

RED TAPE REVIEW GROUP  
FINDINGS & RECOMMENDATIONS

APRIL 19, 2010



SUBMITTED BY

Honorable Kim Guadagno, Lieutenant Governor, Chair

Honorable Steven V. Oroho, Senator, District 24

Honorable John J. Burzichelli, Deputy Speaker, District 3

Honorable Scott T. Rumana, Assemblyman District 40

Honorable Bob Martin, Commissioner of Environmental Protection

Honorable Lori Grifa, Acting Commissioner of Community Affairs

Honorable Jeffrey S. Chiesa, Chief Counsel to the Governor

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This regulation requires a corporation which is not required to file a Federal income tax return to submit proof to the Division of Taxation of its accounting period for reporting purposes. Again, this information is provided to the Division of Revenue upon registration, so this rule can be repealed.

### N.J.A.C. 18:32-1.2. - *Written Protest.*

Protests must be in writing and include taxpayer identification items and the specific amount of taxes, interest and/or penalties under protest, any uncontested amounts, and the grounds for the protest with supporting facts. Subsection (b) of the regulation states that a protest that lacks the stated amount of the taxes under protest (or uncontested), the grounds for the protest and the facts supporting the protest will not be considered a valid protest. This subsection has been interpreted as exceeding the statute, however, and the Division proposes its repeal.

## Department of Environmental Protection

The Department of Environmental Protection has undertaken a partial review of existing rules and regulations pursuant to Executive Order No. 2 (2010) and has suggested that the following rules are candidates for repeal or revision.

### N.J.A.C. 7:15 - *Water Quality Management Planning Rules*

These rules set forth where sewers may be placed throughout the state and the density of developments in other areas. We are already actively engaged in a series of stakeholder meetings to review and address the issues raised by the regulated and environmental communities.

### N.J.A.C. 7:7E - *Public Access*

While the DEP has historically imposed public access requirements pursuant to development applications on lands adjacent to tidal waters, a '08 rule adoption significantly extended the DEP's regulatory reach by requiring municipalities and others to provide 24/7 access and other amenities and by imposing substantial monetary obligations to provide off-site access when on-site access was not feasible. The DEP is about to undertake a stakeholder meeting on these issues to better define the public's need and right for access to tidal waters under the public trust doctrine and to seek a balance with the interests of those who are developing along those waters or seeking to enhance economic opportunities.

### N.J.A.C. 7:38 - *Highlands*

In 2004 the Legislature enacted the "Highlands Water Protection and Planning Act." Major provisions of this law included designation of Preservation and Planning areas,

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creation of the Highlands Water Protection and Planning Council, directing the DEP to prepare rules for enhanced protection of the Preservation Area, providing 17 types of projects that were exempt for the rules, and specifically providing that agriculture was exempt from the rules.

The act has been highly controversial because it essentially took away nearly all of the land values in the Preservation Area and did not provide a mechanism for adequate compensation, was based on water supply and quality assumptions that have been questioned, did not provide mechanisms for targeting growth anywhere in the Planning Area, further restricts any significant development in the Planning Area, and has been implemented in such a way by the Department and the Council so as to prevent or not easily allow even redevelopment projects. There are also several administrative issues between the DEP and the Council that need to be resolved.

The DEP is fully aware of the issues and controversies and is about to begin a series of stakeholder meetings, involving the legislative leaders and a number of interest groups. The stakeholder process will look to see where greater flexibility in the law exists and if that flexibility should be exercised as well as mechanisms to help facilitate certain development projects. The DEP recognizes that a number of regulatory provisions have been enacted since the adoption of this act and that there may be other ways to protect the water and forest resources of this area. We also plan to fully analyze the underlying scientific and non-legislative policy decisions that were made concerning the law's implementation.

### *N.J.A.C. 7:26C, 26B, 26D, 26E and N.J.A.C. 7:14B - Licensed Site Remediation Professional Program*

Last legislative term the Legislature enacted the Site Remediation Reform Act. This law required the DEP to license site remediation professionals to be able to clean up contaminated sites without extensive oversight by the DEP. DEP is committed to ensuring that this program works as the Legislature intended so that the 20,000 known contaminated sites can be remediated as quickly as possible and hopefully returned to productive economic use.

