

NOTE: THIS IS A COURTESY COPY OF THIS NOTICE. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE NEXT NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THIS NOTICE, THE OFFICIAL VERSION WILL GOVERN.

PUBLIC NOTICE

Highlands Council

Legal Department

Notice of Action on Petition for Rulemaking

Petition to amend the Highlands Regional Master Plan (RMP) to require monitoring and compliance with the US Environmental Protection Agency (EPA's) final aluminum criteria for regulated activities that disturb soils, generate stormwater, and/or result in point and non-point discharge of pollutants to wetlands and surface waters, including development and forest management activities.

N.J.S.A. 13:20-1 et seq., Highlands Regional Master Plan

Petitioner: Bill Wolfe

Take notice that on September 22, 2022, the Highlands Water Protection and Planning Council (Highlands Council) received a Petition for rulemaking from Bill Wolfe (Petitioner). The Highlands Council is acknowledging receipt of the Petition for rulemaking. However, as discussed below, the Highlands Council does not acknowledge the Petition on behalf of the Pinelands Commission or the Department of Environmental Protection (DEP), to the extent the Petition asks for relief that is within the sole jurisdiction of either entity.

Petitioner requests that the Pinelands Commission amend the Pinelands Comprehensive Management Plan to require monitoring and compliance with the Environmental Protection Agency's (EPA) Final Aquatic Life Ambient Water Quality Criteria for Aluminum (2018) (Final Criteria) for regulated activities that disturb soils, generate stormwater, and/or result in point and

NOTE: THIS IS A COURTESY COPY OF THIS NOTICE. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE NEXT NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THIS NOTICE, THE OFFICIAL VERSION WILL GOVERN.

non-point discharge of pollutants to wetlands and surface waters, including development and forest management activities.

Petitioner requests that the DEP:

- Amend the Surface Water Quality Standards, N.J.A.C. 7:9B, to adopt aquatic protection criteria for acute and chronic effects of aluminum, at least as stringent as, and consistent with, EPA's Final Criteria;
- Amend the Highlands Water Protection and Planning Act Rules, N.J.A.C. 7:38; New Jersey Pollutant Discharge Elimination System rules, N.J.A.C. 7:14A, Water Quality Management Planning rules, N.J.A.C. 7:15, Stormwater Management rules, N.J.A.C. 7:8, and regulations governing Total Maximum Daily Load provisions of the Surface Water Quality Standards, N.J.A.C. 7:9B, to mandate compliance with the EPA's Final Criteria;
- Revise the Forestry Wetlands Best Management Practice (BMP) to mandate monitoring and compliance with the EPA's Final Criteria;
- Revise the Water Quality Monitoring and Assessment Program under the Federal Clean Water Act sections 303(d) and 305(b) to include aluminum;
- Revise the Forestry rules, N.J.A.C. 7:3, to include monitoring and compliance with the EPA's Final Criteria; and
- Revise all the regulations cited above for conformity with the EPA's Final Criteria pending the Department's adoption of a State criteria.

Regarding Petitioner's request for relief that is specific to the Highlands Council,

NOTE: THIS IS A COURTESY COPY OF THIS NOTICE. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE NEXT NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THIS NOTICE, THE OFFICIAL VERSION WILL GOVERN.

Petitioner requests to close the regulatory loopholes in the Highlands Regional RMP in order to:

- Assure protection of the ecological health of NJ's water and natural resources, based upon the best available science;
- Assure that forest management activities do not impair or adversely impact the water quality and/or aquatic life of NJ's surface waters and wetlands;
- Assure that NJ's waters are fishable and swimmable, as required by the federal Clean Water Act and the NJ Water Pollution Control Act;
- Assure that Highlands, freshwater wetlands, stormwater, and forest management policies and regulations are current, reflect the best available science, and conform to minimum federal standards, criteria, and guidance; and
- Assure protection of the Highlands water and natural resources.

Petitioner also requests that the Highlands Council:

- Amend the Highlands regulations to mandate compliance with the aluminum criteria (water quality standards); and
- Amend the RMP to require monitoring and compliance with the EPA's final aluminum criteria cited above for regulated activities that disturb soils, generate stormwater, and/or result in point and non-point discharge of pollutants to wetlands and surface waters, including development and forest management activities.

In support of the Petition, Petitioner cites to a United State Geologic Survey (USGS) scientific study in the nearby New York Catskills, logging activities adversely impact ecosystem health and water resources, including the toxic effects of aluminum, see: Effects of Forest

NOTE: THIS IS A COURTESY COPY OF THIS NOTICE. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE NEXT NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THIS NOTICE, THE OFFICIAL VERSION WILL GOVERN.

