

August 7, 2008

Lisa P. Jackson
Commissioner
New Jersey Department of Environmental Protection
401 E. State Street
P.O. Box 402
Trenton, NJ 08625-0402

Dear Commissioner Jackson:

Enclosed please find the Final Report of the DEP Permit Efficiency Review Task Force, which you established by Administrative Order 2008-06 on March 18, 2008. The report culminates a significant effort by Task Force members, supported by Department staff.

The Task Force represents a broad range of interests in environmental policy throughout the state. As such, debate on the findings and recommendations was detailed and vigorous. However, the collective commitment to improve the management of the Department drove the members to work together and reach necessary compromises. The result is a final report that has the unanimous support of the Task Force.

On behalf of the Task Force, thank you for the opportunity to assist you. We stand ready to support you in implementing our recommendations.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Daggett", written in a cursive style.

Christopher J. Daggett
Chairman

New Jersey
Department of Environmental Protection

Permit Efficiency Review Task Force

Final Report



August 7, 2008

Table of Contents

Background 1

General Recommendations 8

 Technology 8

 Rulemaking..... 9

 Resource Management 10

 Standard Setting..... 13

 Open Public Records Act 13

 Implementation of Recommendations 14

Land Use Management Recommendations..... 15

 External Permit Application Process..... 15

 Internal Permit Application Process..... 16

Water Quality Recommendations 21

Priorities Recommendations 24

Conclusion..... 26

Exhibit 1, Administrative Order..... 28

Exhibit 2, Task Force Members and Affiliations..... 32

Exhibit 3, Land Use Regulation General Permits 35

Acknowledgements..... 37

BACKGROUND

The New Jersey Department of Environmental Protection (DEP) was created by an act of the New Jersey Legislature in 1970, the same year that the U.S. Environmental Protection Agency (EPA) was formed by an executive order of the President. In the ensuing 38 years, Congress and the state legislatures have passed, and the President and the states' governors have signed into law, a substantial number of environmental laws, which, in turn, have led to the promulgation of regulations to carry out those laws.

At the founding of the DEP and EPA, there was a host of visibly egregious environmental problems facing the state and the country – from soot and smog in the air, to oil, chemicals and debris in our streams, rivers, lakes and oceans, to hazardous waste deposits on our lands. There was a brown-yellow haze over many of our most populated cities, the Cuyahoga River in Ohio caught fire and a 50 million gallon “lake” of hazardous liquids in New Jersey, the Bridgeport Rental & Oil Services site, was featured on the cover of *Newsweek*.

The DEP and EPA grew rapidly, and in the case of the DEP, eventually there were more than 4,000 employees, with responsibilities ranging from cleaning up past assaults on the environment, to permitting new development projects, to protecting and expanding the state's inventory of open space. The charge given to the DEP throughout the years has been vast, reaching into virtually every aspect of the lives of individual citizens and the corporate and small business communities.

New Jersey has a reputation of aggressiveness and national leadership in environmental protection, frequently placing more stringent requirements on responsible parties and permit applicants than its sister states and the EPA. Much of this aggressiveness is borne of our unique position as the most densely populated state in the nation, but it is also based on a deep and abiding respect for the environment and an equally strong commitment to protect the health of residents.

Our knowledge and understanding of the science of environmental protection has become more sophisticated during the last four decades. We have gone from measuring contaminants in soil, air and water in the parts per million, to the parts per quadrillion. We have come to understand better the science of wetlands, streams, rivers, oceans, habitats and species, and we have vastly improved our knowledge of the fate and transport of contaminants.

In response to this improved knowledge, new laws and regulations have become increasingly detailed and complex. Sometimes, they have also become proscribed and rigid, with language that can be confusing, conflicting, overlapping or a combination of the three. In addition, laws have been passed and regulations promulgated without adequately addressing issues of overlap, redundancy, cross-purpose and conflicting requirements with existing laws and regulations. Too frequently, the application of new rules ends up in time consuming administrative challenges and lawsuits, which do little or nothing to improve environmental protection or public health. The reverse is also true in that there remain certain gaps in the legal structure, which can contribute to delays and inefficiencies.

Making the regulatory climate even more difficult, as advances in science were being made and new laws and regulations were being put in place, governments at all levels increasingly faced demands to cut back, to do more with less, to reduce staff size. Cuts in environmental agency

budgets were made without understanding the impact on reduced staff capability to complete the same or even larger volume of work in a timely manner or, worse yet, without effective analyses of how best to make those cuts without compromising environmental quality and public health. Little to no legislative thought was given to providing agencies with information technology resources to improve efficiency.

In New Jersey, the resources problem has been particularly acute in the past few years. The state is facing one of the most significant budget challenges in its history. An increasing debt burden, long term infrastructure financing needs, increasing pension, education and health care costs and the prospect of declining tax revenues have occurred all in a time of structural budget deficits. Together with rapidly rising oil and natural gas prices and resulting inflationary pressures and job losses, these issues have placed the state in a very precarious economic position both internally and in comparison to other states in the region. In short, our competitive edge of location, educational excellence and high quality of life is being jeopardized as never before.

During the past two decades, despite an increasing number of rules and regulations, with a corresponding increase in responsibilities and workload, DEP staff levels have been reduced by more than 1,000 employees – about 25 percent. Further reductions are continuing to take place as of this writing. To offset these staff losses, the DEP has made progress in updating information technology (IT), which has improved the efficiency of its permit processing services and the transparency of its decision-making, while also attempting to eliminate a sizeable backlog of applications. It has also established an Office of Permit Coordination and Environmental Review to expedite the permit decision-making process in certain instances.

