



## State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Division of Watershed Management  
Bureau of Watershed Regulation  
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JON S. CORZINE  
Governor

MARK N. MAURIELLO  
Acting Commissioner

Mr. Samuel Ramiz  
Mount Hope Hydro, Inc.  
627 Mt. Hope Road  
Wharton, New Jersey 07885

NOV 17 2009

Re: Mt. Hope 30MW Biomass Power Plant  
Block: 20001, Lot: 5.05  
627 Mt. Hope Road  
Rockaway Township, Morris County  
Northeast Water Quality Management Plan (WQMP)  
Program Interest No.: 435442  
Activity No.: CSD070020

**Agency Determination:**      **Highlands Act – Exempt**  
Exemption #4  
**Water Quality Management Plan – Inconsistent**

Dear Mr. Ramiz:

The Division of Watershed Management, Department of Environmental Protection (“Department”) hereby responds to Mount Hope Hydro, Inc.’s (“MHH”) application for a Highlands Applicability Determination and Water Quality Management Plan Consistency Determination. Based on the information submitted, the Department has determined that the MHH proposed project/activity is located within the Highlands Preservation Area. N.J.S.A. 13:20-7. Therefore, the Department has reviewed the proposed project/activity to determine the applicability of the Highlands Water Protection and Planning Act regulations, N.J.A.C. 7:38-1.1 et seq., and the requirements established under the Statewide Water Quality Management Planning Rules, N.J.A.C. 7:15-1.1 et seq. Based upon its review, the Department has determined that the proposed project as described in the MHH application would be exempt from the Highlands Act pursuant to N.J.S.A. 13:20-28(a)4, but that the proposed project would be inconsistent with the present Water Quality Management Plan.

The project/activity proposes to reconstruct existing structures on the property located at Block 20001, Block 5.05 in Rockaway Township, Morris County, New Jersey (the “Property”). The MHH application says that the proposed structures would be used for the Mount Hope 30 MW Biomass Power generating facility. The MHH application states that the proposed Biomass Power Plant would use wood residue from NJDEP Class B recycling facilities and would generate electricity via these

recycled materials. The MHH application states that the power plant would not use any sustainable forest resources surrounding or on the Property as a supply for the biomass plant, and would not cut any existing trees on the Property in order to provide fuel for the biomass plant. MHH says a three month supply of wood residues may be on-site at any one time. The project would connect to the existing JCP&L 34,500V transmission line that crosses the Property. Processed steam generated by the boiler would be fed into a turbine generator to produce electricity. The application explains that some structures previously on the Property were demolished after August 10, 2004. The Property also includes additional paved areas such as a parking area outside the service building and drives to the garage, warehouse and turbine room overhead doors, ash hopper and cooling tower. The project proposes to discharge 900 gallons per day of sanitary wastewater to an on-site holding tank which will be hauled off-site; generate 5,000 gallons per day of sludge that would be hauled off site, and 20,000 gallons per day of industrial wastewater which will be discharged to either groundwater or surface water. The project is shown on the plans prepared by Thomas G. Lewis, licensed New Jersey Professional Engineer, dated May 21, 2008, last revised October 28, 2008, unrevised, and titled:

“MOUNT HOPE HYDRO, INC. MT. HOPE 30MW BIOMASS POWER PLANT ROCKAWAY TOWNSHIP, NEW JERSEY HIGHLAND APPLICABILITY DETERMINATION”

“KEY MAP”, sheet 1 of 5,  
“PRE-EXISTING CONDITIONS ENLARGEMENT (AREA 1)”, sheet 2 of 5,  
“PRE-EXISTING CONDITIONS ENLARGEMENT (AREA 2)”, sheet 3 of 5,  
“PROPOSED CONDITIONS ENLARGEMENT (AREA 1)”, sheet 4 of 5, and  
“PROPOSED CONDITIONS ENLARGEMENT (AREA 2)”, sheet 5 of 5. (the “Plans”).