Harvesting on Ecosystem Health in the Headwaters of the New York City Water Supply, Catskill Mountains, New York: <https://pubs.usgs.gov/sir/2008/5057/SIR2008-5057.pdf>. In addition to citing to the study, Petitioner referenced an email from a USGS scientist discussing whether the results from the Catskills study would also apply in the New Jersey Highlands.

Additionally, Petitioner cites to the US EPA "Aquatic Life Ambient Water Quality Criteria For Aluminum (2018)".

In his Petition, Petitioner states that "New Jersey's ecosystems, water resources, and natural resources are particularly vulnerable to the toxic effects of aluminum. USGS research has documented 100% mortality of trout from aluminum, caused by forestry (logging).

'Regarding NJ's particular vulnerability, according to US EPA: "In the early 1980s the impacts of acid rain and aluminum toxicity were observed in aquatic and terrestrial environments in specific regions of the U.S., most notably in the northeastern part of the country where aquatic systems had limited buffering capacity to prevent pH changes. Researchers observed that aluminum can be a major factor responsible for the demise of biotic communities since the toxicant becomes more soluble and potentially more toxic to aquatic biota at acidic pH (Gensemer and Playle 1999)." (Source: EPA, at page 10:

<https://www.epa.gov/sites/default/files/2018-12/documents/aluminum-final-national-recommended-awqc.pdf>.)

The EPA identified anthropogenic activities as important sources of aluminum to surface waters, including soil disturbance, erosion, and runoff. Forest management activities, including logging, create soil disturbance that causes, among other things, liberation of inorganic

NOTE: THIS IS A COURTESY COPY OF THIS NOTICE. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE NEXT NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THIS NOTICE, THE OFFICIAL VERSION WILL GOVERN.

monomeric aluminum via stormwater runoff, sediment transport, and erosion.’

As aforementioned, the Highlands Council does not acknowledge receipt of the Petition to the extent that Petitioner requests amendments to the Pinelands Comprehensive Management Plan and any DEP regulations, or otherwise seeks relief that is beyond the Highlands Council’s authority. The Pinelands Protection Act gives the Pinelands Council the sole authority to amend the Pinelands Comprehensive Management Plan. N.J.S.A. 13:18A-6. The DEP has the sole authority to amend the various rules and regulations implicated by this Petition.

The Highlands Council Response to the Petition

The Highlands Council denies this Petition for rulemaking. While the Highlands Council agrees with Petitioner regarding the importance of protecting the ecological health of New Jersey’s water and natural resources, the agency has determined that a rule change is unnecessary. Petitioner has essentially asked the Highlands Council to regulate and amend New Jersey’s surface water quality standards through amendment of the RMP; as a baseline issue, regulation of surface water quality standards falls under the authority of the DEP, not the Highlands Council. While Petitioner’s particular request for a rule change does not fall under the authority of the Highlands Council, the review and amendment process of the RMP is outlined below.

The Highlands Council encourages a comprehensive regional approach to implementing the 2004 Highlands Water Protection and Planning Act (the Highlands Act) (N.J.S.A. 13:20-14 and 15). The Highlands Act established the Highlands Council and charged it with the creation and adoption of the Highlands Regional Master Plan (RMP) to protect and enhance the natural

NOTE: THIS IS A COURTESY COPY OF THIS NOTICE. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE NEXT NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THIS NOTICE, THE OFFICIAL VERSION WILL GOVERN.

resources within the New Jersey Highlands.

The Highlands Act requires the Highlands Council to review and update the Highlands RMP “at least once every six years, after public hearings”. The Act contemplates that amendments to the RMP will arise principally out of this six-year reexamination.¹ RMP Addendum 2018-1 sets forth the process the Highlands Council will follow to review and update the RMP in a manner that is consistent with the Highlands Act and ensures robust public participation. The goals, policies and objectives that comprise the RMP reflect the synthesis of applicable law, policy, science, economics and relevant considerations from other disciplines.

As such, the RMP and any amendments proposed to the RMP will be reviewed by the Highlands Council with these considerations in mind. Specifically, the RMP must conform to the Highlands Act. Further, the RMP was developed with the benefit of data drawn from multiple sources and disciplines to inform the judgements made by the Council in its adoption of the RMP in 2008. Accordingly, the Highlands Council's review of the RMP at this six-year interval will take into consideration changes observed since 2008 in water resource conditions, land use patterns, demographics and other benchmarks, as indicated by relevant data, as well as data that was not available when the RMP was adopted in 2008.