Despite these efforts, more needs to be done if the DEP is to keep pace with increasing demands for services and stabilized or decreasing staff levels. In this time of fiscal crisis, the challenge before the DEP is to develop different approaches to managing, to consider doing less with less, recognizing that this must be done without compromising environmental protection or public health. The residents of New Jersey may want a stimulated economy with less government, but they do not want less environmental protection.

The fact of the matter is that in the foreseeable future, the DEP is not going to see any appreciable increase in staff levels. The State of New Jersey does a great disservice to DEP staff when legislators and executives place additional burdens on the DEP at the same time they are cutting back on budget allocations. The increasing complexity of applications and the reduced commitment to quantity of staff contribute to application backlogs and a justifiable complaint from staff that they simply cannot do their jobs.

The misdirected charge of “the DEP has to figure out how to do more with less” only exacerbates the situation. However, even if budget limitations were removed and overtime were required for all staff, the improvements might only be marginal because there are also structural inefficiencies that should be addressed. It does not make sense to aim for more staff to spend more time doing the same job. The better approach is to focus on the fundamental changes required to make the process more efficient by allocating resources to those decisions that have the most significant environmental impact.

The current permit process is input driven – the time the system is entered determines the time the system is exited, good project or bad, complete application or incomplete, designated growth area or not. Inherently governmental functions of rule writing, permit review and benefits

analysis are lumped together with rote, time consuming and relatively straight forward processes such as data collection, record keeping and data retrieval services.

What is required is transformational change that focuses on output and performance, on maintaining and enhancing the environment *and* the economy of New Jersey through a platform of environmental statutes, regulations and initiatives that are transparent, predictable, consistent and timely.

In an output/performance-driven system, the DEP would focus on the efficient execution of inherently governmental functions and explore using outside assistance, advanced IT tools or both, to complete the straightforward tasks that are not necessary to be done by government. To accomplish this, a major change must occur in the way that scope and responsibility are allocated within the DEP. In short, if the DEP is ever going to reach a high level of efficiency and effectiveness, the goal for the DEP should be to determine which environmental services are essential and which can be eliminated; which can be consolidated and which cannot; which must be provided by government and which can be delivered by outside vendors or through advanced IT tools, or both.

In addition, the current permit process is value neutral and does not establish priorities of permit review for projects that are well located in growth areas, that improve environmental conditions or that meet state priorities. Such projects are inherently more important to the health and welfare of the state than those that fail these objectives and, thus, should be made a priority. This prioritization needs to be incorporated into the output/performance driven system.

DEP Permit Efficiency Review Task Force

Against this backdrop, Commissioner Lisa Jackson issued Administrative Order 2008-06 on March 18, 2008, creating the DEP Permit Efficiency Review Task Force (“Task Force”, see Exhibit 1). Commissioner Jackson appointed 24 members, giving them 120 days to complete their assignment and providing them with staff assistance from senior members of the DEP, including two assistant commissioners.

The members of the Task Force included representatives of residential and commercial developers, environmental organizations, land use planning firms, nongovernment organizations, housing advocacy groups, business and industry, the environmental justice community, counties, municipalities, public utilities authorities, engineering firms, the EPA, the Governor’s office and environmental consulting firms. Three were former cabinet members: DEP, Transportation and Community Affairs. Exhibit 2 is a list of the members of the Task Force and their affiliations.

Commissioner Jackson’s charge to the Task Force is summarized in the following excerpt from the Administrative Order:

2. a. Within 120 days of its initial meeting, the Task Force shall conduct a comprehensive analysis of the permitting programs of the DEP and shall submit a report to me, with recommendations for restructuring and re-engineering department permitting and other programs to ensure it is providing timely and efficient service to the residents of the State and the regulated community while maintaining public health and protecting the environment;

- b. The report of the Task Force shall also provide recommendations for operational, policy and regulatory changes at the department to provide incentives for and to advance sustainable development projects that contribute to achieving statewide greenhouse gas limits, economic growth opportunities in urban areas and meaningful affordable housing and that, as a result of their location and design, have little or no impact on public health and safety, the environment or natural resources; and
- c. As part of its deliberations, the Task Force may also identify possible statutory changes that would result in enhancing the DEP's timely and efficient service or the DEP's ability to provide incentives for sustainable development projects that contribute to achieving statewide greenhouse gas limits, economic growth opportunities in urban areas and meaningful affordable housing and that, as a result of their location and design, have little or no impact on public health and safety, the environment or natural resources.

In short, the Commissioner formed the Task Force out of a concern that the current permitting process cannot keep up with demand. The Commissioner asked the Task Force to help her in making the permit process more timely, predictable, consistent and transparent to the regulated community and to do so at the lowest possible cost to taxpayers while enhancing New Jersey's environment. The work of the Task Force included only the Division of Land Use Regulation and the Division of Water Quality, two of the key permitting units of the Department. The Task Force work did not include the Site Remediation Program, which is already undergoing a separate public analysis, and the air permitting program.

