

**Summary of Christie Administration
Environmental Subcommittee Transition Report**

JANUARY 25, 2010

The Report of the Christie Transition Environmental Subcommittee, of which MGKF partner, Bruce Katcher was a member, was released on January 22, 2010. The report makes recommendations aimed at ensuring that the NJDEP meets its core mission of protecting the environmental resources of the state, while at the same time, removing unnecessary obstacles to economic growth and more effectively managing limited fiscal and human resources. The principal areas for reform addressed by the report are as follows:

1. **Leadership and Management** – Establish goals and priorities to protect natural resources, provide a stable and predictable business climate for the regulated community and establish performance metrics to ensure accountability and prudent allocation of resources.
2. **Regulatory Reform** – Require transparency, the application of the rule of law, sound science and economic and fiscal analysis; simplify the regulatory process and provide streamlined permitting for environmentally beneficial projects such as renewable energy and green building.
3. **Land Use Management Reinvention Without Compromising Protections** - Institute streamlined permitting with investment in technology enhancement, greater use of general permits, permits by rule and develop a single cross-program land use permit.
4. **Site Remediation Reform** – Continue to advance Site Remediation Reform Act (SRRA) reforms and re-examine risk management strategies.
5. **Natural Resource Stewardship** - Establish a comprehensive and strategic approach to public lands management, forest stewardship and management of endangered and threatened species habitat.
6. **Other Policy Recommendations** – The Report makes many other specific recommendations in the area of enforcement, regulatory reform, and NJDEP budget and operations.

In addition to the above, among the major recommendations in the Report are the following:

Leadership and Management

- Eliminate the Office of Policy Planning and Science and distribute policy and planning responsibilities to the relevant programs.
- Establish a science advisory panel of external experts to advise NJDEP.
- Reinstate the Office of Alternative Dispute Resolution to expedite the settlement of disputed cases and if an appealed NJDEP decision goes to the Office of Administrative Law, make the Administrative Law Judge's decision a final agency action, not subject to further review by the Commissioner (as is the case now).

Regulatory Reform

- Ensure that agency guidance documents are not applied as if they were regulations and increase transparency in guidance development.
- Require a scientific assessment of every rulemaking and peer review of the science.
- Convene informal stakeholder meetings in advance of rulemakings to address objectives and distribute draft rule text for comment prior to preparation of proposed rules.

Land Use Reinvention

- Create a business/project ombudsman in the Office of the Governor to create a single point of entry for complex projects along with NJDEP's own "one-stop" office to respond to complex projects.
- Allow for expanded use of e-permitting, expanded use of permits by rule, general permits, and other recommendations of the Permit Efficiency Task Force to reinvent land use permitting without sacrificing environmental protections.
- Eliminate duplicative land use reviews where the review is performed by another governmental jurisdiction under the Municipal Land Use Law (e.g. stormwater reviews).
- Suspend the inappropriate use of the Landscape Project mapping of threatened and endangered species habitat.
- Revise land use rules to allow for greater use of waivers and exceptions where applicants demonstrate alternatives that will yield equivalent or better environmental results.
- Reexamine various land use and water quality buffer requirements in urban and disturbed areas and areas designated for growth.
- Revise the Water Quality Management Planning rules to update and improve sewer service areas through regional planning and coordination with the State Plan.

Site Remediation Reform

- Revise the interim Rule under SRRA to limit its scope to SRRA required elements (e.g., vapor intrusion investigation rules were not mandated by SRRA and need to be separately reviewed and revised).
- Refrain from using overly conservative assumptions in standard setting and risk management; revise cleanup standards to be both achievable and protective; reexamine groundwater classification areas in certain areas (e.g., where historic fill is present).
- Encourage material reuse (e.g., concrete, asphalt, construction materials) where appropriate and provide clear rules so that reuse will not be hampered.
- Transfer responsibility for the natural resource damages program to the site remediation program and adopt regulations that are transparent, stable and predictable.
- Evaluate pending litigation where the purpose and benefits are not readily apparent.

Enforcement

- Provide more resources to the environmental crimes bureau in the Division of Criminal Justice to pursue those who purposely flout the law.
- Examine NJDEP's self-audit policy to ensure it does not create disincentives to voluntary disclosure.
- Reexamine NJDEP's administrative penalty regulations to ensure fairness and consistency and the implementation of the grace period rules to ensure that they track legislative intent.
- Interchange permitting and enforcement personnel periodically.

Miscellaneous Regulation

- Continue to focus on regulating diesel exhaust and provide financial incentives to early retirement of older engines.
- Simplify the Title V air permitting process.
- Commit to work with the Environmental Justice Advisory Council.
- Embrace new technology to achieve clean-up goals.
- Re-evaluate the chromium clean-up standard considering natural baseline and peer reviewed scientific data.

Budget and Operations

- Modify policies on the application of prevailing wage laws under the brownfield reimbursement program and with respect to having work done at state parks and historic buildings by private investors and tenants.
- Direct all fee revenues collected under NJDEP programs to the NJDEP so that they are not diverted to the General Fund to meet other budget priorities.
- Review and adjust the methodology for responding to OPRA requests as this consumes a large amount of NDJEP resources and work with the legislature to make appropriate reforms.

A copy of the Report may be obtained at this [link](#). If you have any questions concerning the Report, please contact Bruce Katcher at 484-430-2320 (bkatcher@mgkflaw.com).