

SOMERSET COUNTY PLANNING DIVISION STAFF RECOMMENDATIONS
SUBMITTED TO THE NJ SENATE LEGISLATIVE OVERSIGHT COMMITTEE
JUNE 4, 2009

I. History of Somerset County Involvement in the Wastewater Management Planning Process:

1. Served as “201” Agency since 1981; responsible for Somerset/Upper Raritan Wastewater Management Plan encompassing 2/3 of the County which was adopted in 1999
2. Provided formal written comment on draft WQMP Rules during the formal public comment period and hosted workshops
3. The County has facilitated the appointment of Municipal WMP Committees comprised of an elected official, engineer and planner to assure a close working relationship and significant opportunities for local input into the WMP Process
4. Use multiple venues such as breakfast forums, briefing memos and County website to post all meeting notices and guidance documents
5. Strong Freeholder support and County Planning Board itself is fully informed and engaged in process and has prioritized the WQMP in its Work Program

II. WQMP Rules & WMP Process – What Works

1. Importance of the County Wastewater Management Plan as a growth management and water resource protection tool broadly recognized at the state, county and local levels.
 - Most counties and municipalities are actively engaged in the WMP Update Process
2. Lines of communication between County Planners, NJDEP Officials and staff have been opened resulting in an improved working relationship
 - The Commissioner has agreed to provide a forum for WMP issues to be discussed in response to NJCPA’s request
3. NJDEP has made resources available to Counties
 - Grants, GIS Environmental data layers, WMP Model Builder Tool, County WMP Guidance System, Model Ordinances, standardized WMP Map notation, etc...
4. Increased transparency, certainty and predictability is gradually happening and is critical to building support for the WMP Process and the completion and adoption of WMPs
 - The Commissioner, for example, recently agreed to NJCPA’s requests to: 1) to post draft updated SSA Maps on the NJDEP Website, 2) address the need to provide adequate “Due Process” by notifying impacted property owners; and 3) post a running list of “Questions and Answers” that provide *guidance on addressing various complex WMP issues*
5. Goal of the Department to also cull the most environmental sensitive sites from sewerage and intensive development to avoid major permit problems later and loss of critical resources is very laudable –but:

III. WQMP Process – What Doesn’t Work

1. Uniform, consistent application of WMP rules, requirements, methods and process are essential statewide
 - *The WMP rules and requirements can no longer be a moving target – major changes mid-way through the process are extremely wasteful of public resources and will prevent the completion of Updated County WMPs in a timely manner. The resultant frustration will lead to a lack of trust and loss of support for process.*
 - *Different rules and requirements for different counties will create unfair advantages and disadvantages. The high public costs of re-doing and re-doing work **must** be avoided.*
 - *The current “**invent as you go**” approach has also added significantly to the project timeline and costs – for example, NJDEP is still trying to figure out what the minimum requirements are for Municipal Septic Management Plans and Ordinances.*
2. The new County WMP update process is complex and requires a high level of resources and expertise. Differences in resources available and needed by various Counties must be recognized.
 - *Up-front, reality-based information about the true amount administrative and technical resources Counties needed to complete the WMP Update Process must be recognized so that Counties and municipalities can establish appropriate work plans, timelines and budgets.*
 - *Realistic timelines, tailored to the unique needs and capabilities of each County must be allowed.*
 - *NJDEP must acknowledge Counties do **not** have absolute control over the project timeline. The timeline is significantly impacted by Municipal resources and expertise necessary for supporting the County’s work in preparing Municipal WMP Chapters **and** opportunity for private property notification and interaction .*
3. The use of inaccurate, unverified environmental data by NJDEP in preparing its preliminary draft Updated SSA boundaries has made the process of updating the SSA boundaries extremely inefficient, time intensive, costly and difficult from both an administrative and technical perspective.
 - *The GIS Landscape Project Habitat data layer is not scientifically credible enough to be used as the **sole** reason for removing development projects, planned community facilities, COAH sites and other properties in the early planning stages from SSAs that are consistent with municipal Master Plans, Zoning, NJDEP’s previously adopted SSA boundaries, the State Development and Redevelopment Plan and smart growth principles.*
 - *Equal consideration **must** be given to other State; Regional and local land use planning priorities, particularly when they all reinforce each other, when deciding on whether or not a property is removed from the SSA.*
 - *The removal of property from the SSA must be substantiated enough to hold up in court.*
 - *The assignment of “**burden of proof**” to Counties and municipalities on a site-by-site basis is inefficient, costly and time-consuming. Many SSA corrections*

are due to outdated, inaccurate NJDEP data and NJDEP itself controls much of the permit documentation it requires to justify the return of properties to the SSA.