### *N.J.A.C. 7:26E – Re-adoption of the Technical Requirements for Site Remediation*

The Technical Requirements for Site Remediation (“Tech Regs”) is the regulation that describes the process for remediating contaminated sites. The regulated community has expressed their concern that this regulation is overly prescriptive which hinders the rate at which sites can be remediated.

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In conjunction with the newly implemented Licensed Site Remediation Professional (LSRP) program, the DEP is redrafting the Tech Regs to make them less prescriptive and more goal and performance based. A steering committee of site remediation stakeholders (regulated community, industry trade associations and LSRPs) has been established to provide input to the DEP as part of this process. This group meets on a regular basis with DEP staff to provide input on appropriate changes to both the Tech Regs and the guidance documents. The DEP believes that this active outreach and involvement of stakeholders will result in a streamlined rule that is focused on achievable outcomes with the guidance documents serving as the “how to” manual for conducting site remediation activities.

### *N.J.A.C. 7:26C - The Site Remediation Reform Act (SRRA)*

Signed into law in May of last year, the SRRA authorized the DEP to adopt special rules to implement the provisions of the act. The rules, known as the Administrative Requirements for the Remediation of Contaminated Sites (ARRCS rule), became effective upon filing on November 4, 2009. The emergent nature of this special adoption of the ARRCS rule did not provide, under the law, an opportunity for the public to comment on the rulemaking.

At this time, the DEP is working on proposing minor changes to the ARRCS rule to clarify and simplify certain provisions in the rule. This rulemaking effort thus provides an opportunity for the public, including stakeholder groups, to provide input where the previous rulemaking effort did not provide that opportunity.

The DEP is actively soliciting comments from stakeholders via a listserv and internet outreach process similar to an interested party review, as well as from various stakeholder meetings that are taking place on a regular basis. In addition, the proposal will be subject to formal public comment under the “Administrative Procedure Act.” The DEP is planning to propose the rule in late September of this year.

The DEP plans to propose further more substantive changes to meet its obligations for when the program becomes fully effective in May of 2012. The DEP will continue to actively seek involvement from stakeholders early in the rulemaking process. SRRA and the ARRCs regulations will expedite the clean-up of 20,000 contaminated sites, thereby providing greater protection of human health and the environment and freeing up sites for redevelopment.

### *N.J.A.C. 7:27-19 - High Energy Demand Day compliance date extension*

The existing regulatory requirement will be modified to provide an additional 20 months for certain electricity generating units (those with at least 30% control of NO<sub>x</sub>) to comply

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with tighter NO<sub>x</sub> emission limits (currently required by May 1, 2015). Extension of the compliance date was discussed in response to comments on the rule when adopted in 2009.

### *N.J.A.C. 7:31 - Toxic Catastrophe Prevention Act*

This law was passed after the catastrophe in Bhopal, India where an explosion at a chemical plant killed thousands of persons living near the plant. The Act is intended to prevent similar incidents in New Jersey by proper planning to prevent an incident and to properly respond to it. Recent regulatory changes to this act changed the types of plans certain facilities had to supply, thus costing them significantly more money. Food processing plants were particularly impacted. DEP is looking at the impacts of these regulatory changes, that have gone beyond federal standards, to determine their impacts on the regulated community and if they are necessary for public health and safety.

### *Waivers*

Executive Order No. 2 requires that each DEP adopt regulations that allow it to waive compliance from its rules in certain circumstances. Perhaps in no department is this authority more needed than in the DEP where we have thousands of pages of proscriptive regulations, many often in conflict with each other, many which are near impossible to meeting, many which do not allow for flexibility where a project would actually further the goals of the Department, and many which prevent decisions that could lead to enhanced environmental protection and a net increase in ecological values.

The DEP is working on crafting necessary regulatory changes to allow for the waiver of substantial compliance with its regulations where that waiver would lead to a better environmental result and where that waiver would further the overall policy goals and objectives of the DEP and the State.

