



April 8, 2011

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ATTN: DEP Docket No 03-11-02  
NJ Department of Environmental Protection  
Office of Legal Affairs, 4<sup>th</sup> Floor  
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Dear Mr. Brower,

The Delaware Riverkeeper Network is absolutely opposed to proposed rule N.J.A.C. 7:1B, the Waiver of Department Rules rule ("Waiver Rule").

The Waiver Rule:

- ✓ is redundant in that rules affected already have their own crafted waiver and variance provisions already available,
- ✓ it lacks the specificity of analysis and application necessary to ensure appropriate and evenhanded application of the rule,
- ✓ it lacks the guidance necessary to ensure the DEP's environmental protection mission is not undermined and the provisions of the rule are not abused,
- ✓ it fails to ensure a balancing of the equities and effects so as to protect the communities that will be affected by any waivers granted,
- ✓ it fails to look at the cumulative ramifications of the waiver provision either economically or environmentally, and
- ✓ it fails to include a fee provision necessary to cover the increased costs and work load for the Department that this rule will directly generate.

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Unfortunately, and embarrassingly, it is both a poorly conceived and poorly executed concept and document.

**If it has been determined that a waiver or variance provision in a particular law is inadequate, the appropriate response is a rule/regulation/legislation specific remedy that will address the specific requirements and shortcomings of the rule/regulation/law. A broad-brush response that has broad application is not likely to provide the targeted and most beneficial remedy needed.**

**That this rule is about waiver, as opposed to modified application of rules to accommodate specific and unique circumstances highlights the intent to overreach.** If the rule were truly about ensuring more effective application of rules for purposes of environmental, health and safety protection, and other community objectives, then it would be about modified application of the law to suit unique and defined circumstances – instead it is about wholesale waiver of the law. Clearly, this rule is a broad-brush overreach by the government in order to allow unfettered actions by those undertaking projects that inflict community and environmental harm.

It is quite informative and inequitable that the Waiver Rule provides weakening or waiving the application of protective regulations in some circumstances based on circumstances, but does not similarly provide the option or opportunity to identify unique circumstances when strengthened, more stringent, stronger, protections are needed and likewise allow them to be required in order to provide greater protections to communities who may already suffer from overwhelming flooding problems, or toxic contamination from business operations in their communities, or from loss of fisheries vital to sustain local jobs and economies, etc. **If there is a rule that allows less stringent application of the law in some circumstances, there should likewise be allowed more stringent application of the law in other circumstances when the case can be made that it is warranted.**

The Waiver Rule asserts that DEP's mission is to be advanced through effective and balanced implementation but really, the DEP's mission should be advanced by recognizing that priority protection of the environment provides economic, health, safety, and quality of life benefits to the entire state; where as a focus on "balance" introduces subjective prioritization that inevitably benefits one community to the detriment of another. True balance in implementation of environmental laws comes in the uniform benefits provided by environmental protection. **Protective environmental regulation may require developers, industry and others to change the way they do business, but it is an investment in change that properly ensures they internalize and fully cover the costs of their ventures. And protective environmental regulations ensure that our natural River and resources are protected in a way that protects our whole community – allowing our rivers and natural environments to serve and benefit multiple needs and communities, rather than the economic interests of a limited few. In short, protecting the environment is a legitimate and appropriate cost of doing business which should be paid for by the industry inflicting (or hopefully working to avoid) the harm.**

**The limitations on when this Waiver Rule can be used is actually quite limited – in other words, the universe of regulations to which it applies is expansive, over 97 rules by last count.** Fundamental protections from stormwater runoff that can cause flooding, erosion and pollution damaging to communities; protections for wetlands or limiting development in floodplains that also can put communities in the path of harm from flooding and pollution,

inflicting irreparable harms as well as costs that must be shouldered by the taxpayers rather than the developers that caused the damage – are among the long list of programs subject to waiver.

The materials accompanying the Waiver Rule discuss a focus on transparency and predictability and consistency in the application of regulation. But rather than help accomplish these goals, the proposed Waiver Rule actually undermines them.

