

# Ten Questions the Senate Judiciary Should Ask Robert Martin

## Nominee for DEP Commissioner

**1. Qualifications** – With a BA in economics and MA in finance, your professional experience is in business consulting.

- Do you have any science, legal, or regulatory training or experience?
- Have you recently done any local civic or volunteer work on protecting the environment, or membership in any group related to the environment?
- Please describe the training, knowledge, experience, and commitment that you feel qualifies you for Office of DEP Commissioner, a complex regulatory agency with a staff of over 3,000 and budget of \$300 million.
- Please provide specific examples of your work at the firm Accenture – did you work on privatization and deregulation policies and practices, especially for water and energy public utility systems? Please provide details. *Will you pursue a similar agenda at DEP?*

**2. Regulatory Moratorium** – Governor Christie issued a series of Executive Orders (#1-4) that, among other things, imposed moratorium on adopting proposed regulations; mandated cost benefit analysis (CBA); established new “common sense” policies, including cost benefit analysis, federal consistency and waivers; and revised longstanding administrative law practice by creating a “Red Tape Review Group” and a Regulatory Czar in the Lt. Governor’s Office who may block or influence the content of proposal and adoption of regulations. EO #1 blocked twelve major DEP rules. [See [http://www.peer.org/news/news\\_id.php?row\\_id=1310](http://www.peer.org/news/news_id.php?row_id=1310) ]

- Which if any of the 12 rules blocked will not be adopted as proposed? Please explain in detail any specific changes and the rationale for blocking or revising any proposed rules.
- Please detail your understanding of the statutory authorization of CBA and its role in regulatory decision-making at DEP. What is your plan to implement the new policy to mandate cost benefit analysis?
- DEP has one economist on staff, and he is not trained in CBA. How will CBA be conducted (and staffed)?
- Assistant Commissioner Wittenberg recently testified to the Senate Environment Committee that the draft Oyster Creek NJPDES cooling tower permit will be subject to a CBA. Is this legal?

The framework of federal environmental law allows and encourages states to be more stringent. For the last 35 years, New Jersey has pursued a policy – generally - of more stringent requirements than federal minimums.

- Please justify the policy to require that DEP requirements that are more stringent than federal counterparts be subject to additional justification and that new State rules adopt the federal program rules.

**3. Transition Report** – The DEP Transition Report made numerous controversial recommendations.

Please describe in detail which specific recommendations you have accepted and plan on implementing at DEP, and those that you have rejected.

**4. Pending Administrative Order on Guidance** – Assistant Commissioner Kropp recently testified to the Assembly Regulatory Oversight Committee that you would soon issue an Administrative Order making all current DEP Guidance voluntary and restricting enforcement to the express provisions of regulation.

- Please describe the rationale and impacts of this order.
- What DEP Guidance documents and Technical Manuals would be impacted?

**5. Scientific Integrity** – The Corzine Administration announced a plan to create a Science Advisory Board. Appointments to that Board were never made. PEER has recently prevailed in an Open Public Records Act lawsuit to force DEP to reveal the names of nominees to the board and their corporate sponsors. [See [http://www.peer.org/news/news\\_id.php?row\\_id=1306](http://www.peer.org/news/news_id.php?row_id=1306)]

- What is your plan for a Science Advisory Board and how will you assure that no regulated entities with economic stakes in science and policy are members of that Board?

The DEP has been criticized for policies and practices that politicized science within DEP and restricted the public release of data and scientific reports. [See [http://www.peer.org/news/news\\_id.php?row\\_id=1220](http://www.peer.org/news/news_id.php?row_id=1220)]

- What is your plan to assure that political concerns and the DEP press office do not interfere in DEP science?
- How will you make DEP science more open and transparent?

**6. Transparency** – Governor Christie has made a commitment to increasing transparency in government. The Corzine administration denied petitions filed PEER that sought rules to increase transparency and accountability at DEP. [See [http://www.peer.org/news/news\\_id.php?row\\_id=1295](http://www.peer.org/news/news_id.php?row_id=1295)]

The PEER rules would 1) require public disclosure of meetings and communications between DEP policy makers and representatives for regulated industries and developers; 2) post calendars of top officials on the web; and 3) ban gag orders so that scientists, inspectors and other professional staff can speak honestly to the public and the media without fear of retaliation.

- Will you agree to reconsider and act to approve these transparency petitions?

**7. Environmental Justice** – DEP recently issued a Report that found that New Jersey’s urban areas and minority and lower income groups are disproportionately impacted by pollution. NJ EJ Advisory Council in March 2009 issued a Report to DEP with recommendations, including new requirements to improve urban air quality, address cumulative impacts, and mandate additional pollution controls and risk assessment requirements.

- Do you support these recommendations and how will you address New Jersey’s pressing urban environmental quality deficits?

**8. DEP Role in Economic Development** – You have stated that you want DEP to play a more active role in promoting economic development. However, DEP is a regulatory agency created to protect public health and the environment, and promotion of economic development is not the legislative mission of DEP or the policy of state environmental laws. Please explain what you meant by these remarks.

**9. Water Resource Protection** – The Water Supply Master Plan is long overdue.

- When will it be proposed?

The Corzine administration weakened the DEP “Category One” water protection and stream buffer program. [See [http://www.peer.org/news/news\\_id.php?row\\_id=1058](http://www.peer.org/news/news_id.php?row_id=1058)]

- Will you restore the prior C1 methodology to assure protection of 300 foot buffers and upgrade Category One designations for all 1,600 “Candidate C1 Waters” listed in the March 2003 NJ Register? If not, why not?

**10. Implementation of the Global Warming Response Act** –

- What is your plan to implement deep GHG emission reductions to meet the requirements of the GWRA?

In 2005, DEP adopted a regulation that defined GHG’s as “air contaminants” under the New Jersey Air Pollution Control Act. This authorized DEP to regulate GHG emissions.

- When will you propose regulations based on this authority to implement specific DEP regulatory controls on all sectors and major sources of GHG emissions?

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