The work of the Task Force was divided into three committees: Land Use, Water Quality and Priorities. The Task Force met 12 times, each for three hours, either in committee or as a whole. A briefing book of permit application statistics and ongoing efforts to improve efficiency was supplied to the Task Force in advance of the first meeting. DEP staff also compiled information about programs in selected states and localities that have attempted to address permit processing efficiencies. In addition, several staff presentations were made to committees and to the full Task Force. Finally, there were numerous conference calls and email exchanges to supplement the work of the group, and many additional documents were supplied to the Task Force in response to issues raised and data requested. All written materials prepared for the Task Force are available on the DEP Web site, which can be found at <http://nj.gov/dep/permittf/>.

Findings

The impact of the DEP permitting process on everyday activities of business and industry, as well as individual residents, is vast and visible. As a result, it is a big, easy target for criticism. A number of the criticisms are fair, but many are misplaced. New Jersey is an expensive state in which to live and run a business. The cost of living is among the highest in the nation because, historically, New Jerseyans have been willing to pay for the benefits of one of the most highly ranked education systems, a high quality of life and environmental and health protection second to none.

As referenced above, the volume of permit applications is very significant and rising, while staff levels have been declining steadily in recent years. The Task Force reviewed statistics in all of the permit programs in some detail, statistics that are difficult to summarize in tabular form or in a few sentences because they do not always correspond with existing data reporting systems, such as the permit dashboard, and could thus cause more confusion than clarity. They are also

difficult to summarize without addressing issues of definition and interpretation of administrative and technical completeness and of delays unrelated to DEP actions.

Although a contrary opinion may be held by some members of the public, much of the permitting that the DEP does, it does well. There are, on average, thousands of permit applications processed each year: Water Allocation, 450; Safe Drinking Water new construction, 375; new well permits, 14,500; Treatment Works Approval, 700; Individual Permits and General Permits in the New Jersey Pollutant Discharge Elimination System program, 275 and 2,600, respectively; and Land Use Regulation Division, 6,700 (all numbers rounded). Overall, 90 percent to 95 percent are approved, often with substantial changes as a result of DEP input, with the remainder being denied or withdrawn. The permit decisions are usually made within the statutory timeframe, which varies from program to program. However, certain permit actions that are complex, time consuming and for which there currently is no processing priority have resulted in a substantial and growing backlog. Economic conditions impact the permit pipeline but usually only in the types, not the overall number of permit applications.

The permitting system breaks down most frequently when there are multiple permits for a single project, when projects are large in size and when impacts to the environment are complex and potentially extensive. These complex projects enter the system in the same manner as a simple permit, such as a single family residence, with no apparent prioritization for either. Nor is there any prioritization for any projects that advance state objectives. In too many cases, decisions are not rendered for two or more years. It is precisely these types of projects that require the expertise of the DEP to be brought to bear, but all too often these resources are consumed with ancillary tasks, such as answering OPRA requests and writing rules, which detract from permitting productivity and which, in a number of instances, could be completed by outside vendors. In addition, the ability of senior management to freely and flexibly manage and shift resources is severely limited by a somewhat Byzantine series of work rules and hiring processes. Moreover, budget decisions made by the legislature often are made as a financial exercise rather than as a reflection of business needs. Economic benchmarks of fully allocated costs and break-even analyses are rarely utilized, so the concept of delivering even the most basic permit or renewal at the lowest possible cost is not part of the process. Finally, while not a specific focus of the Task Force, there are instances in which the cumulative impact of nearly 40 years of statutes, executive and administrative orders, guidance documents and policy directives has been conflicting, overlapping and counterproductive regulations that have a troublesome impact on permitting efficiency.

The problem of permit processing is exacerbated, as indicated in the Background section, by declining budgets, reduced staff and an IT system that has not kept pace with advances in size, interconnectedness and processing. Worse, the DEP budget each year does not include any money for IT upgrades. Money for upgrades comes only from excess receipts, extra funds made available to the DEP when fee income exceeds budget projections. Needless to say, this is an ineffective way to keep pace with ever advancing IT capabilities.

Permitting inefficiency is also exacerbated by the system of filling vacancies that occur in the DEP. At present, the first step is to justify the position, a many months process of internal review and case statement preparation, submission to the New Jersey Department of Personnel (soon to be abolished, with no clear understanding of which department will assume the responsibilities), then review by the Governor's office. If approved (and too often the filling of a vacancy is denied), the DEP starts an equally time consuming process of hiring a replacement. All together,

the entire process can take years. This process is applied to fee funded positions as well as positions funded by state appropriations. In the meantime, there is no reduction in the number of permit applications that must be processed or other responsibilities that must be met.

Three other issues also contribute to permit processing inefficiencies by consuming money and staff time. The first is responding to requests under the Open Public Records Act. According to the DEP 5th Year Annual Report of OPRA, in the five-year period ending in the 2006-07 fiscal year, the DEP spent more than \$15 million to process 55,174 OPRA requests, only approximately \$2 million of which is covered by fees. That number represents 63 percent of such requests received by all departments of state government. To handle this large volume of request, DEP has been obliged to assign a staff of 12 people, supported part time by 20 records custodians to monitor the OPRA tracking system and 120 file officers to identify new requests, review files, determine if requested records exist and update the database to reflect responses to requests. Thirty-four percent of the requests required staff to retrieve and make paper copies of files.

The second issue consuming staff time is the obligation to respond even to poorly prepared permit applications. While permitting staff provide an important service to the regulated community by helping applicants to work through application issues, particularly when rules are not as clear as hoped or intended or when there are various legitimate interpretations of rules, too much time is spent working with applications that are improperly prepared.