- ✓ It ensures that **different business and community constituents will be treated differently from one another** – one business will be held to the letter of the law and required to design their project and implement it in a way that fully complies with the law, while another is allowed to operate without complying with the requirements of law in whole or part.
- ✓ **Small businesses will be particularly disadvantaged** as they will lack the financial and personnel resources needed to pursue the waiver option; while bigger business operations with greater financial and personnel resources will be able to more easily compile the necessary information and application materials, to engage in the meetings and lobbying needed to successfully escort their waiver materials to a successful conclusion securing the requested waiver.
- ✓ And **neither agency personnel nor the public are promised a quality and quantity of information necessary to make a truly informed decision** or to provide informed public comment – as the rule does not obligate the creation of such materials nor ensure their release to the public at a time and in a fashion that guarantees an opportunity for public review and comment prior to decisionmaking.

So all in all this rule creates an incredible level of inequity, unbalance, and unfairness among businesses who might avail themselves of the opportunity.

**It is disturbing that the rule talks about alleviating business operations of the “burdens” imposed by environmental protection regulations – rather than recognizing that in fact these are protections, benefits and gains for the public at large.** By preventing polluted stormwater runoff, appropriate siting of projects or activities, by protecting valuable ecosystems, environmental rules and regulations are protecting the public and taxpayers from the threats, harms and costs of flooding, erosion, drought, pollution, damaged fish populations that support fishing and ecotourism, etc.

**The cost implications of failing to protect the environment are very real:** naturalized areas along a water body help prevent the erosion of public and private lands, including the undermining of bridges and roadways. Protection of our streams is much more cost effective than having to restore them once damage is done; preventing our infrastructure from being undermined is much more cost effective than having to repair preventable damage. Preventing harms such as erosion damage can save thousands when compared to the cost of repairing severe harm.

- ✓ A vegetated buffer along a waterway protects and supports the banks and other critical parts of a stream’s make-up, allowing it to resist erosive forces and remain stable. The vegetation’s roots hold the riparian lands in place, maintaining the hydraulic roughness of the bank, slowing flow velocities in the stream near the bank.<sup>i</sup> Also, the absorption ability of a vegetated buffer, especially when it contains a mix of woody shrubs and trees, slows down the water in high stream flows and soaks up water, reducing in-stream channel velocity and volume during storm events<sup>ii</sup>, and thereby preventing non-natural erosion.

- ✓ In Ohio, the DOT found that on average it costs between \$3-\$10 per linear foot to preserve a stream, while it costs almost \$300 per linear foot to restore it.<sup>iii</sup>
- ✓ Protecting our floodplains and buffer areas keeps people from building in the floodplain where they are vulnerable to floods and therefore flood damages while at the same time protecting our public and private lands from being literally washed away.

The Waiver Rule materials acknowledge that there already exists in law provisions for waivers and variances – so this rule is not needed, nor is it therefore appropriate. The waivers and variances in place were the subject of thoughtful consideration and debate by the legislature, regulators and/or the public within the specific context they were to be applied. A blanket waiver of environmental protection laws with such a broad brush is truly an overreach. **If the DEP feels that waiver provisions of individual rules need alteration, then those waivers, in the context of those individual rules, should be carefully crafted, considered and applied within the context of that rule to ensure the level of detail, specificity and application necessary to ensure the goals of the rule and the waiver are fully realized.** A broad-brush waiver of this kind necessarily lacks the focus necessary to prevent misapplication, misinformation, and gaping holes because of the lack of focus.

**Important terms are used in the Waiver Rule and supporting information that are not defined, and as such ensure subjective, unbalanced, and unknown-to-the-applicant-and-public application of the rule.**

- ✓ Words such as “impracticable” or “excessive” that can have a range of definitions depending upon who is defining and applying it.
- ✓ The definition provided for the term “unduly burdensome” is ill defined, including subjective criteria or criteria that could have but lack a quantitative limitation or their application.
- ✓ The rule proposal asserts that appropriate application of a waiver includes circumstances when strict compliance with a rule would be unduly burdensome, imposes actual or exceptional hardship, or results in excessive cost – these terms need clear and quantitative definition to be of objective application and value; and they need to ensure consideration of the burdensome ramifications to others in the community of granting a waiver.
- ✓ In addition, it needs to be clear what elements are to be considered when assessing these undefined and ill-defined terms. While a stormwater best management practice may increase the cost (i.e. burden) of a particular development project, there are also very real and more significant costs and burdens to taxpayers, neighbors and downstream residents that come from failing to use a stormwater BMP approach to development. The ramifications of granting the waiver need to be included in the analysis: what increased erosion and flooding effects does failure to require compliance with the law inflict? What decrease in the value of nearby properties would the failure to use the required stormwater strategies result in? What is the lost value in terms of ecotourism and lost days at work by flood victims that result from using standard detention basins as compared to beautiful and beneficial infiltration systems? Both sides of the coin need to be earnestly, honestly and fully evaluated. The costs/burdens that are suffered by the community from degradation are real costs and significant, long-lived, burdens – they include lost market value of affected homes, loss of quality of life in the community, and increased taxpayer obligations to pay for emergency services, rebuilding eroded away infrastructure, repairing washed out riverbanks that cause pollution, infrastructure destabilization and the loss of public and private lands (through erosion) and more.

