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PUBLIC NOTICE

HIGHLANDS COUNCIL

LEGAL DEPARTMENT

Notice of Receipt of Petition for Rulemaking

Petition to: 1) amend the Highlands Regional Master Plan (RMP) to require monitoring and compliance with the US Environmental Protection Agency (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; 2) amend the NJ Surface Water Quality Standards, NJAC 7:9B - 1 et seq., to adopt an aquatic protection criteria for acute and chronic effects of aluminum, at least as stringent as, and consistent with, the US EPA Final Criteria (2018) cited above; amend the Highlands, the New Jersey Pollutant Discharge Elimination System (NJPDES), Water Quality Management Plan (WQMP), Total Maximum Daily Load (TMDL), and Stormwater management regulations to mandate compliance with the aluminum criteria (water quality standards); 4) revise the Forestry Wetlands Best Management Practices (BMP) to mandate monitoring and compliance with the proposed aluminum criteria; 5) revise NJ Department of Environmental Protection's (NJ DEP's) Water Quality Monitoring And Assessment Program under Clean Water Act Section 303(d) and 305(b) to include aluminum; 6) revise the forestry regulations to include monitoring and compliance with the aluminum criteria; 7) revise all the regulations cited above for conformity with the EPA aluminum criteria pending adoption of a NJ DEP State criteria; 8) Amend the Comprehensive Management Plan (CMP) 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.

Pinelands Comprehensive Management Plan (N.J.A.C. 7:50-1.1 et seq); Highlands RMP; Highlands Act; NJ DEP Surface Water Quality Standards (NJAC 7:9B); NJ DEP Freshwater Wetlands Regulations (NJAC 7:7A); NJ DEP Stormwater Management Regulations (NJAC 7:8); NJ DEP NJPDES Regulations (NJAC 7:14, NJAC 7:14A); NJ DEP Water Quality Management Regulation (NJAC 7:15); NJ DEP Highlands Regulations (NJAC 7:38); CAFRA (NJAC 7:7); NJ DEP Forestry Wetlands BMP Manual; NJ DEP Forestry Regulations (NJAC 7:3); NJ DEP Water Quality Monitoring And Assessment Clean Water Act Section 303(d) and 305(b) programs.

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, the Highlands Council does not and cannot 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. Accordingly, this Receipt of Petition will focus on Petitioner's request for relief that is specific to the Highlands Council.

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

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 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.

This notice and the full text of the petition filed in this matter are available on the Highlands Council website at www.nj.gov/njhighlands/act/index.html#petitions.

In accordance with N.J.A.C. 1:30-4.2, the Highlands Council will subsequently mail to the Petitioner and file with the Office of Administrative Law a notice of action on the petition.