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Environmental and Labor Groups File Lawsuit Challenging DEP Waiver Rule and Call on Administration to Withdraw the Rule

Trenton – Today environmental leaders and labor organizations from across the state came together to announce they have filed suit to block the Department of Environmental Protection’s Waiver Rule. The Waiver Rule was recently adopted by the DEP has gone beyond what they can legally do and it is an abuse of power. This rule gives too much power to the DEP Commissioner and will undermine 40 years of environmental progress and critical legislation passed by the New Jersey Legislature to protect our water, air, and open spaces.

Twenty-five organizations joined in the lawsuit and maintain that the Waiver Rule will create loopholes and weaken environmental protections in New Jersey. This rule is too vague and will result in more pollution, flooding, and sprawl. The rule would give polluting industries the ability to negotiate an end run around most state environmental standards if they can convince the NJDEP Commissioner that complying would be “unduly burdensome” to their business interest.

“This rule is the broadest attack on environmental protections in 40 years. It is so vague that it is subject to abuse and ‘pay-to-play’. It was wrong to propose this rule and the Governor must withdraw it to protect New Jersey’s environment from special interests,” **said Jeff Tittel, director of the NJ Sierra Club.** “Basically this is just waiver goodbye to environmental protection”.

Under this rule, 124 DEP programs are at risk, impacting hundreds of permits. There are no standards outlined to evaluate the criteria that will be used to issue these waivers. Waivers will be case-by-case so anyone can come in and apply, adding more work for an already overburdened DEP staff and less transparency and predictability in permitting. The development community has emphasized the need for transparency and predictability in the permit application process, and these rules do neither. This rule is not a response to problems faced by regulators; it simply allows DEP and developers to side-step environmental protections. This rule is going to create a bigger slowdown in environmental permitting as all applicants will want a waiver and will sue the DEP when they do not receive one.

“Under the guise of improving the environment, DEP’s waiver rule actually *reduces* the environmental protection that each and every New Jersey citizen is entitled to, and in adopting a blanket waiver rule DEP has unconstitutionally exceeded the authority granted to it by the legislature,” **stated Michael Pisauo, New Jersey Environmental Lobby.**

By adopting the Waiver Rule the Christie administration has overstepped its constitutional authority by waiving protections under the law instead of making sure that laws are faithfully executed. This is not the first time the Christie administration has overstepped its constitutional powers, recently the court overturned Governor Christie’s attempt to abolish the Council on Affordable Housing.

Says Maya van Rossum, the Delaware Riverkeeper, "The Governor's Waiver Rule will pollute the water we drink and the air we breath, it will subject communities to increased flooding and pollution, it will destroy jobs dependent upon healthy environments and compromise worker health, and it will take from our kids and families the natural areas we enjoy and learn from. The Governor's Waiver Rule will strip protections vital for our kids and communities and will turn New Jersey from an envious place to live to a state that is once again the butt of jokes."

The Waiver Rule would allow hundreds of environmental protections to be waived including state's Safe Drinking Water Act, Radiation Protection Act, and Air Pollution Control Act just to name a few. The Administration's attempt to issue a blanket waiver for all of these rules is unprecedented. We believe that if a waiver is issued it must be done for each statute individually and with specific criteria tailored to the specific statute instead of one broad rule.

"Gov. Christie is doing an illegal end-run around the environment and the Legislature," said **Doug O'Malley, field director for Environment New Jersey.** "There's no law that allows the Governor to issue blanket waivers from environmental protections. If the Governor wants to change environmental laws, he needs to work with the Legislature, not rule from on high."

Over a hundred existing rules can be waived under this new proposal. Environmental and labor groups are concerned this will allow polluters and developers to be exempt from critical environmental and public health and safety protections including the Pollution Prevention Act, hazardous discharge regulations, and air pollution controls. In a state with more than 20,000 contaminated sites, waivers could be granted for clean ups allowing people to live on toxic sites that have not been properly cleaned up. In addition, the rule could lead to more pollution in communities in areas that already are burden with pollution. The groups note that many of the Department rules that could be waived already have waiver provisions written into the regulations, based on the intent of the Legislature in adopting those protections.

John Pajak, a refinery worker and Vice President of Teamsters Local 877, which represents employees at the ConocoPhillips petroleum refinery and Infineum chemical plant in Linden, NJ, said, "I work with hazardous chemicals daily. DEP enforces laws, like one to prevent toxic leaks, fires, and explosions, that protect my safety, my co-workers, and the community. We will not allow Governor Christie to gut such vital safeguards."