**Protection of healthy environmental ecosystems is always more cost beneficial than damage with later restoration.** It is more cost beneficial in terms the out of pockets to do the restoration work as well as the economic benefits derived from a protected habitat versus a restored one. So **to the extent the Waiver Rule is accepting and encouraging of mitigation in lieu of protection it is failing to be environmentally and economically wise with resources.** Further, mitigated environments are no where near as functional ecologically or in terms of addressing stormwater runoff or pollution issues as mature habitats, and therefore cannot and should not be considered as being on par in terms of performance as mature habitats proposed for destruction by development or other activities for which a waiver is being pursued.

**Allowing waiver of ecological protections in the face of a claimed emergency is often, in both the short term and the long term, not wise and ends up being more costly in terms of ramifications and future repair costs.** For example, after flood events communities often use a claim of emergency need to support their request to scour out stream corridors, stream banks and floodplains. The result is increased future flooding and erosion that requires near-term and long-term restoration and taxpayer dollars for emergency and rebuilding response. The proposed Waiver Rule allows for waiver without any guidance as to when it might be appropriate and to what degree – a rule that provides no guidance for full waiver of an existing regulation is reckless and opens tremendous opportunity for abuse and misapplication.

**The Waiver Rule's evaluation criteria are woefully inadequate and extensively subjective – without providing the objective assessment criteria for a waiver request this rule becomes little more than a rubber stamp for waiver requests.** The first provision of the rule 7:1B-1.1 states very bluntly that this is a rule applied at the agency's discretion – therefore, its application is subjective and at the whim of the individual applying it. The issue of subjectivity is compounded by the failure of the rule to provide needed objective, quantitative, criteria and guidance as to how and when the rule should be applied; and the minimal guidance on application given is either subjective or woefully limited. Considering the broad expanse of the rules to which this Waiver Rule applies – over 97 at last count – objective criteria and clear guidance on its application is not just warranted but crucial.

The requirement of 7:1B-2.3 that the notice for request of a waiver simply be part of the public notice being pursued for the project does not go far enough. **The public notice required for someone pursuing a waiver -- a rather extreme measure in any circumstance, in that it is seeking to waive the requirements of existing law – should be the subject of its own notice and public comment process; to allow the notice of a request for waiver to be buried in the context of other regulatory notice requirements does a disservice to the public and denies the agency decisionmakers of the full value and benefits of the public comment process by limiting the public awareness of the request and therefore the need to comment.** If a separate notice is not deemed acceptable, then there must be specific notification mandates that make sure the inclusion of a waiver request is put front and center of any notice given so that the public can quickly realize and recognize that there is an effort to waive the requirements of the law, and that as such they will not be able to rely upon the protections of the law or our regulatory representatives to ensure public protection, and so the public is clearly alerted to the reality that the permit/notification/action in play is one they need to be much more involved in and vigilant over.

**The assessment of economic impact fails to consider the economic ramifications of providing waivers – it simply asserts and assumes benefit and no where discusses the economic ramifications of a waiver, or the burden to the taxpayer that will result in having to respond to the harms caused by individual and/or cumulative grants of waiver.** For example – the cost of reduced property values for others in the community that result from pollution or flooding.

