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NJDEP's Common Sense Principles

On March 9, 2011, the NJDEP announced its proposal of a common sense waiver rule, which would provide for economic growth and enhanced environmental benefit. In furtherance of Governor Christie's Executive Order No. 2 that seeks to establish "Common Sense Principles" to govern New Jersey, the NJDEP has proposed a rule to enable it to remove unreasonable impediments to economic growth while ensuring net environmental benefits for the state. The proposed rule would allow the NJDEP to waive strict compliance with regulations in certain limited circumstances that do not compromise protections for the environment or public health. In its proposal, the NJDEP has provided for the consideration of a waiver application if one or more of the following conditions exist:

- **Conflicting Rules**-The requirement sought to be waived conflicts with another Department or other State or Federal agency rule
- **Unduly Burdensome**-Strict application of a rule creates an exceptional and undue hardship or where another method of compliance would have the same or better results at a significantly lower cost
- **Net Environmental Benefit**-The environment would be enhanced by a project enabled by the waiver (mitigation projects would be allowed to be considered)
- **Public Emergency**-DEP must waive a rule to respond to an emergency

In the words of Commissioner Martin, the NJDEP's proposal would not allow waivers to be routinely or commonly granted. Consideration of each application would be on a site by site basis and would be fact specific. Under the rule, the DEP would consider whether the proposed waiver is consistent with the Department's core mission: whether the waiver is consistent with the intent of any underlying statute; whether the site is a redevelopment or brownfield; and/or whether a net environmental benefit would be achieved by granting the waiver. Waivers would not be granted in any case inconsistent with any

State or Federal law, regional air agreements, emissions trading programs, or health and safety standards. Furthermore, the review process would be transparent and approvals would be publicly noticed.

The proposed rule has been published in the New Jersey Register and is available online at <http://www.nj.gov/dep/rules/notices.html>

Additionally, a hearing on the waiver approval is scheduled for April 14, 2011 in the DEP's public hearing room at 401 East State Street, Trenton, New Jersey.

If you have questions about the NJDEP "Common Sense Principles" or any other environmental laws and/or regulations, please do not hesitate to contact me directly.