The application originally submitted was received by the Department on April 12, 2007 and was found to be Administratively Complete on May 10, 2007. However, the application was found to be Technically Incomplete since it did not include certain information needed to review the request for the exemption (i.e. a site plan). The Department initially asked for missing information in a Notice of Technical Incompleteness dated September 10, 2007. The applicant responded with more information on October 12, 2007. On October 22, 2007 the Department asked for a clarification regarding the proposed Phase II of the proposed project. More information was requested by phone and received on January 10, 2008. The information that was received did not accurately reflect the criteria for the requested exemption and was clarified by phone on January 15, 2008. Additional information was received on February 19, 2008. Upon further review, the Department determined that due to the large scale of the proposed project, the site plans submitted to date needed more details.

On April 22, 2008, a Notice of Technical Incompleteness was issued. Those requested items of information, were received on May 23, 2008. A site visit was then conducted on July 29, 2008. On September 11, 2008, the Department sought clarification regarding various aspects of the proposed project and additional information was requested by phone and received on September 23, 2008. On October 6, 2008, additional information was requested by phone and received on October 30, 2008. On November 14, 2008, the applicant was contacted to clarify calculations that were submitted on October 30, 2008. On November 19, 2008, new calculations were submitted that were certified by a professional engineer. Based upon review of the additional information that had been submitted and potential objections raised by commenters, the Department decided to conduct another site inspection which was conducted on February 20, 2009. On February 26, 2009, the applicant submitted additional information.

As part of the application process, the applicant included the following supporting documentation which describes and depicts the proposed project on the Property:

- A signed statement from George Thompson, Vice-President of Tilcon New York Inc. regarding impervious structures and foundations that were removed from the Mt. Hope site, dated August 5, 2008.
- The survey prepared by Norman A. Smith, licensed New Jersey Professional Engineer and Land Survey, dated April 20, 1988, unrevised and titled "SURVEY TOWNSHIP OF ROCKAWAY MORRIS COUNTY, NEW JERSEY TAX MAP BLOCK 20104 LOTS 1, 2, 3 & 4 TAX MAP BLOCK 20001 LOT 5", SHEET 2 OF 6.
- The site plan aerial prepared by The Louis Berger Group, Inc., titled "MOUNT HOPE HYDRO, INC. PHOTOGRAPH LOCATION MAP", and based on aerial photography performed by Atlantis Aerial Survey Company, Inc. on February 16, 1999.
- Aerial photography from the Department's Geographic Information System 2002 Aerial Photography and 2007 Aerial Photography.
- The calculated values for the Mt. Hope 30 MW Biomass Power Plant – Block 20001, Lot 5.05, prepared by Thomas G. Lewis, licensed New Jersey Professional Engineer, based on Mount Hope Hydro Inc. Highland Applicability Determination drawings dated May 21, 2008, last revised October 28, 2008.
- The plan dated July 15, 1963 and titled "SHAHMOON INDUSTRIES INC. NEW 48x60 CRUSHER PLOT PLAN" and the plan dated July 19, 1963 and titled "SHAHMOON INDUSTRIES INC. NEW 48x60 CRUSHER FOUNDATION PLAN".
- The Department's own site inspection photos from 2008 and 2009
- Miscellaneous narrative submittals by the applicant.

Together the above-referenced application, narratives, Plans and explanations submitted by the applicant constitute the proposed project (the "Project").

The Department has reviewed the materials submitted by the applicant as well as the numerous comments submitted by the public and the information gathered from the two site inspections to determine the applicability of the provisions of the Highlands regulations. As a result, the Department has determined that the Project as described in the application, the Plans and the supporting documentation submitted by the applicant would meet the definition of "Major Highlands Development," as defined at N.J.A.C. 7:38-1.4, since it is a non-residential development. However, the Project qualifies for an exemption, N.J.S.A 13:20-28(a)4, N.J.A.C. 7:38-2.3(a)4. The Highlands Act states:

Reconstruction of any building or structure for any reason within 125 percent of the footprint of the lawfully existing impervious surfaces on the site, provided that the reconstruction does not increase the lawfully existing impervious surface by one-quarter acre or more.

