



IMPACT OF DEP REGULATIONS ON DEVELOPMENT AND INVESTMENT IN NEW JERSEY

DESCRIPTION

The regulations promulgated by the New Jersey Department of Environmental Protection (DEP) have a negative impact on the economic viability of our State. Many DEP regulations provide little or no environmental benefit. There is no balance between economic viability and environmental protection. NJBIA's goal is to raise the awareness of decision makers on these issues and bring balance back to the process.

BACKGROUND

In 2007, the DEP proposed over 2,000 pages of land use regulations, almost all of which will have a negative impact on economic growth in the State of New Jersey. The rules cover site remediation, public access to tidally flowed waterways, flood hazard, wetlands protection, and limiting development along designated waterways. In addressing these issues, DEP fails to take into consideration the impact on economic growth. Furthermore, DEP fails to consider the ability of the department to actually implement such rules, given its current staffing constraints. Below you will find a brief overview of some of the regulations:

Public Notification Rules

The public notification rules are an attempt to provide information to the public about site clean-ups. The rules require anyone performing a remediation to provide notice, via sign or letter, to everyone who works, lives or avails themselves of recreation within 200 feet of the property boundary. The notification includes notifying non-English speakers in their native language.

These regulations unnecessarily delay site remediation projects. They apply equally to site each remediation project, regardless of the level of risk to the public. They create another level of approval by an already understaffed DEP, as the DEP would have to review and approve all notification plans. Furthermore, there are literally thousands of languages. The expectation that a developer would have the resources to ascertain the native language of every person within a 200-foot radius goes beyond the pale. The requirements under these rules are costly and irrational, and could ultimately force investment out of the State.

Public Access Rule

Under the guise of providing "beach access," this rule requires 24-hour public access to any tidally flowed waterway, including beaches, rivers, and tributaries.

This rule impacts municipalities, individual property owners, businesses and industrial facilities. For industrial facilities, the rule would require 24 hour access to tidally flowed waterways by either providing such access on-site or paying the DEP for that access to be provided off-site. This proposal sends the wrong message to those companies that have called NJ home for decades by forcing them to pay a hidden tax through this regulatory requirement. Furthermore, the increased costs to municipalities will undoubtedly increase property taxes.

Category One

Creates unnecessary “no development” buffers around 910 miles of rivers, lakes, reservoirs and tributaries in the State, which will severely impact development of new facilities and expansion of existing facilities. The rule effectively bans development within 300 feet, on either side of waterways that are now being designated as Category 1 (C-1).

Water Quality Management Planning Rules

Water Quality Management Plans (WQMPs) take into consideration both potable water and wastewater capacities, and constraints within a specific planning area. Under this rule, development could be stalled or prevented if such projects do not comport with a county’s WQMP. Currently, all WQMPs must also be approved by DEP before they can be implemented, which can take up to two years. Any changes to a WQMP—known as a plan amendment—must also be approved by DEP. The proposed rules require all planning agencies to submit their WQMPs within nine months of adoption of the rule, which we expect will overwhelm the DEP staff and make timely review and approval impossible. This will force development projects into a state of limbo until those plans or plan amendments are approved.

Soil Standards

The new soil standards will directly impact remediation and redevelopment of brownfields. DEP considers all water as potable (drinkable), and their standards treat it as such. A majority of the cleanup standards have changed dramatically and are simply unattainable. The rule will make remediations more difficult and costly, and raises justifiable concerns for those who have cleaned up their properties to standards that were once acceptable. The focus should be on exposure pathways to humans and impact to human health, not simply creating new standards for the sake of creating standards. (For more information, see the SRP Legislative Changes Economic Growth Paper)

Flood Hazard Rules

DEP has proposed 768 pages of regulations that create new buffers around a large number of waterways throughout the State. There are no grandfathering provisions for older facilities in flood plains or riparian corridors. The rule will negatively impact development, redevelopment and facility expansions throughout the State.

New Wetlands Rule Proposal

These regulations force companies to obtain individual permits for construction and maintenance near freshwater wetlands anywhere in the State. Many of these activities are currently covered under general permits. General permits can be approved as quickly as 90 days, while individual permits could take years. Many of these activities are routine, such as trimming branches off of trees around power lines that happen to be located along wetlands, and have no impact on the environment. Therefore, there is no justification for requiring individual permits for such activities. Once again, this sends the wrong message to companies that have made New Jersey their home for decades.

NJBIA POSITION

Finding balance between environmental protection and economic growth is imperative. Keeping companies here and attracting new companies can be done while we continue to protect the environment and human health. While the Department has a job to do, it seems that the idea of balance no longer exists.

Furthermore, the internal vetting of rules fails to take into consideration the impact on economic growth and ultimately stops the DEP from implementing these rules in a fair and efficient manner.

Legislation is only a part of the process. Legislators and key decision makers should take a greater interest in how environmental laws are implemented by DEP. Legislators should use their oversight responsibilities to ensure that regulations provide for a fair and balanced approach to environmental protection.

NJBIA has submitted comments on all proposals in which the comment period has ended. Copies are available on line at the following website.
http://www.njbia.org/issues_environ.asp

COST

The cost of these proposals cannot be accurately derived due to the fact that costs associated with specific projects and activities vary greatly. The cost of compliance for each specific company is based on their specific business operations and permitted activities. But there is a hidden cost to these regulations—the cost in lost ratables and economic activity from businesses that decide these regulations are too much. These costs take the form of brownfield sites that do not get cleaned up and brought back to productive use; of New Jersey businesses that decide to move out of New Jersey; in the form of the company that doesn't relocate to New Jersey because the regulatory burdens are just too great.

There is also the matter of administrative costs. The department is already understaffed and faces a backlog on review of its existing submissions. Yet it has proposed a series of regulations that will dramatically expand its workload. Given the fiscal challenges facing New Jersey, increased staffing is highly

unlikely. We expect that hundreds of environmentally sound projects will be delayed indefinitely simply because DEP is unable to review them in a timely fashion.

Every department has to operate within a budget, and that means it cannot implement every program or regulation it would like. DEP has plunged ahead with new and expanded environmental programs when it clearly does not have the resources to implement them.

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