The standards for waivers defined in the Waiver Rule are so vague that they provide no standards at all. Prior to the waiver rule, specific safeguards and detailed standards were included in environmental statutes and regulations, however the Waiver Rule creates "standard-less" exceptions leading to uneven and unfair enforcement of environmental protections. In order to seek a waiver applicants have to claim one of four criteria, which include unduly burdensome, net environmental benefit, conflicting rules, and public emergency.

"Under the waiver rule, DEP can arbitrarily allow violations of rules under the guise of "unduly burdensome" or "conflicting rules". It should be clear to the public that DEP is forgetting its

environmental protection responsibilities and catering to private industry,” **Jaclyn Rhoads, Director for Conservation Policy**

The Waiver Rule will allow the DEP Commissioner to waive compliance with regulations if he finds the regulation is unduly burdensome, conflicts with other DEP, state, or federal rules, or the Department believes some net environmental benefit can be achieved. The Commissioner could basically waive virtually any section of any rule. The definition of unduly burdensome can include hardship, alternative compensation, and excessive cost. Allowing net environmental benefit to be considered in the issuance of waivers may lead to developers cleaning up a polluted site while at the same time damaging wetlands, polluting rivers or harming endangered or threatened species.

Rick Engler, Director of the NJ Work Environment Council, which includes fifty labor organizations among its members, said: "DEP is supposed to protect the environment and this often includes the workplace environment. The waiver rule will lead to more workers getting sick from toxic exposures and dying in chemical explosions and fires. It must be stopped."

The Waiver Rule attempts to rewrite New Jersey's extensive environmental laws without the consent from the Legislature. DEP may only grant waiver's when given permission by the Legislature to do so. Many of NJ's environmental laws provide for a waiver under specific circumstances and provide clear requirements when and how to provide those waivers. The Waiver Rule gives the unfettered power over to the DEP Commissioner allowing for changes to be made to various laws with no standards or consent from the Legislature.

"We are very concerned about the potential impact of the Waiver Rule on public parkland. The Green Acres rules protect our public parks, conservation and recreation lands from being converted to other uses. Under the Waiver Rule, it appears that development of these lands could be approved if a local government claims, and DEP agrees, that protecting them is "Unduly Burdensome" or that developing them will result in a "Net Environmental Benefit".", **said Alison Mitchell, Policy Director for New Jersey Conservation Foundation.**

The Waiver Rule will create loopholes and open environmental protections to political abuse and pay-to-play negotiations for polluters and developers. Undue influence by politically connected developers and polluters will push through projects to the detriment of the environment. Mitigation and offsets will be used to push through projects that should not be built.

"This waiver will allow the 1% to get past the environmental professionals and the rules that protect the 99%. It's another example of deregulation that harms the many and benefits the few. Whether it is in the financial district, in our few remaining Open Spaces, near a reservoir or in a City, regulations protect the citizens and our environment. A waiver such as this is a terrible mistake," **explained Hetty Rosenstein, New Jersey Area Director for CWA.**

Currently the Waiver Rule does not require public notice for all waiver requests, only that waiver requests be included in any other public notice an applicant is required to provide. No provisions are given for public comment periods. The DEP will announce it is reviewing a waiver request and the decision it makes on its website, but neighbors of proposed projects won't be checking

online and may not realize environmental regulations no longer apply to a development near their home. Waivers may be issued and local governments and the community will not be aware that state regulations no longer apply to projects impacting their municipality and natural resources.

“The Rule does not give the public and affected municipalities any way to comment on application. A resident or local official is not able to point out when a waiver would cause environmental damage or create a hardship on the municipality.” **Sandy Batty, Executive Director, Association of New Jersey Environmental Commissions (ANJEC)**

Federally delegated programs, air emissions, fishing licenses, and criteria to protect human health are exempt from the waiver rule. However, under Governor Christie’s Executive Order 2, which restricts state agencies from adopting rules stricter than federal standards, regulations may be waived down to less strict federal standards instead of New Jersey’s.