This exemption determination is valid for so long as the applicant complies with the conditions and limitations outlined below. This exemption determination is limited to the land area and specific scope of the activities described herein or as shown on the referenced site plan above. **This determination does not eliminate the need for any permits, approvals, or certifications required by the Department or any Federal, State, county or municipal review agency with jurisdiction over this project/activity.** Department approvals that may be required include, but are not limited to: sewer extension and discharge approvals under the Water Pollution Control Act (N.J.S.A. 58:10A), water main extensions under the Safe Drinking Water Act (N.J.S.A. 58:12A), approval under the Realty Improvement Sewerage and Facilities Act (N.J.S.A. 58:11-23 et seq.), water allocation or registration pursuant to the Water Supply Management Act (N.J.S.A. 58:1A), approvals under the Freshwater Wetlands Protection Act (N.J.S.A. 13:9B), approvals under the Flood Hazard Area Control Act (N.J.S.A. 58:16A-50 et seq.), approvals under the Solid Waste Management Act (N.J.S.A. 13:1E-1 et seq.) and permits related to air pollution.

- The allowable increase in exempt impervious surface shall be less than 0.25 of an acre.
- To the extent of any forested portion of the Property, any disturbance more than 20-feet from the edge of the exempt impervious cover is not exempted. If disturbance extends beyond this limit then the project shall not be exempt.
- This exemption does not apply to the reconstruction of any agricultural or horticultural building or structure for a non-agricultural or horticultural use.
- The applicant states that the existing off-site power lines are adequate for all of the Project's proposed transmission purposes. Thus, no added impervious coverage on the Property from the installation of any new power lines and no off-site added impervious coverage to transmit the electricity generated by the proposed project is authorized or permitted under the issuance of this exemption.
- If any additional site improvements are required that would result in the addition of new impervious coverage, that impervious coverage cannot, for any reason, equal or exceed the 0.25 acre limit of new impervious covering on the site as of August 10, 2004. This includes expansion of buildings, roadways, parking lots, new or expanded power line improvements, etc. If the new impervious equals or exceeds the 0.25 acre limit, then the exemption lapses and may subject the applicant to enforcement action.

The Department received numerous and ongoing comments from the public throughout the review of the proposed Project. The Department has reviewed all of the comments. The Department has taken these comments under advisement during the review of the application as well as developing conditions of this determination. The Department's summary of the comments and responses to those comments are part of the administrative record. Anyone who submitted comments has been copied on

this final determination, however, some of the comments and the commenters' signatures and addresses were illegible.

The Department also reviewed the Project for consistency with the Statewide Water Quality Management Planning Rules at N.J.A.C. 7:15 and the provisions and recommendations of the Northeast WQMP. Based on the Department's review, the proposed Project is inconsistent with the WQMP. This determination is made based on the following:

The proposed Project is not located in the approved Rockaway Valley Regional Sewerage Authority Wastewater Management Plan (RVRSA WMP) or the areawide Northeast Water Quality Management Plan (WQMP). The Property lies beyond the approved sewer service area and the applicant proposes to discharge sanitary waste and industrial waste. The sanitary wastewater is proposed to be discharged to a holding tank that would then be disposed off-site to a permitted facility. Installation of permanent holding tanks is not permitted in accordance with N.J.A.C. 7:9A and would require a Treatment Works Approval (TWA). The proposed use of on-site holding tanks to store sanitary wastewater is inconsistent with the presently adopted Wastewater Management Plan (WMP).