The third issue is inadequate training of permit writers, inadequately supervised permit writers or both. This can result in permits being declared administratively or technically incomplete due to an inaccurate or improper reading of the rules, which can result in time consuming requests for reconsideration by DEP management.

Overall, there is no single silver bullet that can fix the various permitting problems of the DEP. Rather, what is needed is similar to the approach that enables certain manufacturing companies to stand out in their fields. The success of these companies is rooted in rigorous and unrelenting attention to all of the little details of the manufacturing process, or in the DEP's case, the permitting process. The successful manufacturing companies have created a work culture with a bias toward action – a performance-driven environment – and have empowered its employees to perform. For the DEP, there is a need to constantly identify all of the small and large impediments to expediting permit decision-making, and then to empower everyone in the process always to be looking for ways to improve and providing the support to do so.

Permitting efficiency improvements should begin first by shifting the management of the DEP from an input to an output focus. Unless and until such a transformational change occurs, every recommendation offered by the Task Force will be subsumed by the complex web of statutes, regulations and bureaucratic functions that govern the DEP's day-to-day work.

There are three key components of establishing an output, or performance based, model of managing the DEP. The first is establishing a baseline staffing level and budget, recognizing that in the current budget climate there will be no appreciable increases in the budget or staff, which afford some breathing room to be able to maintain the proper foundation of resources required to efficiently and consistently perform the duties of the DEP.

The second component is to ensure that the fees charged by the DEP are on a fully allocated basis, including salaries, benefits, pensions and overhead such as administration and IT. The regulated community understandably complains about the increasing costs yet increasing time for permit reviews. However, if fees were levied on a fully allocated basis and the DEP provided a timely review of permit applications, we believe there would be wider acceptance and fewer complaints about fees, even if there were a cost of living adjustment to the fees on an annual basis. The regulated community is prepared to pay for performance.

The third component is to upgrade the DEP's IT capabilities to a state-of-the-art level, particularly when staffing will be stable or declining in the foreseeable future. There simply is no excuse for the inefficiencies in the permitting program borne of paper shuffling between reviewers, the regulated community and the general public. While electronic capabilities of the DEP have improved over time, the DEP must move as quickly as possible to e-permitting and greater use of electronic communications with its various constituencies.

Recommendations

The findings and recommendations of the Task Force are detailed below. General findings and recommendations are listed first, followed by Land Use, Water Quality and Priorities.

GENERAL RECOMMENDATIONS

TECHNOLOGY

FINDING

1. Permit applications and reporting, such as monitoring data and condition compliance information for almost all DEP programs are submitted, processed and issued in hard copy, paper form. This process increases the cost and time to prepare, submit and process permit applications.

RECOMMENDATIONS

- 1.1 Migrate to electronic submission and processing of permit applications and associated reporting. Such e-permitting will require upgrading IT infrastructure, including networks, wiring, routers and other hardware.
- 1.2 Develop and implement an e-portal for receipt of suitable applications. Build e-portal so that applications cannot be submitted unless project critical information is included.
- 1.3 Accept email communication between the DEP staff and the applicants, agents or both as the formal record of correspondence for permit applications.
- 1.4 Designate as mandatory the electronic submission of the suitable applications. Utilize a phased-in schedule to allow applicants to adjust to this new requirement.
- 1.5 Expand Geographic Information System tools for the screening of proposed projects for environmental constraints. Expand Computer Assisted Drawing (CAD) tools in order to review electronic submission of plans.
- 1.6 Facilitate upgrading of computers to keep up with industry standards to allow permitting staff to view GIS data and CAD designs and run other appropriate programs.
- 1.7 Digitize all maps and data on GIS to ease access for the regulated community and DEP staff.
- 1.8 Enable staff to remotely access DEP data systems from the project sites via wireless laptop computers and provide them with appropriate GPS mapping tools.
- 1.9 Since migration to e-permitting will require a training component, ensure adequate training for all staff implementing the e-permitting tools.

FINDING

2. Inadequate IT staffing levels inhibit efficient programmatic improvements. Web site update and maintenance, electronic reporting, GIS mapping layer integration, DEP bulletin reporting fixes and NJEMS maintenance, such as standard permit condition library, Letter builder and Projects, too often fall to permit review staff.

RECOMMENDATION

- 2.1 Dedicate IT technical staff within each program to maintain and enhance systems and to take on specific technology work tasks so that staff knowledgeable of internal processes can make needed process improvements, allowing permit review staff to concentrate on permit reviews.

FINDING

3. The lack of a consolidated database of permit information makes it difficult for DEP staff and the regulated community to easily access older permit data that is often required to process new applications.

RECOMMENDATION

- 3.1 Consolidate permit application databases by importing relevant historical data into the current data management system, NJEMS, thereby eliminating redundant searches and incomplete information searches. Identify how applicants might be able to provide relevant historical permit data to reduce the burden by DEP staff to search databases.

RULEMAKING

FINDING

4. At times, the DEP adopts new rules and does not have all resources or implementation tools, such as guidance documents, technical manuals and mapping, available at the time of adoption. This creates difficulty and confusion as the new rules are implemented. In addition, lack of internal coordination between rule writers and permit review staff contributes to inefficiencies in implementation of new rules.

