

February 22, 2008

State Ethics Commission  
PO Box 082  
Trenton, NJ 08625

Via email, facsimile, and US mail

Re: Request for investigation and determination regarding potential ethics code violations

Dear Commission:

For the reasons stated below and based upon the attached emails summarized below, pursuant to New Jersey Conflicts of Interest Law, N.J.S.A. 52:13D-12 et seq., New Jersey Public Employees for Environmental Responsibility (PEER) requests that the Commission investigate, find facts, determine compliance, and take enforcement action, as warranted, against potential ethics violations.

New Jersey PEER is the state chapter of a national alliance of state and federal agency resource professionals working to ensure environmental ethics and government accountability.

We recently received a series of email communications between Mary Comfort, an employee of the Department of Environmental Protection (DEP), and private sector representatives of a DEP-regulated development project known as Takanassee. These emails were discovered pursuant to an OPRA request filed by representatives of Surfrider Foundation. Surfrider is opposing the issuance of a DEP CAFRA permit to Takanassee. Surfrider recently provided these emails to PEER. PEER has had no involvement in that CAFRA permit process. Although we have no reason to doubt their authenticity, PEER has not independently authenticated the emails.

The pattern of conduct evidenced by these email communications and private meetings is disturbing. We believe the conduct suggests improper political intervention in the CAFRA permit process and raises issues regarding potential violations of the New Jersey Conflict of Interest Law and DEP Ethics Code.

Specifically, applicable Conflicts of Interest Law and DEP's Ethics code provisions mandate that DEP employees:

- “shall hold the respect and confidence of the people. Public officials must, therefore, avoid conduct which is in violation of their public trust or which creates a justifiable impression among the public that such trust is being violated.”
- No Department employee shall knowingly act in any way that might reasonably be expected to create an impression or suspicion among the public having knowledge of his or her acts that he or she may be engaged in conduct violative of his or her trust as a Department employee.
- No Department employee shall willfully disclose to any person, whether or not for pecuniary gain, any information not generally available to members of the public which he or she receives or acquires in the course of and by reason of his or her official duties.

Based on the emails, it appears that Ms. Comfort has not fulfilled her duty to avoid “conduct which is in violation of their public trust or which creates a justifiable impression among the public that such trust is being violated.” Instead, Comfort may have engaged in such conduct.

It also appears that Ms. Comfort’s actions have created a “justifiable impression among the public that such trust is being violated”.

Furthermore, it appears that Ms. Comfort willfully disclose[d] to any person, whether or not for pecuniary gain, any information not generally available to members of the public which he or she receives or acquires in the course of and by reason of his or her official duties

As noted below and in the attached email documents, Ms. Comfort appears to have disclosed to private persons “deliberative” and “pre-decisional” “information not generally available to members of the public.” Examples include:

1) In a 10/2/07 email forwarded and/or written to “ansellzaro” (representative of the Takanassee developer), Comfort refers to “working with wolf”. “Wolf” is Wolf Skacel, DEP Assistant Commissioner for Enforcement. In so doing, she disclosed and provided confidential enforcement information. Worse, she appears to be attempting to direct moneys from a pending DEP enforcement action to the benefit of “ansellzaro”’s client. The pending enforcement money’s would be directed to satisfy DEP staff recommended regulatory obligations as then contemplated conditions of the CAFRA permit (i.e. recommendation by SHPO for funds to “movement/preservation of the buildings” - see 10/2/07 email from Colleen Keller (DEP/CAFRA) to Comfort).

2) In the same 10/2/07 email forwarded to and/or written to “ansellzaro”, Comfort disclosed and provided information not generally available to the public regarding the

DEP staff review of the CAFRA permit application then pending before DEP, specifically regarding the staff finding that the permit application “**does not meet the parking requirements within the traffic rule**”. Comfort appears to be directly involved in negotiating regulatory compliance issues. That type of involvement should be limited to expert CAFRA permit review staff. In a subsequent 10/2/07 4:04 pm email, Comfort appears to disagree with and appear to over –rule the finding of DEP staff when she advised ansellzaro that “**hold off on the parking question. Looks like you guys ar all right**”. This communication to a regulated entity directly contradicted DEP CAFRA staff’s finding that the application “**does not meet the parking requirements within the traffic rule** “

3) In a 10/3/07 email to Jerold Zaro, Comfort recognizes the implications of the failure to comply with the parking requirements (i.e. additional required parking would conflict with public access and force “revised Subchapter 5 calculations”.) These CAFRA permit application deficiencies could adversely impact the economic and regulatory viability of the permit, so are highly significant.

4) An October 28, 2007 email documents communications between Comfort and other legal representatives of the Takanasee project. Comfort’s role usurps permit review staff and appears to be not only biased but unfounded.

5) July 5, 2007 and July 9, 2007 emails show Comfort directly involved and disclosing or possibly even negotiating critical conditions of the CAFRA permit review process.

6) A July 10, 2007 email documents a Sunday meeting at the site for a personal tour. Such a site visit is highly unusual for a DEP political appointee not trained in coastal resource management.

7) Emails dated 10/30/07; 11/1/07; and 11/7/07 show Comfort discussing finalization of pending CAFRA permit conditions with the CAFRA applicant. These emails suggest that Comfort is engaged in discussions or negotiations and disclosing information to the applicant that is not available to the public. Comfort also appears engaged in technical permit review functions under CAFRA not under Ms. Comfort’s management oversight within DEP.

8) An email of 11/8/07 shows Ms. Comfort explicitly coaching the applicant to remedy a procedural deficiency in the application.

9) A June 7, 2007 email suggests that there were off site lunch(s) meetings being planned and appears to document that at least one lunch meeting had already occurred.

The selective disclosure of deliberative, pre-decisional, and enforcement sensitive information to representatives of a developer with a known economic stake in the outcome of the CAFRA permit during the course of DEP review of that CAFRA permit undermined the integrity of the permitting process and created an appearance of, or actual, ethics violation.

In summary, the totality of these emails paints a disturbing picture. We ask that the Ethics Commission conduct an investigation into this matter and determine if Conflict of Interest and ethics laws were violated.

We request that the Commission address this matter during the next meeting.

Sincerely,

Bill Wolfe  
Director  
New Jersey PEER

Email attachments