In addition, the applicant proposes an industrial wastewater discharge which must comply with N.J.A.C. 7:14A and obtain a New Jersey Pollutant Discharge Elimination System (NJPDES) Industrial Discharge Permit. No such discharge is presently authorized under the adopted WMP; therefore, the proposal is inconsistent with the WQMP. As per N.J.A.C. 7:15, all regulated discharges need to be included in the Morris County Wastewater Management Plan (WMP) which is currently under development. The applicant should contact Morris County to see if this proposal can be incorporated into the WMP currently under development. If it is not possible to include this proposal in this WMP, once the Morris County WMP is adopted by the Department, the applicant can then apply to the Department for a site-specific amendment to the WMP. Therefore, the Project is presently Inconsistent. A finding of Inconsistent means that, pursuant to N.J.S.A. 58:11A-10, the Department cannot issue any permits or approvals for the Project as proposed.

The Highlands Applicability Determination is subject to the following additional limitations:

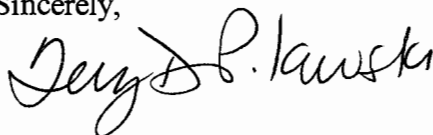
- (1) This determination does not eliminate the need for any permits, approvals, or certifications required by the Department or any Federal, State, County or municipal review agency with jurisdiction over this project/activity. Department approvals that may be required include, but are not limited to, air quality approval, sewer extension and water main extension approvals, a water allocation, approvals under the Freshwater Wetlands Protection Act Rules, (N.J.A.C. 7:7A) and approvals required under the Flood Hazard Area Control Act Rules, (N.J.A.C. 7:13) and the Solid Waste Management Act (N.J.S.A. 13:1E-1 et seq.) .
- (2) The issuance of this determination shall not obligate the Department to issue any other approvals, permits or certifications required for this project/activity.
- (3) This determination shall be considered null and void if changes are made to the project that would increase the scope or area disturbed by the project, or result in a change in the use or change the method of wastewater treatment; or if the information submitted to obtain this determination from the Department is later determined to be inaccurate.

The proposed Project, Mt Hope 30MW Biomass Power Plant, was published in the June 6, 2007 DEP Bulletin and comments were received and taken under advisement. Some comments were received that were related to the project but did not have specific bearing on criteria of this exemption determination. This is a determination that the project is exempt from the Highlands Act. The application is still required to obtain all other necessary approvals.

If the applicant disputes the Department's factual findings or any of its conditions or if anyone is aggrieved by this determination, that person may request an adjudicatory hearing. A request for an adjudicatory hearing shall be submitted in writing by certified mail, or by other means which provides verification of the date of delivery to the Department, within 30 days of notice of this decision published in the DEP Bulletin in accordance with N.J.A.C. 7:38-1.5. The adjudicatory hearing request must be accompanied by a completed Adjudicatory Hearing Request Checklist and Tracking Form (form enclosed).

When contacting the Department about the Project, please identify the program interest number and the activity number found above at the top of all written correspondence submitted to the Division of Watershed Management. If you have any questions or require further assistance, please call Rebecca Hill at (609) 984-6888.

Sincerely,



Terry Pilawski, Chief  
Bureau of Watershed Regulation

Enclosure(s)

- c: Christopher Corliss, The Louis Berger Group, Inc.  
Rockaway Township Clerk  
Rockaway Township Construction Official  
Rockaway Township Environmental Commission  
Rockaway Township Planning Board  
Ray Zabihach, Morris County Planning Board  
Cindy Sopka, Morris County Environmental Commission  
Chris Ross, Highlands Council  
Elliot Ruga, Highlands Coalition  
David Feifer, ANSEC  
Lawrence Baier, Director DEP Division of Watershed Management  
Barbara Baus, NJDEP, Bureau of Coastal and Land Use Compliance and Enforcement (w/o encl.)  
Armand Perez, NJDEP, Bureau of Coastal and Land Use Compliance and Enforcement (w/o encl.)  
Daniel Bello, NJDEP, Bureau of Inland Regulation (w/o encl.)  
Barry Miller, NJDEP, Bureau of Watershed Regulation (w/o encl.)  
Rebecca Hill, NJDEP, Bureau of Watershed Regulation (w/o encl.)  
Abigail Amutah, NJDEP, Bureau of Watershed Regulation (w/o encl.)  
Lewin Weyl, Deputy Attorney General