RECOMMENDATIONS

- 4.1 When the DEP intends for the regulated community to be bound by implementation tools, such tools must be subject to public notice and comment before becoming effective.
- 4.2 Involve stakeholders in the development of significant new implementation tools.
- 4.3 Ensure that rule writers closely interact with permit review staff to fully understand the ramifications and implementation logistics of all new and amended rules so the new rules can be written in a manner that ensures consistent interpretations among permit reviewers and facilitates implementation.
- 4.4 Review and evaluate the existing process that addresses internal and external rule implementation to make sure it works for all DEP units affected by any proposed rule change, particularly those tasked with writing permits and who interact with the applicants.
- 4.5 When a rule is proposed as a requirement of new law, ensure that DEP is allocated the resources to implement the statutory directives based upon a DEP projection of staff resources necessary to implement the rule.

FINDING

5. The public often does not have access to the rulemaking process until the proposed rules are published, making substantial changes to the rule proposal after publication difficult due to unavoidable legal constraints. Feedback from the public and the regulated community earlier in the rule proposal formulation process can result in increased efficiencies by reducing extensive changes as a result of the public comment process, by reducing post-adoption litigation and by facilitating the preparation of guidance and other documents that will assist in implementation recommendations expressed elsewhere by the Task Force.

RECOMMENDATIONS

- 5.1 Identify opportunities to use methods such as advanced notices of proposed rulemaking and interested party review to provide the public with earlier notice of rule proposals and an opportunity to comment before rule proposals are formalized and published.
- 5.2 Identify opportunities to formulate stakeholder advisory committees to flesh out options and recommendations related to complicated and highly contested rule proposals, including broader public notice and comment opportunities, and provide them to DEP for consideration in the formal rulemaking process.

FINDING

6. Administrative rules sunset every five years. Re-adoption is a labor intensive process, requiring a significant amount of staff and management effort, particularly for programs with numerous permit programs and charged with implementing rules. Smaller amendments are often made within the five-year period on an as needed basis, but these amendments do not automatically extend the five-year sunset.

RECOMMENDATION

- 6.1 Consider a revision to the Administrative Procedures Act to simplify the rule making process for re-adoption without change, for minor amendments and for amendments required to satisfy a federal or similar mandate.

RESOURCE MANAGEMENT

FINDING

7. Permit programs require an appropriate base level of staff to efficiently process the large volume of applications received each year. As staff retire or otherwise leave DEP, all programs undertake a burdensome and time consuming process to justify the back filling of the position, first within the DEP, then at the Department of Personnel (DOP), which is slated to be abolished under the recently approved state budget, and finally at the Governor's office. If approved, another equally burdensome and time consuming process is undertaken to fill the position. Restrictions on filling vacated and new positions in a timely manner have adversely impacted the ability of the programs to efficiently fulfill their responsibilities and utilize the fees collected. In addition, the DEP has difficulty in re-allocating staff between programs in response to changing workloads and priorities. The continuous volume of incoming permit applications is independent of the number of resources available. Therefore, as vacancies occur, workloads of remaining staff increase, thereby adding to processing delays.

RECOMMENDATIONS

- 7.1 Supplement the DEP's Office of Management and Budget online exit survey by conducting exit interviews with staff that leave DEP to get a better understanding of circumstances. Use the results of the survey and interview to evaluate workplace conditions in an effort to improve the overall work environment, to retain more staff and to improve staff morale.

- 7.2 Establish and implement comprehensive succession plans for each program, including a training schedule, to ensure a smooth transition of workloads as staff retire or leave DEP and to address potential staff shortfalls in a manner that is least disruptive to work outputs.
- 7.3 Re-examine personnel policies and procedures to determine how to give program managers and senior staff flexibility in designating key staff for promotions; transferring critical resources to areas of the DEP significantly impacted by workload spikes; and allowing for the use of temporary work assignments based upon pairing up the complexity of a specific application with the skill set of a particular staff person.
- 7.4 Allow the fee supported programs to maintain a base full time equivalent (FTE) level through back filling of vacancies commensurate with fee revenue generated without having to go through the full approval process at DOP and the Governor's office. This will ensure continuity in staffing and outputs and will maintain DEP capacity to efficiently process permits.
- 7.5 Hire and maintain full time clerical support so programs do not need to rely on temp agencies for support. While a good stopgap measure, use of temp agency staff requires frequent training that detracts from the work output of other staff.
- 7.6 Institute mandatory training programs, which, ideally, would be offered on site at DEP, if possible, for staff in the various permit areas to ensure that staff is kept abreast of the latest innovations in each program area and to ensure the proper and accurate application of rules.
- 7.7 Monitor and analyze program work loads and staffing levels over time to assess permit application processing and reallocate staff accordingly to address shifting permit workloads and priorities.
- 7.8 Establish permit goals for each permit program, such as the number of permits decisions made, and use this information in employee annual reviews to assess whether the goals have been achieved and to assess the causes or roadblocks for such achievement.
- 7.9 Re-establish relationships with colleges and universities to assist those educational institutions in maintaining and enhancing their curricula in the fields utilized by the DEP, including, but not limited to, science, policy and management. This might enable the educational institutions to: offer training to current DEP staff; provide interns educated in these areas to the DEP both in the summer and during the academic year; and produce graduates with appropriate training to address environmental protection and policy in both the public and private sectors.
- 7.10 Within 18 months, reassess the appropriate base level of staff resources necessary to effectively meet current needs once the Task Force recommendations have been implemented.

