



For Immediate Release

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Environmental and Labor Groups Call on Administration to Pull Proposed DEP Waiver Rule

Trenton -- Leaders from environmental and labor groups across the state came together today calling on the Christie administration to withdraw a waiver rule proposed by the NJ Department of Environmental Protection (DEP).

The organizations are concerned that the waiver rule will create loopholes and weaken environmental protection in New Jersey. The rule would give polluting industries the ability to negotiate a reprieve around most state environmental standards if they can convince the NJDEP Commissioner that complying would be "unduly burdensome" to their business interest.

Maya van Rossum, the Delaware Riverkeeper, says she is "disappointed at the cavalier attitude displayed in this rule towards the importance of environmental protection. Our environmental protection laws are about protecting our communities from the devastation of floods, the illnesses caused by polluted air and water, the costs of having to rebuild bridges and public lands washed out by development caused runoff. This rule is the ultimate pay to play loophole — and will allow developers and industry to ignore environmental and community protection in pursuing their projects simply by asking for permission. With this rule the public will have to continue to pay with their health and their pocketbooks for the costs of flawed development and damaging industry. No longer will the public be able to rely on the law or our public servants to protect us – they're now out of the loop and industry is off the hook."

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“This rule is the broadest attack on environmental protections in 30 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”.

Ninety-eight 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. 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.

“The proposed rule violates the environmental statutes from whose protections it would give waivers. Some statutes, like the Freshwater Wetlands Protection Act, already have their own waiver provisions. Others, like the Endangered and Non-Game Species Conservation Act, do not have waiver provisions at all. In both cases, the legislature has decided whether or not it wants to allow waivers and, if so, on what terms. In neither case can DEP impose its own generic waiver rule,” **said Jaclyn Rhoads, director for conservation policy, Pinelands Preservation Alliance**.

The proposed 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 definition of unduly burdensome can include hardship, alternative compensation, and excessive cost. Groups are also concerned that allowing net environmental benefit to be considered in the issuance of waivers will lead to developers cleaning up a polluted site in exchange for the ability to avoid other DEP regulations.

“This rule would blow a major hole in state environmental protection. With one sweep of the pen, the rule would label protections for our air, land and water a burden to business and open to political negotiations with polluting companies. It turns decades of thoughtful standard setting upside down, removing all guarantees that our environment will at least as clean and green as the standards we’ve adopted here in New Jersey,” **said Dena Mottola Jaborska, executive director of Environment New Jersey**.

The proposed 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. Groups are concerned that waivers will 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.

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"ANJEC has real concerns about the vagueness of the language allowing waivers to be given for 'hardships,' when these are not even defined. In addition, with no provision for local or public notice, when DEP grants a waiver on a permit the town government will have no idea that the regulation is no longer protecting the local stream, wetland, flood plain or other natural feature," **said Sandy Batty, executive director of the Association of New Jersey Environmental Commissions.**

Federally delegated programs, air emissions, fishing licenses, and criteria to protect human health are exempt from the waiver rule. However, groups are concerned that under Christie's Executive Order 2, which restricts state agencies from adopting rules stricter than federal standards, regulations will be waived down to less strict federal standards instead of New Jersey's. The lax Army Corps of Engineer standards will 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.

"This new rule is essentially a get out of jail free card for anyone looking to skirt their environmental responsibilities. Although the waiver rule is being proposed under the guise of efficiency and economic growth it opens up the potential for a tremendous negative impact on our environment," **said Jen Coffey, policy director, Stony Brook Millstone Watershed 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 rule provisions allow 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 provision will allow inappropriate development that will destroy our resources to move forward. For example, the Department of Community Affairs could approve the construction of housing next to streams when the DEP would deny the project under stream buffer requirements. DCA objected to Category 1 stream protections as a hindrance to redevelopment and new growth. 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. 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.

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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 favorites 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 little resources the DEP currently has.

The groups are also concerned that waiver requests will not be properly scrutinized by a shrinking DEP staff.

"Aside from laying the groundwork for easy sidestepping of our most necessary environmental protections-- which we strongly oppose, of course-- we question how an already understaffed DEP could diligently process the onslaught of waiver requests as a result of this rule," **said Julia Somers, executive director, New Jersey Highlands Coalition.**

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