“This rule violates the law, leaves too much discretion to DEP, has contradictory provisions, and has loopholes wide enough to drive a truck through. It is ripe for abuse, will increase red tape and the role of politics as well as decrease predictability and the role of science in decision making. By DEP’s own admission, the rule would have ‘negative environmental impacts’. If not overturned, buffers protecting drinking water will be smaller, folks will be more likely to be in harms way come floods, and there will be more emergency room visits by asthmatics and premature deaths due to dirty air,” **said Dave Pringle, Campaign Director of New Jersey Environmental Federation.**

The lax Army Corps of Engineer standards may be used in permitting wetlands instead of stricter New Jersey standards. On toxics in drinking water, the federal standard is cancer rates at one in 10,000 people and the New Jersey standard is one in 1 million people. The concern we have with cleaning up of toxic sites is that the standards will be waived or type of clean ups will be waived for the polluters at the expense of people who are impacted by those sites.

"Governor Christie's waiver rule seeks to promote a common sense approach to environment rules to promote jobs and growth. This waiver rule will further poison the air, our fragile waterways as well as thousands of hard working NJ families. This rule shows that common sense in the state house is not very common at all. NJ families deserve better," **stated Bob Spiegel, Edison Wetlands Association.**

The general provisions of the rule impacts states the rule would allow for an additional number of houses to be built, promoting sprawl and inappropriate land use development, allowing destruction of more critical natural resources and more evasion of important environmental standards.

“The waiver rule undermines home rule by allowing the administration to override local decisions,” **said Bill Kibler, Director of Policy and Science for the Raritan Headwaters Association.** “For example, in Tewksbury Township Bellemead wants to build an 800,000 square foot office complex and a wastewater treatment plant that would process 100,000 gallons of sewage per day. The project area is in the Highlands Planning Area, but Tewksbury recently

opted to conform the Planning Area portions of the township with the Highlands Regional Master Plan. One of the reasons was to protect Tewksbury from this unwanted development and to help protect the water quality in nearby Rockaway Creek. The waiver rule would allow DEP to waive several environmental and land use rules, including the Highlands Rules, to allow this development to go forward, even though it does not meet Tewksbury's municipal master plan."

The rule allows for a waiver if there are conflicting rules, defined in the rule as a situation where two or more DEP, other state agency, or federal rules are in conflict, making compliance impractical or impossible. This will allow inappropriate development that will destroy our resources to move forward. For example, when expanding a highway, the Department of Transportation rules allows for filling in a wetland rather than building a bridge over it, the more expensive protocol. If the State Planning Commission targets an environmentally sensitive area as a growth area, environmental regulations may be waived to allow development. The Delaware River Basin Commission could approve the use of hydrofracking and standards for wastewater discharge in the Delaware River Basin and, under this rule provision, the state could waive wastewater discharge requirements for suspended solids which would allow fracking waste in our waterways.

"The Sourland Mountain is the largest contiguous forest in central New Jersey, breeding area for thousands of migratory birds, and the headwaters of streams flowing into the Delaware and Raritan Rivers. We have recently seen what the Governor is doing to the Highlands Council- how can we expect anything different for other parts of the state?" **stated Andrea Bonette, Sourland Planning Council.**

The Waiver Rule undermines the core mission of the DEP, which is to protect the environment, our public health and safety. Instead this rule would waive environmental protections putting our environment and health at risk.

"Given the current conditions of water quality and coastal ecosystem stress throughout the State, it is imperative that the Department prioritize diligent enforcement of existing regulations instead of waiving vital public health and environmental protections," **said Cindy Zipf, Executive Director of Clean Ocean Action.** "This rule will weaken the environmental foundation of the Garden State and make our streams, rivers, and bays more polluted in both the short and the long term."

The development community has emphasized the need for transparency and predictability in the permit application process, and these rules do neither. Some politically-connected developers may benefit with waivers while smaller businesses will not, which leads to abuse and 'pay to play'. DEP may show favoritism to one developer and not others, resulting in litigation. As staff at the DEP continues to decline, litigation against the DEP will further tie up what few resources the DEP currently has. DEP's shrinking staff will not be able to properly scrutinize waiver requests.

"Environmental rules protect our families, our communities and our state. They are there for a very good purpose – to protect the public against powerful special interests like developers and industry. They are meant to insure that the state acts in a predictable way, on behalf of the public. This waiver rule throws those basic protections out the window, and empowers special interest to

destroy the environment for their own gain” said **Tim Dillingham, Executive Director of the American Littoral Society, a coastal conservation organization based in Highlands, NJ.**

All the groups in New Jersey are united in their efforts to prevent the Waiver Rule from going forward with this litigation being the first step in that process.

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