FINDING

8. Applicants often submit incomplete applications, and consultants often have difficulty keeping up with new rules and amendments, leading to administratively deficient applications and subsequent significant revisions during the technical review period. As a result of this defective process, DEP staff spends considerable amounts of precious time shepherding applications through the process. Rutgers University, the Department of Community Affairs and others provide permitting workshops for continuing education but rely on DEP staff to prepare updated hand-out materials and power point presentations and to make the presentations. Using permit review staff for such outreach activities diverts from its ability to process permit applications. Additional permit processing efficiencies could be achieved through standardized training of new staff and cross program training.

RECOMMENDATIONS

- 8.1 To improve the transparency of the decision making process, expand and improve the accessibility of the names of reviewers and supervisors for each permit application on the DEP Web site.
- 8.2 Consider developing cross-training programs for permit writers so that during times of high permit backlogs, high permit applications, or both, assistance can be provided across division lines.
- 8.3 Outsource training activities to a delegated authority to develop, provide and maintain educational programs on regulations and permit application requirements for consultants and for required training of well drillers and pump installers. Accomplish this through an RFP process and solicit firms that will require only minimal DEP staff assistance. Develop a training policy that defines when DEP staff will take the lead on training and at what point DEP will defer to outside groups to handle the training. DEP would maintain the lead training role as rules are promulgated but defer to outside trainers at a later time.
- 8.4 To improve the consistency of permit application reviews, institute a training program similar to that used for judges in the court system, whereby a number of judges review the same set of facts, then compare their approaches and decisions.

FINDING

9. Most permit programs are funded through permit fees, which are based on a workload analysis and reflect the staffing levels required to process the actual caseload of permit applications. The fees cover staff salary and pension costs but not benefits, field equipment, staff training and information technology needs such as computer hardware, software and licenses.

RECOMMENDATIONS

- 9.1 Revise permit fee schedules to reflect the total cost of DEP permit review staff, including all direct and indirect costs. These costs include salaries, benefits, pensions, field equipment, staff training and the comprehensive needs for information technology.
- 9.2 During times of increased permit workload, contract out for permit review services. Similar to the DEP air program, the consultants would work at DEP offices and would be paid by the state, thus eliminating any conflict of interest.

FINDING

10. Applications for public sector and utilities work, including those for infrastructure affecting public health and safety, are typically processed as routine applications within the DEP.

RECOMMENDATIONS

- 10.1 Publicly funded infrastructure projects that protect public health, safety and welfare and that meet appropriate location, design and policy criteria should benefit from the Priorities process set forth in this report.
- 10.2 Consider the development of a streamlined review process for projects of redevelopment or repair of existing infrastructure.

STANDARD SETTING

FINDING

11. Standard setting is a highly technical activity that necessitates integration of the latest and best science with pragmatic policy and implementation concerns. The current decentralization of standard setting does not afford efficiencies that could be gained by consolidation of this function across DEP programs.

RECOMMENDATION

- 11.1 The DEP would benefit from the assembly of a multidisciplinary group of scientists whose expertise would inform standard setting and rule writing for water and land use programs.

OPEN PUBLIC RECORDS ACT (OPRA)

FINDING

12. New Jersey has one of the broadest open public records laws in the nation, and the DEP receives more OPRA requests than any other agency of state government. OPRA has evolved over time to become a general site search to find any and all permits, approvals and documents for a particular site or region. There are significant resource demands to comply with OPRA requirements and associated deadlines. Additionally, paper file maintenance of hundreds of thousands of individual public records, some of which are data-managed and many of which are not, dating back many decades, makes retrieval of those public records cumbersome and time consuming and creates an additional burden on limited program resources.

RECOMMENDATIONS

- 12.1 When producing records in response to OPRA requests, DEP staff should no longer copy files. Instead, all files should be scanned and provided to the requester electronically or, if necessary, in hard copy by downloading and printing them. In those instances when consultants who make appointments to view files scan those files, the consultants should be required to provide an electronic copy to the DEP to be used to fulfill future OPRA requests.
- 12.2 The DEP should be provided resources to upgrade its computer hardware and software to enable a more rapid move to e-filing of required submissions. E-filing of materials will make information available in digital format to DEP staff, as well as to the public, which may ultimately reduce OPRA resource expenditures. Many of the resource intensive elements of OPRA cannot be avoided, such as determining privileges, but for general requests for application materials and technical documents, this should certainly help.
- 12.3 Provide a centralized, web-based reading and viewing location where the public can search a library of databases for permit information and tracking reports.
- 12.4 The OPRA statute should be amended to provide a fee structure that recovers the costs of search, retrieval and copying, along with a provision for waiver of such fees when a department concludes it is in the public interest. The federal Freedom of Information

Act and federal agency implementing rules have similar provisions that can serve as a model for amendment of OPRA and state departmental implementing rules. For example, see EPA's rules on fees and fee waivers at 40 CFR, Section 2.107.

IMPLEMENTATION OF TASK FORCE RECOMMENDATIONS

FINDING

13. While most of the recommendations outlined in this report are limited to DEP practices, resource allocation, internal priorities and organization, some of the recommendations might involve changes in regulations, policies and, in some instances, laws.

RECOMMENDATIONS

- 13.1 In consultation with the Attorney General's office, review each individual recommendation of the Task Force to determine whether regulatory or statutory changes are needed to ensure full implementation of each recommendation. Conduct this evaluation within a short timeframe of perhaps 30 days as it will be instrumental in determining an overall implementation plan for these recommendations.
- 13.2 The implementation plan should prioritize the three recommendations highlighted in the conclusion section – technology, rule making and resource management – along with the recommendations in the priority section. Regardless of the immediate resource constraints, these recommendations should be implemented because of the long term cost-benefits and the necessity to effect real change.
- 13.3 Initial research indicates that there might be a number of initiatives underway in other states and localities that deserve further analysis. Review these initiatives for possible application in New Jersey.