- While the property value of a home or business is dependent upon several factors, it is largely influenced by the features either on or nearby the site. A *Money* magazine survey found that clean water and clean air are two of the most important factors Americans consider in choosing a place to live. Living near a stream, creek or river increases property value. “Ocean, lake, and riverfront properties often sell or rent for several times the value of similar properties located inland.”<sup>iv</sup> But, more than just simply living near a body of water, it is important that the water is clean in order to increase property value.<sup>v</sup> A case study from the Maine Agricultural and Forest Experiment Station compared property values for homes facing clean water versus water considered dirty or unclean. The study shows that property located near a high quality water body has a higher market value than if the water body has lower water quality and that in some cases the entire market value premium (increase) resulting from the waterfront location can be lost as the result of declining water quality.<sup>vi</sup>
- A loss of tree cover over a 15 year period (1985 to 2000) in Bucks, Montgomery, Delaware, Chester Counties, Pennsylvania and Mercer, Burlington, Camden and Gloucester Counties, New Jersey, reduced the ability of the Delaware watershed region’s urban forests to “detain almost 53 million cubic feet of stormwater, a service valued at \$105 million.”<sup>vii</sup> The same region “stored 2.9 billion cubic feet of stormwater in 2000, valued at \$5.9 billion.”<sup>viii</sup> Waivers that reduce tree cover will increase runoff, and therefore the costs associated with preventing, managing and/or responding to that increased volume of runoff that, if left unaddressed is a significant source of pollution, flooding and/or erosion.
- Existing tree cover was found to prevent 65 million cubic feet of stormwater runoff in the Big Timber Creek watershed saving the community \$3.3 billion in stormwater infrastructure. In the Cobbs Creek watershed existing tree cover prevented 20 billion cubic feet of stormwater runoff saving the community \$1 billion in stormwater infrastructure.
- In the Mill Creek watershed existing tree cover prevented 6.7 million cubic feet of stormwater runoff saving the community \$350 million in stormwater infrastructure. And in the Frankford-Tacony watershed existing tree cover prevented 38 million cubic feet of stormwater runoff saving the community \$2 billion in stormwater infrastructure. This tremendous savings translates into \$176,052,455 per year of benefit/savings for the Delaware River watershed community.<sup>ix</sup>

The social and associated emotional and economic ramifications of this Waiver Rule and its affect on important realities like increased flooding and flood damages is given woefully short shrift. **The Waiver Rule, by providing waivers from critical stormwater, floodplain and development protections, will subject New Jersey communities, families, and taxpayers to the increasing ravages and costs of flooding.** Individual waivers will, in come cases, have an affect; over time the cumulative affect of multiple waivers will set in; and in both cases it will be New Jersey residents, citizens and taxpayers that have to pay the price for NJDEP and the Governor letting developers, industry and business off the hook rather than holding them responsible for all of the costs associated with their activities including the costs of preventing polluted stormwater runoff that inflicts harms on others.

**By allowing waiver from critical rules for development, stormwater runoff and floodplains, the proposed Waiver Rule will most certainly increase flooding, flood damages and flood pollution for communities – while the contribution to the costs and harms discussed below may be limited when talking about individual projects, when viewed cumulatively the cost over time becomes substantial** (as is already the reality for New Jersey after years of failing to properly consider and address these issues and as a result suffering the growing costs and harms of increasing flooding). In the wake of a flood communities have to deal with a variety of issues. The cost of emergency services that must be provided before, during and after a flood are immense and include both economic and psychological costs. What are the costs associated with flooding totally ignored by this proposed rule and the summary social, environmental and economic evaluation that is intended to support it?:

