

DEPARTMENT OF ENVIRONMENTAL PROTECTION
OFFICE OF THE COMMISSIONER
Notice of Receipt of Petition for Rulemaking
Department Organization; N.J.A.C. 7:1

Request for rules requiring disclosure of certain Department senior staff members' scheduled meetings with nongovernmental entities and individuals, and records related to such meetings; and repeal of rule describing the function of the Department's Press Office

Petitioner: New Jersey Public Employees for Environmental Responsibility

Take notice that on May 3, 2007, the Department of Environmental Protection (Department) received a petition for rulemaking from the New Jersey Public Employees for Environmental Responsibility (petitioner). The petitioner requests that the Department "promulgate regulations to govern mandatory public disclosure of activities of private individuals that may influence [Department] governmental processes." Specifically, and as described more fully below, the petitioner requests that the Department propose rules that require the disclosure of information related to meetings of certain Department senior staff with representatives of nongovernmental entities and/or regulated private individuals, and to repeal the portion of the Department Organization rules, N.J.A.C. 7:1, that describes the functions of the Department's Press Office.

First, the petitioner requests that the Department promulgate rules that require disclosure of the meeting calendars of certain Department senior staff (specifically, the Commissioner, Deputy Commissioners, Chief of Staff, and Assistant Commissioners) to allow monitoring of meetings held with representatives of regulated industry, nongovernmental entities, and/or regulated private individuals. The petitioner suggests this disclosure could be accomplished by posting the information on a dedicated page of the Department's website on a daily or weekly basis. The posted information should include meeting attendance sheets, meeting objectives, meeting minutes, as well as all presentations, notes or written materials distributed or discussed at the meeting. Additionally, the identities of private, non-governmental employees and specific projects, Department approvals sought, and clients represented should be disclosed.

In addition to disclosure of the meetings information, the petitioner requests that rules be promulgated to require that all other meetings, correspondence, and/or communications between regulated private individuals and Department Assistant Commissioners, Deputy Commissioners, and Division Directors be defined as public records subject to disclosure under the Open Public Records Act.

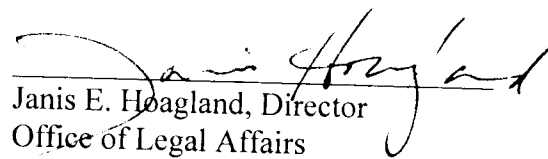
Second, the petitioner requests that the portion of the Department Organization rules that describes the Department's Press Office functions (see N.J.A.C. 7:1-1.2(f)3) be repealed. Petitioner asserts that the description, which provides that the Press Office serves as a single point of contact between the Department and media for the purpose of facilitating release of accurate and timely information to the press and assuring that all Department communications

with the press reflect the current policies and priorities of the Commissioner, is in effect a "gag order on DEP staff." The petitioner asserts that the rule inappropriately limits the content of what staff can express to the media and requires that they conform such communication to the policies and priorities of the Commissioner, which may force them to violate the ethical standards that are applicable to the professions of which they are members. The petitioner asserts that the rule is inconsistent with the public interest, restricts the free flow of public information, violates professional ethical standards and duties to the public interest, limits the public's right to know and access to the best available science, and, in addition, chills the free speech rights of Department employees.

The petitioner asserts that the requested rule changes are supported by, consistent with, and/or further the objectives of Governor Corzine's Executive Order No. 1 (2006); the Conflicts of Interest law, N.J.S.A. 52:13D-12 et seq.; the Open Public Records Act, N.J.S.A. 47:1A-1 et seq.; and the Legislative and Governmental Process Activities Disclosure Act, N.J.S.A. 52:13C-18 et seq.

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

6/7/07
DATE



Janis E. Hoagland, Director
Office of Legal Affairs