LAND USE MANAGEMENT RECOMMENDATIONS

EXTERNAL PERMIT APPLICATION PROCESS

FINDING

14. Permitting programs regularly receive inadequate application submittals. A majority of applications are classified as technically deficient, and nearly as many are administratively deficient. DEP staff devotes significant amounts of time with applicants and consultants on deficient applications, often waiting long periods of time to receive required information outlined in deficiency letters. In addition, the DEP does not have the authority to hold consultants accountable for the quality of their work

RECOMMENDATIONS

- 14.1 Develop clear informational requirements and checklists for administrative and technical completeness.
- 14.2 Require a mandatory pre-application meeting of the project principal and a DEP supervisory level staff member for certain categories of DEP permit applications, depending on the scope and potential impact, to clearly define the specific requirements for any forthcoming permit application. Require the submission of a completed Readiness Checklist with all pre-application meeting requests and publish the completed checklist on the applicable DEP program Web page so the public has access to basic project information. Consider fees for some categories of optional pre-application meetings.
- 14.3 Mandate a certain level of professional expertise, education and/or certification for the preparation of certain permit applications.
- 14.4 Require applicants to certify that all required application information has been included with any permit application submission.
- 14.5 Require that e-mail addresses for the applicant, owner, agent and consultant be provided in the application and notify by e-mail all parties of all application deficiencies.
- 14.6 Promptly reject all applications that are administratively deficient, except for *de minimis* deficiencies for which a seven day period to cure should be provided.
- 14.7 Establish a mandatory time frame for submission of deficient technical information to the DEP and, if the requested information is not received within that time frame, cancel the application and require submission of a new application.
- 14.8 Implement a new process to cancel an application when, after two notices of technical deficiency, it remains deficient. Credit only half of the original permit application fee toward a new application for the same project.
- 14.9 Do not refund application fees if an application is denied or if an application is cancelled or withdrawn late in the process.
- 14.10 Develop a qualitative rating system of consultants' performances based on the rate their applications are rejected as administratively or technically deficient. Publish these consultant reports on the DEP Web site.

FINDING

15. Applications for various permits related to the same project are often submitted separately, causing inconsistencies and inefficiencies in the review of the activity as a whole.

RECOMMENDATION

- 15.1 If a DEP-regulated activity requires a number of permits from a single program in the DEP, require that all permit applications be submitted as one package to that program and reject any application for a project if it does not include all applications for that project. This will allow for consolidation of all permit review actions and the issuance of one program decision for the project. Exceptions will be allowed in cases where a pre-application meeting or concept meeting establishes specific permit application types that should be bundled or defines a schedule for submission of multiple permit applications.

INTERNAL PERMIT APPLICATION PROCESS

FINDING

16. Application requirements, review criteria and time frames of the various permit programs are inconsistent because they are governed by different statutes, administrative rules and policies that have been adopted over decades. This results in confusion and prevents implementation of efficiencies in administrative processing of permits. It greatly increases the complexity for managing data systems and building the e-portal required to implement electronic permitting.

RECOMMENDATION

- 16.1 Standardize and streamline the administrative and technical requirements for all permit programs. Install requirements for uniform application, public notice, review criteria, review time frames and graduated review time frames based on permit complexity. Decisions on this recommendation need to consider federally delegated programs and other permit types where synchronized review time frames might not be appropriate. Further evaluation of regulatory change versus statutory change must be completed.

FINDING

17. The requirements for submission of administratively and technically complete applications are often unclear to the regulated community and change over time in response to amended rules and other factors, presenting difficulties for applicants navigating the permit process.

RECOMMENDATION

- 17.1 Update and maintain all permit application checklists with input from the regulated community to ensure they are current and available on the Web. Clearly define how an application meets administrative completeness and technical completeness. Outsource administrative completeness reviews.

FINDING

18. Technical deficiencies are often identified late in the review process, necessitating an extension of the application review time frame or waiving of 90-day rights to allow the deficiency to be resolved. The current 20-day time frame for initial review is unmanageable with existing staff allocation.

RECOMMENDATIONS

- 18.1 Reallocate staff resources and dedicate additional staff review earlier in the permit review process for specific technical elements to identify technical deficiencies in a timelier manner and notify the applicant of such.
- 18.2 Involve supervisors earlier in the permitting process to avoid last minute supervisory vetoes of permit applications after months of staff work.

FINDING

- 19. Site plans, surveys and development plans have different requirements and do not always include the information necessary to process permit applications, often resulting in requests for amended plans and information.

RECOMMENDATION

- 19.1 Clearly define the scope of information required to be included on all plans for each permit type in order to facilitate the review of permit applications.

FINDING

- 20. The DEP relies heavily on the data provided by the extensive stream and groundwater monitoring network established in New Jersey. While expensive to maintain, these networks are critical to comprehensive, accurate and timely permit application decisions.

RECOMMENDATION

- 20.1 Establish a long term reliable source of funding to ensure the maintenance of these networks and the tools needed to both gather and manage this data and should look for outside partners to assist in funding these critical networks. Consider whether permit fees ought to reflect maintenance of these outside systems that are critical to environmental review.