- Feelings of panic, anger, anxiety, disorientation, and despair emerge in the wake of a flood. Exhaustion, grief, desperation and depression can then set in.<sup>x</sup> The prolonged stress caused in the wake of a flood can lead to difficulty sleeping, irritability and outbursts of anger, difficulty concentrating, excessive drinking and drug use, re-experiencing the traumatic event, withdrawal, suspicion, frequent loss of self control, painful emotions, apathy or avoidance of emotions or post traumatic stress disorder.<sup>xi</sup> **Children can be more deeply affected than adults.** “Children may experience emotional and behavioral effects for months, one year or even two years following the disaster.”<sup>xii</sup> Children can, among other things, experience nightmares, fear, anxiety, increased physical hurts such as headaches and stomach aches, a decline in their academic performance, difficulty sleeping, even suicidal tendencies.<sup>xiii</sup>
- The economic costs of responding to a flood are increasingly varied and expensive. Responding to a flood requires response by a variety of emergency service operations and personnel including police and fire departments. There are also the costs associated with the local and county emergency response personnel, tracking floods, and cleanup attempts. After a flood, communities must be provided temporary housing, food and water. There must also be an investment of time and resources in providing ongoing information and assistance to flooded communities.
- Flooding destroys public and private utilities, costing homeowners and taxpayers to repair damaged power lines, roads and bridges, gas pipes, water treatment and storage facilities, and electronic heating and cooling systems.
- When flooding occurs, recreation is halted, ecotourism stopped.
- Other often unrealized expenses include health threats, and the cost of lost food and polluted drinking water. Repair, renovation and demolition operations that must occur in the wake of a flood “often generate airborne asbestos, mineral fiber that can cause chronic lung diseases or cancer.”<sup>xiv</sup> Inhalation of asbestos can be fatal.<sup>xv</sup> Lead is another dangerous toxin that can be released during repair, renovation or demolition operations. If inhaled or ingested, lead can cause damage to the nervous system, to the kidneys, to blood forming organs and to the reproductive system.<sup>xvi</sup>
- After a flood, it is recommended that foods that came into contact with flood waters be discarded, and that all water should be considered unsafe until communities have been notified otherwise. These can be costly hardships for communities recovering from a flood.<sup>xvii</sup>
- Flooding can result in the growth and transmission of fungi which can cause illness such as mildew, mold, rusts and yeasts.<sup>xviii</sup> Some forms of the fungi can cause skin, respiratory and other disorders.<sup>xix</sup>

- Waterborne illnesses caused by bacteria, viruses and protozoa in drinking water can also be a concern in the wake of a flood.<sup>xx</sup>
- Flooding pollutes rivers with accumulated chemicals and debris from roadways and cities. Thunderstorms and hurricanes often lead to “Boil Water Advisories” as the result of sewage overflows at water treatment facilities. These advisories can be expensive, as well as the added cost of having to buy treated/filtered water. Catastrophic pollution releases such as a chemical spill or toxic discharge has similar costs when residents are advised not to use tap water.
- Flooding and flood damages increases the burden on the taxpayers that have to help fund the response and rebuilding that takes place. Since January 1, 1978 until February 29, 2008, payouts for flood damages from the National Flood Insurance Program have been staggering. New Jersey has received \$845,551,164 for damages to 82,203 properties.<sup>xxi</sup> Repetitive loss properties are a subset of the properties that collect from the National Flood Insurance Program. For the period January 1, 1978 thru September 13, 2005 (before Katrina) FEMA reports Pennsylvania, New York, and New Jersey among the top 10 communities for total repetitive loss payouts: New Jersey (at #5) is reported to have 6,778 repetitive loss properties receiving total payments of \$307,086,377.<sup>xxii</sup>

**The Waiver Rule’s supporting documentation also fails to assess the increased burden on the agency of having to evaluate and respond to this new waiver request and process.** There will be increased agency resources that will have to be diverted to respond to the influx of waiver requests and yet there is no special fee to file such a request in order to cover those costs – the result is that agency resources will have to be diverted from other environmental protection efforts in order to respond to these requests to minimize environmental protection.

When discussing environmental impacts of the Waiver Rule there is a discussion of unacceptable environment and public health impacts. And yet **there is no discussion of what is deemed “unacceptable environment and public health impacts” nor is there any discussion of the unacceptable environment or public health impacts that result individually and cumulatively from waiving our environmental protection rules and regulations. In this section, as with social and economic considerations, the discussion and analysis is one-sided, skewed towards supporting waiver rather than objectively assessing the value of waiver.**

**The materials released in support of the Waiver Rule are contradictory and internally inconsistent** – while they talk about avoiding unacceptable environmental harm on the one hand and that the waiver would result in net environmental benefit, buried in the last paragraph of the same section titled “Environmental Impact” the rule reverts to a discussion of minimizing the environmental harm that will result and only “partially” offsetting such harm. Which is it, will there be net environmental benefit to the same resources impacted by a waiver, or minimized harm with partial offsets which translates to there actually being a net environmental harm?

The mitigation allowed for achieving a claim of “net environmental benefit” in the definition of the term does not mandate that the affect or value or quantity of the mitigation exceed the environmental damage allowed by the waiver, it merely requires that the mitigation be beyond what the waived rule would have required – **so “net environmental benefit” can be achieved by an insignificant level of activity for the environment;** and in a case where the



rule being waived requires protection of a resource, and waiver allows its destruction, what would be defined as a net environmental benefit in that circumstance?

