

GOVERNMENT AFFAIRS TEAM

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August 20, 2007

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NJ Department of Environmental Protection
Mr. Gary J. Brower, Esquire
Attn: DEP Docket Number 11-07-04/557
Office of Legal Affairs
401 East State Street, 4th Floor
PO Box 402
Trenton, New Jersey 08625

Christopher Emigholz
Director
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**Re: NJBIA Comments on the Proposed Surface Water Quality Standards,
Category One Designations (N.J.A.C. 7:9B)
DEP Docket Number 11-07-04/557**

Frank Robinson
Vice President
Grassroots &
Transportation

Dear Mr. Brower,

John Rogers, Esq.
Vice President
Human Resource Issues

Christine Stearns, Esq.
Vice President
Health & Legal Affairs

I am writing in response to the above-referenced proposal on behalf of the New Jersey Business and Industry Association (NJBIA). NJBIA represents over 23,600 businesses in the State of New Jersey, many of which are impacted by the proposed amendments to N.J.A.C. 7:9B, Surface Water Quality Standards and the proposed Category One designations of various waterways. As the largest state-level employer association in the nation, we appreciate this opportunity to share our thoughts with the Department. Specifically, NJBIA supports the attached comments developed by the New Jersey Chapter of the National Association of Industrial and Office Properties (NJ-NAIOP) and we urge the Department to consider the concerns enumerated therein. In addition, I would like to briefly highlight a couple of issues that are of great concern to our members.

First, the lack of compensation for landowners in the C-1 designated areas contradicts State policy on takings. Public Advocate Ronald Chen, who has provided the State's position on eminent domain in a number of court cases including the *Gallenthin Realty Development, Inc. v. Borough of Paulsboro* case heard before the NJ Supreme Court, has stated that adequate compensation is a necessary component of any lawful taking. NJBIA supports the appropriate use of eminent domain so long as there is both just compensation and added protections for property owners, as well as greater transparency in the process.

The DEP's proposal however, makes no mention of compensation and seems to eliminate any rights of property owners in the designated C-1 areas. So, while the State is advocating that municipalities and other local government units provide adequate compensation and appropriate protections for property owners, the DEP

would be allowed to effectively take thousands of acres of land with no compensation and no protections for property owners whatsoever.

Second, this proposal seems to impose severely restrictive limits on development based upon limited scientific data and a complete disregard for local planning. This seems to contradict the Governor's goal of sustaining and growing NJ's economy.

The department, through current policies and other rule adoptions, has placed restrictions on operations and development through a variety of criteria regarding pollutant discharges, impervious cover, and impacts to soil, air and water bodies. These restrictions generally limit operations or development but provide a mechanism for such actions to occur or continue so long as certain requirements are met. The designation of C-1 waterways however, eliminates the opportunity for development, expansions or certain operations (in some instances) within the buffer zones immediately upon adoption. This seems to be extremely harsh and will have a severely negative impact on NJ's economy.

It is clear that the growth of New Jersey's economy is inextricably tied to the ability of the private sector to invest in our State. It is also clear that the NJDEP has a responsibility to protect the natural resources of our State, as well as the safety of our citizens. However, NJBIA is concerned that an extremely restrictive land use policy through takings, based upon inadequate scientific data as authorized under this proposal, could have a severely negative effect on any future investment in our State.

NJBIA would respectfully request the Department to withdraw this proposal. At the very least, the Department should have a stakeholder process so we may have a constructive dialogue on the impacts this proposal will have on NJ's economy.

NJBIA appreciates the opportunity to express our concerns on this proposal. If you have any questions or if you need additional information, please contact me at (609) 393-7707, extension 236.

Sincerely,

David H. Brogan
Vice President, Environmental Policy
New Jersey Business and Industry Association