony or written statements as a result of the public hearing appear to raise substantial new questions concerning a proposed plan amendment, the Board may:

- a. Reopen or extend the public comment period for no more than thirty additional days to give interested persons an opportunity to comment on the information or arguments submitted.

- b. Disapprove the proposed amendment and, where applicable return it to the applicant; or
- c. Return the amendment request to the applicant for necessary substantial changes. If the applicant then submits a revised amendment request, the SCWQMA and NJDEP shall review the request in the same manner as a new amendment request.

Any action by the Board disapproving the amendment pursuant to section C. 5.b. and c. above shall be in writing to the applicant and shall be considered to be a final action for purpose of appeal under Section 9 of this procedure.

7. Final Freeholder Consideration:

The Board, upon completion of the public comment period, shall at a subsequent meeting to which consideration of the proposed amendment may be adjourned, take final action on the proposed plan amendment *for only those proposal that are entirely within the Sussex County WQMP planning area*. Said final action shall be completed no later than sixty (60) days after completion of the public comment period and be by a majority of the full membership of the Board. Said final action may not however, occur until after the expiration of the sixty (60) day period for endorsement by the parties identified above. Where such party has refused to endorse or has not acted on a request for endorsement, the Board in making its final decision, shall consider the reasons, if known, for that refusal to endorse or inaction.

In taking its final action, the Board may:

- a. approve the amendment as proposed;
- b. disapprove the proposed amendment, and where applicable return it to the applicant; or
- c. approve the propose amendment with minor changes, acceptable to NJDEP and the applicant, that do not effectively destroy the value of the public notice.

The Board, in its sole and absolute discretion, at the request of the applicant for plan amendment, may extend the 60 day period from the completion of public comment to final action for up to an additional 60 days.

8. Final State Action:

If the proposed amendment is granted approval by the Board pursuant to section C.76.a. above, resolutions from PAC, the Board and from the parties from whom endorsements/ *and or written statements of consent* were requested *including copies of the certified receipts from entities that did not provide consent*, where applicable, shall be forwarded, within 15 days to the New Jersey Department of Environmental Protection, Bureau of Water Quality Planning for final adoption. The proposed amendment shall become an effective part of SCWQMP upon the subsequent adoption of the Board approved amendment by the Governor or his or her designee.

9. Administrative Record:

The Board shall retain the administrative record for proposed WQM Plan Amendments for the following periods of time, in accordance with the relevant records retention schedules from the NJ Division of Archives and Record Management (DARM):

- a. Each plan amendment adopted is a permanent record, and will be maintained in paper and/or digital format, in accordance with State DARM standards.
- b. For each proposed plan amendment disapproved or returned to the applicant, the file will be kept for a period of 5 years from the date of disapproval or return, prior to disposal.

10. Appeal:

Appeal of any final action taken by the Board of Chosen Freeholders approving or rejecting any proposed amendment shall be by appropriate action filed in the Superior court of New Jersey no more than 45 days from the date of said final action.

III. Plan Revision Procedure

The procedure for Processing a Revision to the SCWQMP is as follows:

1. Prior to recommending any revision to the Board of Chosen Freeholders, the staff shall submit the proposed revision to the WQM PAC. The purpose of the PAC review is to allow for public input. The PAC review of the proposed revision shall require the presence of a quorum. The PAC recommendations shall not be binding on the Board.

3. Upon completion of the PAC review, the staff shall submit the proposed revision to the Board of Chosen Freeholders for review and action. Any such recommendation shall be in the form of a draft resolution approving the revision and shall be accompanied by a statement or memorandum as to the reasons why such revision is necessary or desirable.
4. Within thirty (30) days of the receipt of the recommendations from staff, the Board shall schedule the same for consideration.
5. Upon consideration of the proposed revision, the Board of Chosen Freeholders shall pass a resolution either rejecting same or approving it. If approval is granted, the resolution shall provide that the revision shall be submitted within 15 days to the NJDEP, for review and comment. The submittal to the NJDEP shall include the staff's statement of reasons as to the need for the revision. The resolution shall further state that the revision shall only be valid upon the adoption by the Governor or his or her designee.
6. The NJDEP shall review the submittal in accordance with the applicable criteria at N.J.A.C. 7:15-3.5. If based on the information provided, it is determines the application qualities for as a revision, the NJDEP shall provide a copy of the proposed revision to the agencies identified in N.J.A.C. 7:15-5.22 and provide 21 days for these entities to comment on the proposed revision prior to adoption. Revisions shall be adopted in accordance with N.J.A.C. 7:15-3.5(e).
7. The NJDEP and the Sussex County WQM agency shall on an annual basis make publicly available a list of adopted revisions to the SCWQMP. Interested persons may submit petitions pursuant to Section II. B. herein above and under N.J.A.C. 7:15-3.4, to amend the SCWMP to repeal or to modify such revisions.