### *Flexibility*

Similar to the need for a waiver is the need for greater flexibility in how we protect our natural resources of the State. By focusing on results and state and regional planning goals, rather than site-by-site decision making, we can significantly enhance our environment, ecological resources, and promote sensible economic growth at the same time. We are exploring avenues to incorporate these concepts into our rule and decision making.

### *Time of Decision*

Executive Order No. 2 requires that the DEP adopt a time of decision rule governing the rules that will apply when an application for a permit is made to the Department. Given the number of statutory programs in place at the DEP and the number of state and federal

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laws we are implementing, adoption of a time of decision rule is complicated. We fully intend to abide by the terms of EO 2 and will shortly begin a rule writing process.

### N.J.A.C. 7:7 and N.J.A.C. 7:7E - *Coastal Rules*

DEP is currently drafting a rule proposal to combine the Coastal Permit Program Rules, N.J.A.C. 7:7-1 with the Coastal Zone Management Act rules at N.J.A.C. 7:7E-1 to form one comprehensive coastal rule. This will reduce confusion and provide clarity for people interacting with these rules. These rules expire in March 21, 2011 and July 7, 2011 respectively. In the re-adoption, DEP will remove the traffic and parking requirements, reduce the permitting process (general permits to permit by rules) for activities in manmade lagoons, remove other prohibitions such as restaurants on piers which have no environmental basis, clarify dock requirements, reduce the scope of dune regulation, and clarify the filled water's edge rule, streamline the Tidelands grant signature process, among other streamlining and efficiency changes, some recommended by the Permit Efficiency Task Force.

### N.J.A.C. 7:13 - *Flood Hazard Area Control Act*

The DEP will be proposing amendments to the above rule to streamline and clarify application of these rules, adopted in 2007 which include but are not limited to: 1) Adding more General Permits, these help applicant to obtain permits faster. New GP's: trails and board walks, site remediation, forestry; 2) Adding more Permit by Rules which reduces staff work load. 3) Examining the Riparian Zone rules, looking into relaxing regulations for areas with previously disturbed riparian zone. 4) Adding buffer averaging and/or mitigation type of language for disturbance in riparian zone. 5) Comparing Coastal Rules to Flood Hazard rules to provide uniform requirements based on a particular activity. 6) Re-evaluate acid producing soils criteria; and 7) Unified application procedure for all Land Use permits.

### N.J.A.C. 7:27 - *Title V program streamlining*

The DEP is considering revising existing generic air permit conditions to allow for use of some temporary equipment at major operating facilities. This approach, if approved by EPA, is intended to address industrial facilities' concerns regarding the need for a mechanism to allow facilities to periodically employ temporary equipment for short periods of time and on short notice.

### N.J.A.C. 7:14A - *Stormwater Management Permitting*

Currently, the requirements of the New Jersey Stormwater Management Act are conducted at the local and state level resulting in redundant efforts. The DEP has developed a pilot program (including 27 towns) to determine if the stormwater reviews currently performed by the state can be eliminated allowing the function to be performed

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solely by the municipalities as part of their development project reviews. It is important to note that this is not a new responsibility for municipalities, but rather a strengthening of the existing relationship between the DEP and the municipalities.

### *Delegation of Permitting Authority*

As with the stormwater permitting program outlined above, the DEP will explore other permits that we issue that can more easily be administered on the local level. These will likely encompass minor projects involving individual homeowners where the impacts to the environment are negligible. The DEP is also committed to reviewing its regulatory relationship to other regulatory and planning entities, in particular the Highlands Commission and the Pinelands Commission to ensure a consistency of approach to protecting natural resources while promoting economic growth and also to eliminate redundant and conflicting processes.

### *N.J.A.C. 7:8 - Municipal Stormwater Program*

The DEP has adopted regulations requiring municipalities to adopt certain stormwater ordinances and implement certain practices. The DEP has taken this action in accordance with federal mandates by the US Environmental Protection Agency. In certain instances municipalities have claimed that our rules are too proscriptive and costly. The Department is looking at the flexibility the federal law may allow us to implement our municipal stormwater program and ways that we can make it easier and less costly for local governments to comply. We are also committed to a continuing educational and outreach program to assist municipalities in their compliance efforts.