The Highlands Council also will take into consideration public comment received through the procedure described further below. Accordingly, all amendments to the RMP that are presented

¹ N.J.S.A. 13:20-8(a). Even though it would not be the norm, a RMP amendment could be considered and adopted outside of the six-year reexamination process, utilizing the procedure provided herein. In that case, the Highlands Council, by a vote of at least 8 members, would refer the recommendation to the RMP Amendment Committee for its review; Council staff would send the RMP Amendment Committee a report, setting forth staff's response to the recommendation; after evaluating the proposal, the Committee would send its report and recommendation to the Council; and the Highlands Council would take action on the recommendation as it deemed appropriate. If the Council decided to move the proposal forward, it would proceed with the public hearings required before final adoption. Alternatively, the RMP Amendment Committee could recommend that the Highlands Council defer the proposal until the next six-year reexamination process.

NOTE: THIS IS A COURTESY COPY OF THIS NOTICE. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE NEXT NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THIS NOTICE, THE OFFICIAL VERSION WILL GOVERN.

to the Highlands Council for consideration will be accompanied by a detailed analysis and justification that, among other things and to the extent applicable, sets forth:

- The purpose/intent of the proposed amendment;
- The text of the proposed amendment;
- An explanation of how the proposed amendment is consistent with the Highlands Act and other applicable law;
- Any data that supports the proposed amendment, including the data considered by the Council in its adoption of the RMP in 2008, and any changes observed in the data or new data developed since 2008; and
- A summary of public comment received related to the proposed amendment.

Monitoring Program and Recommendation Report

The RMP calls for the development of a Monitoring Program to track and evaluate regional conditions, and to identify emerging issues and discern changes and trends, as observed in relevant data, which will “inform the development of future iterations” and “guide potential amendments.” The RMP contemplates the compilation of this information in a Monitoring Program Recommendation Report (MPRR), together with any recommendations for potential changes to the RMP. To this end, the Highlands Council staff, under the direction of the Highlands Council, will gather and evaluate relevant data, which will be summarized and presented to the Highlands Council in the MPRR for its review and consideration as part of the 6-year review of the RMP, in accordance with the process outlined below. A draft MPRR will be available for public review and

NOTE: THIS IS A COURTESY COPY OF THIS NOTICE. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE NEXT NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THIS NOTICE, THE OFFICIAL VERSION WILL GOVERN.

comment, and any proposed amendments to the RMP will be subject to public hearings, as further described below.

Review of the MPRR by the RMP Amendment Committee

Action by the RMP Amendment Committee

The Highlands Council staff will prepare a draft MPRR for review and approval by the RMP Amendment Committee (Committee). The draft MPRR may include suggested changes to the RMP. Upon the Committee's review and recommendation and the Council's approval, the draft MPRR will be published on the Highlands Council website for public review and comment for a minimum period of 30 days, unless extended by the Council up to 90 days, as further outlined below.

Public Participation

The Highlands Council will accept written comments on all aspects of the draft MPRR, including any changes to the RMP suggested therein, as well as suggestions for additional or different changes to the RMP than those proposed in the MPRR. Anyone wishing to suggest additional or different changes to the RMP than those proposed in the draft MPRR will be asked to provide the information outlined below to support such changes to the best of their ability. Changes will not be rejected or discarded due to a lack of information; rather supporting information will be used by Council staff to provide context for any such amendment to the Committee:

- The proponent's name and contact information;
- The purpose/intent of the proposed amendment;

NOTE: THIS IS A COURTESY COPY OF THIS NOTICE. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE NEXT NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THIS NOTICE, THE OFFICIAL VERSION WILL GOVERN.

- The suggested text of the proposed amendment;
- A summary of how the proposed amendment is consistent with the Highlands Act and other applicable law; and
- A summary of any data supporting the suggested amendment, together with a reference to the actual data so it may be reviewed by staff.

Following the conclusion of the public comment period, the Highlands Council staff will provide to the Committee for its consideration a summary and evaluation of the public comments received. Thereafter and subject to any changes approved by the Committee, the Committee shall send the final MPRR to the Council, together with its recommendation that the Council authorize release of the final Report to the public. The MPRR will include the summary and evaluation of public comments received on the draft MPRR.

