



New Development: Department of Environmental Protection Waiver Rules

Client Advisories

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In response to Governor Christie's Executive Order No 2, which directs state agencies to implement common sense principles of government reform, the New Jersey Department of Environmental Protection (DEP) has adopted a new rule that gives the agency flexibility to modify compliance with rules in certain limited circumstances.

The **Official Version of the NJDEP Waiver Rules** was published in the New Jersey Register on April 2, 2012. In it, NJDEP acknowledges that strict compliance with rules may produce unfair or unintended results and undermine, rather than advance, legislative intent. DEP will accept requests for waivers of a rule requirement beginning August 1, 2012. No requests for waiver will be accepted prior to that date.

DEP began conducting external training sessions last month. In the meantime, the DEP is developing:

- An internal process to ensure consistency;
- Standardized Waiver Request forms;
- Electronic systems for the receipt and tracking of Waiver Requests; and
- Online reports to provide transparency by allowing public review of Waiver decisions.

To apply for a waiver, the requester must demonstrate that at least one of four criteria is met:

- There is a public, formally declared, emergency.
- Conflicting rules are adversely impacting a project or preventing an activity from proceeding.
- A net environmental benefit will result.
- Application of the Rule is resulting in undue hardship.

There is no automatic right to a Waiver, which will be granted after careful review of each case by technical staff and approval of the Commissioner.

DEP's core mission to protect public health, safety and the environment, will not be compromised and Waiver decisions are to be based on science, facts, data and common sense. Toward that end:

- A Waiver cannot violate State or Federal statutes or Federal regulations.
- The Rule will not create a time for DEP action and Waiver requests will not be processed on a first-come, first-served basis.
- Priority will be given to Waiver Requests upon evaluation of the number and type of requests received after August 1, 2012.

If you have questions about the DEP waiver rule or a related matter, please contact a member of Archer's Land Use, Environmental Permitting and Compliance Practice Group in Haddonfield at (856) 795-2121, in Hackensack at (201) 342-6000, in Princeton at (609) 580-3700, or in Flemington at (908) 788-9700.

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