IV. County Role as WMP Pilot- What have we learned:

The Somerset County Board of Chosen Freeholders executed an agreement with NJDEP in 2007 allowing the County to serve as a Pilot to create a model Countywide WMP that is consistent with the Adopted WQMP Rules.

- *Saved money for the County's municipalities who previously served as municipal WMP Agencies.*
- *Must assign senior and well- experienced Planning staff due to complexity of process*
- *Provided feedback to NJDEP to help refine its Wastewater Flow Estimator Model and interaction at a peer-to-peer level worked well*
- *Importance of preparing easy-to-understand guidance documents for WMP Stakeholders in cooperation with NJDEP and the Highlands Council*
- *County took lead to identify regulatory, technical and policy issues that require better coordination among NJDEP, Highlands Council, OSG, COAH and other State Agencies and offered potential solutions so towns and County do not get torn between inter-agency conflicts*
- *Assured the WMP for Somerset County is developed through an open public participation process by providing frequent public information forums, one – on-one meetings with municipal WMP Committees, making information about WMP meetings, guidance documents, draft maps and draft County WMP available through the County Website*
- *Facilitated the use of NJCPA as a way for NJDEP to tap into County expertise to: 1) share “what works; 2) avoid “re-inventing the wheel”; and 3) “preventing past mistakes”.*

V. County Recommendations to Committee

1. The County WMP process should **not** be suspended
 - Realistic project timelines that are uniquely tailored to the capabilities and resources of each County, and that recognize time needed for local involvement and the work yet to be done by NJDEP to facilitate the process must be provided.
 - Focus on **getting it right** – rather than arbitrary deadline for submitting WMPs
 - Do not **penalize** Counties and municipalities that are making progress and working cooperatively to complete WMP Chapters i.e. do not roll back SSAs for towns working diligently with NJDEP and the County to resolve outstanding issues.
2. Pursue “fixes” to shortcomings in the current WQMP Rules and WMP Process that can be implemented immediately and with little cost – without going through the time-consuming Rule Amendment Process.
 - Involve Counties in the process of identifying appropriate, realistic solutions.
3. Apply the “Reasonableness” Litmus Test

- **Counties must be given greater authority in the decision making process.** County Planners are uniquely and superbly qualified to identify property specific solutions to SSA delineation issues that balance the protection of environmentally sensitive areas with other critical State, Regional and Local land use priorities. If this authority is denied, an interdisciplinary arbitration body should be considered to resolve real policy disputes.
- 4. A much more reasonable and balanced application of the Landscape Project Data Layer must be considered.
 - *NJDEP Should Update its Environmentally Sensitive Areas Analysis to show, rather than suppress species specific Landscape Project Habitat Rank 3, 4, and 5.*
 - *More realistic, affordable, timely and do-able alternatives to the performance of Habitat Suitability Determination Analyses, which can be accomplished during the WMP Update Process, and that allow properties to be returned to the SSA located in State Plan PAs 1, 2, and centers must be provided.*
 - *Extend “Desk-Top” Habitat Analysis performed by NJDEP to other high priority areas including Brownfield redevelopment, TDR receiving areas, Transit Villages, etc.*
 - *Rules that implement the Habitat Protection Act must be adopted rather than manipulating the WMP process to serve as pseudo-Habitat Protection Rules. The WMP Process does not comprehensively or effectively achieve Habitat protection goals from a regional perspective.*
 - *The Landscape Study, with its many shortcomings, should not serve as the sole basis for the removal of any properties from the SSA*
- 5. *Much greater coordination among State Agencies is needed.*
 - *The role of the State Planning Commission and the State Development and Redevelopment Plan in both guiding and balancing land use and infrastructure investment decisions must be strengthened and enhanced.*
 - ***The Regulatory WQMP and WMP Processes cannot substitute for Comprehensive Sustainable Land Use Planning at the State, County and Local Levels.***

Additional Supportive Documents Provide by Somerset County Planning Board:

- a. Final Somerset County WMP Public Information Guidance Document