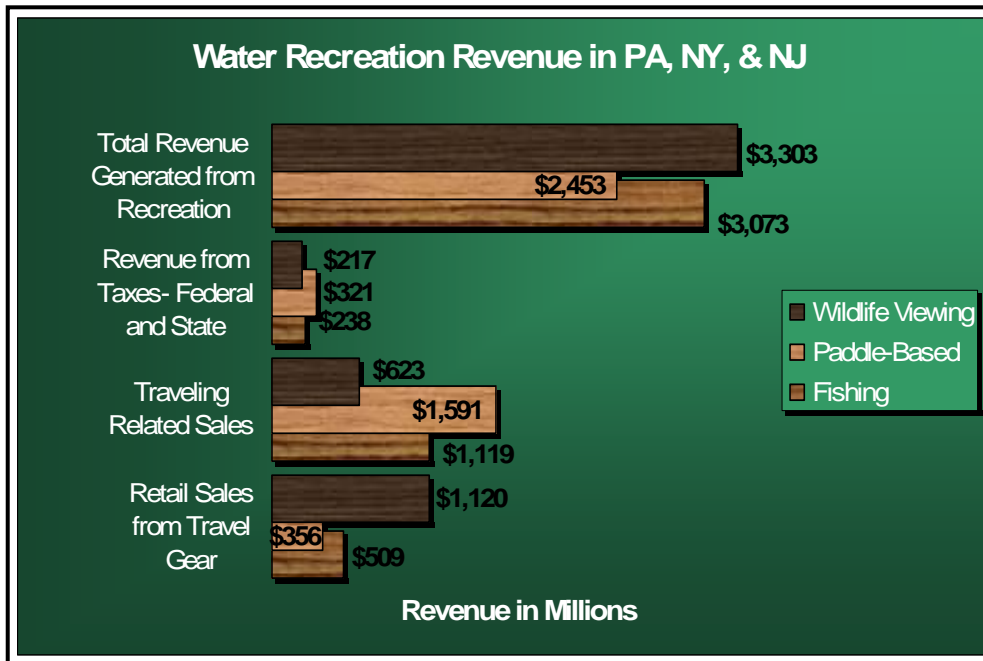
**The Waiver Rule fails to provide the guidance, criteria, public process, agency review process, or guidelines necessary to ensure objective application of the rule, net environmental benefit, net public protection benefit, and absence from agency and industry abuse.**

**The fact is, that waiving rules designed to protect communities from the ravages of pesticides, radiation, air pollution, water pollution, stormwater runoff, abandoned wells, underground storage tanks for hazardous substances, hazardous waste sites, and the pollution emanating from brownfields inflicts environmental and community harm that cannot be undone. And by waiving rules that protect the environments that in a very concrete way protect the health and safety of New Jersey communities such as wetlands, forests, floodplains, green acre lands, and the highlands, this rule is in fact ensuring net environmental and community harm.**

**There is no room in New Jersey for the Waiver Rule.**

Billions of dollars of economic benefit and jobs depend upon healthy ecosystems – clean water, healthy and edible fish, abundant birds and wildlife, healthy native forests, pollution free nature. **The Waiver Rule fails to consider the individual and cumulative job impacts of application of the waivers.** Among the economic and job benefits of protecting the environments of New Jersey are:

- Many rural river towns are supported by seasonal tourist revenue.<sup>xxiii</sup> Recreation is a \$730 billion annual contribution to the United States economy.<sup>xxiv</sup> In New York, New Jersey, and Pennsylvania alone, the total economic contribution of outdoor recreation exceeds \$38 billion annually, generating over 350 thousand jobs and adding additional economic sales and tax revenues of more than \$32 billion.<sup>xxv</sup>
- According to the Outdoor Industry Foundation, “more Americans paddle (canoe, kayak, raft) than play soccer”, and “more Americans camp than play basketball”.<sup>xxvi</sup> The U.S. Fish & Wildlife Service reports that in 2006 fishing was the “favorite recreational activity in the United States” with 13% of the population 16 and older (29.9 million anglers) spending an average of 17 days fishing in that year alone.<sup>xxvii</sup> As a result, in 2006, “anglers spent more than \$40 billion on trips, equipment, licenses and other items to support their fishing activities.”<sup>xxviii</sup> Of this, 44% (\$17.8 billion) was spent on items related to their trips, including food, lodging and transportation.<sup>xxix</sup>
- New Jersey state parks received 12 million visits in one year alone (1994), with wildlife recreation, fishing and hunting responsible for 75,000 jobs and generating \$5 billion in retail sales.<sup>xxx</sup>
- The total economic contribution of fishing in Pennsylvania, New York, and New Jersey exceed \$3 billion.<sup>xxxi</sup> Another \$2.5 billion is supplied from paddle based boating.<sup>xxxii</sup> Nearly \$2 billion is spent on the gear to support these industries with another \$3 billion generated from related travel.<sup>xxxiii</sup> In addition, nearly \$750,000 is generated in state and federal taxes on all of these water recreation income streams.<sup>xxxiv</sup> **Graph 1** shows how the amount of money spent on recreation purposes breaks down specifically in the tri-state area.