Review of RMP amendments by the Committee and adoption by the Highlands Council

Action by the RMP Amendment Committee

The Committee shall review and discuss the merits of the suggested changes to the RMP in the MPRR, request additional information from Highlands Council staff as may be necessary to develop a proposed RMP amendment and determine the merits of the proposal, or take any other step(s) it determines necessary to evaluate the proposal. Any meeting of the Committee at which it is anticipated the Committee will take action on a proposed RMP amendment shall be open to the public, but the public shall not be entitled to participate or make comments at the Committee meeting. The public will have an opportunity to make public comments at Highlands Council meetings and at the public hearings held before any amendment to the RMP may be adopted.

NOTE: THIS IS A COURTESY COPY OF THIS NOTICE. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE NEXT NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THIS NOTICE, THE OFFICIAL VERSION WILL GOVERN.

A copy of the proposed RMP amendment(s) that the Committee is expected to take action on will be available to the public at the time that the Council provides public notice of the RMP Amendment Committee meeting.

The Committee may recommend that the Council take any of the following actions on each proposed amendment under consideration:

- Take no action;
- Refer proposal to Council staff and RMP Amendment Committee for additional information on the proposal;
- Refer proposal to the Science & Research Agenda for further review;
- Conduct the public hearings required by the Highlands Act prior to adoption of the amendment.

Public Participation

The Council will hold five public hearings in various locations in the Highlands Region, and at least one public hearing in Trenton. Testimony offered during public hearings will be limited to the proposed amendment(s). The public hearings may be conducted as part of a regular Highlands Council meeting, or they may be conducted by staff in which case the hearings will be chaired by the Executive Director. At least one of the public hearings will be conducted in the evening hours for the convenience of the public. At the discretion of the Council, an additional public hearing outside of the Highlands Region, may be held, based on potential impacts on stakeholders outside of the Region. The Council will provide not less than a 10-day public notice of the dates, times and locations of the public hearings, and shall also invite the submission of written comments within not less than 60 days of the date of the public notice. The Council will

NOTE: THIS IS A COURTESY COPY OF THIS NOTICE. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE NEXT NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THIS NOTICE, THE OFFICIAL VERSION WILL GOVERN.

determine, on a case-by-case basis, the length of the public comment period at the time it authorizes public hearings on the proposed amendment(s).

The Council will also consult with the State and local government entities, as required N.J.S.A. 13:20-9, by: 1) transmitting copies of the proposed RMP amendment(s) to the clerk for each municipality and clerk for each county located entirely or partially in the Highlands Region; 2) inviting the submission of written comments within 60 days, and 3) scheduling one or more meetings with such officials. The Highlands Council may, in its discretion, schedule one or more public meetings with stakeholders to discuss the RMP and any amendments proposed thereto.

Action by the Highlands Council

At the conclusion of the public hearings, Highlands Council staff will provide to the Committee for its consideration a summary of the testimony received during the public hearing. The Committee will provide the Highlands Council with its final recommendation of the proposed amendment(s), including any proposed changes thereto based upon public comments.

The Highlands Council may act upon the proposal by adopting the proposed amendment(s) to the RMP. Alternatively, the Highlands Council may choose to take no action, refer the proposed amendment(s) back to the Committee for additional information, or place it on Science and Research Agenda for further review.

Upon adoption of any amendment to the RMP, a copy of the RMP amendment will be sent to the Governor, the Legislature, the governing body of every municipality and county located in the Highlands Region, and the State Planning Commission pursuant to N.J.S.A. 13:20-9 (d).

The Highlands Council follows this outlined structure to review and update the RMP in


NOTE: THIS IS A COURTESY COPY OF THIS NOTICE. THE OFFICIAL VERSION WILL BE PUBLISHED IN THE NEXT NEW JERSEY REGISTER. SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THIS NOTICE, THE OFFICIAL VERSION WILL GOVERN.

a manner that is consistent with the Highlands Act and ensures robust public participation. The RMP was most recently amended in 2019; a public comment period was held from March 27 through May 28, 2019, and the Highlands Council held six public hearings in locations throughout the state to solicit public comment. Petitioner is encouraged to comment on the Highlands Council's next MPRR which will be available in 2024.

This notice and the full text of the Petition filed in this matter are available on the Highlands Council's website at www.nj.gov/njhighlands/act/#rules. Additionally, the notice of receipt of Petition was published in the November 7, 2022 New Jersey Register (54 N.J.R.728(a)).

In accordance with N.J.A.C. 1:30-4.2, the Highlands Council will mail to Petitioner and file with the Office of Administrative Law for publication in the next New Jersey Register, a notice of action on the Petition.

11/7/2022
Date


Benjamin L. Spinelli, Esq.
Executive Director