- In 2006, over 71 million Americans participated in wildlife watching including photography and observation, spending nearly \$45 billion dollars on travel, equipment, food, and lodging.<sup>xxxv</sup> Twenty-three million of the 71 million traveled away from home (more than a mile) to engage in their wildlife watching activities.<sup>xxxvi</sup> In New Jersey, it has been determined that watchable wildlife attracted 1.9 million participants in a single year.<sup>xxxvii</sup>
- Wildlife viewing creates nearly 500 thousand jobs nationally, and generates \$2.7 billion in federal and state taxes.<sup>xxxviii</sup> In Pennsylvania, New York and New Jersey, 31% of the population participates in some form of wildlife viewing.<sup>xxxix</sup> These activities generated an estimated \$1 million in retail supply sales, \$623 million in trip related sales, \$217 million in federal and state taxes, and supported 35 thousand jobs.<sup>xi</sup> The total economic contribution of wildlife viewing in the tri-state area exceeded \$3 million in the year 2002.<sup>xii</sup> The Outdoor Recreation Alliance estimates that New Jersey alone generated nearly \$4 billion from wildlife-related recreation in 2006, and reports that New Jersey ranks number six in the amount of economic activity created by in-state wildlife viewing activities.<sup>xlii</sup>
- Bird watching has become one of the most lucrative forms of recreation in the Delaware River watershed because of the diversity in avian species, and the wealth of attractive viewing areas. Bald Eagles, Red-Tailed Hawks, and migrating shorebirds such as Sanderlings and the Red Knot *rufa* can all be viewed within the watershed. In addition to being among the most lucrative activities for our region, birding is also among the fastest growing.
- In New Jersey, the Cape May Bird Observatory holds a spring weekend every year offering guided walks, boat rides, nature tours, book signings, movies, speakers, and birding. At the end of the three-day weekend they hold a world series of birding to discover how many birds each person has counted over the weekend. More than 200 birds have been spotted flying throughout the nature center's premises.<sup>xliii</sup> The event raises more than \$500,000 annually to support bird conservation efforts and attracts bird enthusiasts from all over the world.<sup>xliv</sup>

**INTERESTED VOLUNTEERS AND AREA VISITORS CAN  
WATCH THE ARRIVAL OF THE BIRDS ON A HOLIDAY AT  
JERSEY BEACH.**

- Delaware Bay is critical habitat for many birds.<sup>xiv</sup> Each spring, at least 10 million birds feed on the eggs of the horseshoe crab, including Sanderlings, Sandpipers, and other shorebirds. The feeding and migration of the birds is a major industry. Birding and outdoor recreation is a major industry in Bay Shore to watch the spectacle. The sale of recreational-related goods and services, patron restaurants and local shops, and dependent ecotourism generate an estimated \$11.8 million in spending in Cape May, NJ alone. The state is providing an additional \$3 million for the NJ Department of Fish and Wildlife to study and migratory bird phenomenon. The state provides \$11.8 million with over \$15 million in other beneficiaries elsewhere. The state provides \$25 million of benefit annually. The million of annual economic value included in the calculation.<sup>xlix</sup> The "spring season", it is particularly valuable.

**The Waiver Rule analysis also fails by failing to fully enforce the environmental protection work days that result when a person is in the community.**

**The opportunity for a waiver is to ensure there are a number of protective regulations and opportunities. Any regulation that affects the environment should not be included. Regulations addressing contaminants (their use, storage or control) and water supply are among the most important for protecting important ecological resources. Any opportunity such as regulation should be available for waiver.**