FINDING

- 21. The Division of Water Supply has created a master permit, which allows for unlimited water main extensions with purveyor approval and which is under utilized, thereby increasing the workload of staff. This division performs an overall water availability and firm capacity analysis for the water supplier. The purveyor then is authorized to make as many service connections it can under the approved limits of the master permit.

RECOMMENDATION

- 21.1 Amend regulations, except in the Highlands Preservation Area, to specifically delegate authority to purveyors to issue water main extensions through a master permit and mandate that large purveyors use the master permit. Such a regulation would require that purveyors have all current data from the DEP with regard to safe yields in order to make consistency determination at the time of the purveyors' permit decisions.

FINDING

22. The Water Supply Management Act currently requires a five-year agricultural certification program. For nonagricultural diversions, the water allocation rules allow for the issuance of a water allocation permit for up to 10 years.

RECOMMENDATIONS

- 22.1 Increase efficiency by allowing the program to extend the effective periods for both of these approvals in those situations where there are not significant, adverse environmental or water supply impacts.
- 22.2 Amend N.J.S.A. 58:1A-6a. (2) to establish the effective term of agricultural water usage certifications not to exceed 10 years. Amend the water allocation rules to extend the nonagricultural permit period from 10 years to 15 years in those situations where there are not significant adverse environmental or water supply impacts and only where all safe yield data is current.

FINDING

23. As required by statute, water connection permits must be renewed annually. The Division of Water Supply processes about 700 every year and regulates the installation of backflow preventers necessary to ensure safe drinking water supply.

RECOMMENDATION

- 23.1 Delegate to the water purveyors with oversight by the Division of Water Supply the responsibility to ensure that backflow preventers are installed throughout systems.

FINDING

24. Permit application fees for the various land use permits are based on many different factors, including complexity of processing, cost of a project and cost for full time employees. Projects requiring multiple permits also require multiple fees, and many of the initial administrative deficiencies are related to improper fee calculations, submissions or both.

RECOMMENDATION

- 24.1 Standardize fees across the various Division of Land Use Regulation permit types and simplify calculation for multiple permits.

FINDING

25. Statute 13:D-122 allows applicants with permit fees of more than \$1,000 to pay in three installments. This creates an additional administrative burden for staff since payments are due based on permit processing milestones and often requires DEP to chase payments.

RECOMMENDATION

- 25.1 Eliminate the installment payment schedule for permit applications from the statute or significantly increase the base permit fee subject of this provision. Allow applicants, consulting firms or both to establish application fee escrow accounts modeled after escrow accounts used in federal bankruptcy courts, from which fee payments can be drawn.

FINDING

26. The Land Use Regulation statutes and regulations require different buffers for coastal wetlands, freshwater wetlands and riparian zones, which sometimes results in confusion and delayed actions. With the exception of the wetland buffer rule in the Coastal Zone Management rules, all other buffers are proscribed and defined.

RECOMMENDATION

26.1 Establish a uniform series of wetland buffers pursuant to the Coastal Zone Management rules and consistent with the buffer requirements established for other Land Use Regulation programs.

FINDING

27. The Freshwater Wetland Mitigation Council was established by statute to oversee wetland mitigation banks and currently holds six annual meeting, often without a quorum. Significant staff effort is involved in preparing for these meetings, detracting from the DEP ability to review and process mitigation plans associated with permit applications. Since state and federal rules outline specific criteria for success of wetland mitigation projects, the Council review is often redundant and does not always add value to the process, as evidenced by its infrequent challenges to DEP decisions.

RECOMMENDATION

27.1 Work with the Freshwater Wetlands Mitigation Council to reconsider roles and responsibilities, to evaluate options for changes to meeting schedule and to establish a streamlined process for operations, including, but not limited to, options to distribute information electronically to members and to vote on projects via e-mail or conference calls.

FINDING

28. Dewatering permit activities for 31 days or fewer are regulated under permit-by-rule. This 31-day period is often insufficient to cover the required dewatering process, necessitating a full application for dewatering activities exceeding 31 days.

RECOMMENDATION

28.1 Given the temporary nature of dewatering activities and the minimal potential for adverse environmental impacts, amend the permit-by-rule to allow dewatering for a longer time frame, such as 60 days, in cases where no sensitive resources are likely to be impacted.

FINDING

29. Applications for water allocation permits that also require the approval or consistency determination of the Pinelands Commission are often delayed while the programs await resolution of those issues.

RECOMMENDATION

29.1 Support adoption of clear, consistent standards in the Pinelands Commission Comprehensive Management Plan to facilitate permit decisions from both the DEP and the Pinelands Commission. Require that any water allocation permit application to DEP be submitted concurrently with any application to the Pinelands Commission.

FINDING

30. Both DCA and the DEP regulate construction activities, however the standards that apply to construction in special flood hazard areas are inconsistent. DCA recognizes the minimum regulatory standards of the Federal Emergency Management Agency while the DEP, in response to increasing flood damages throughout the state, has adopted more stringent standards that exceed the minimum regulatory requirements of DCA and FEMA. This inconsistency causes confusion to code officials and the regulated community.

RECOMMENDATION

30.1 Engage DCA in an effort to align the standards for construction in floodplains, such as low floor elevations, acceptable uses of crawl spaces and electrical and mechanical equipment locations, consistent with the higher standards adopted by the DEP.

WATER QUALITY RECOMMENDATIONS

FINDING

31. The DEP has not been able to realize certain efficiencies because the necessary IT upgrades are not in place. Staff has estimated that currently needed upgrades will not be in place for 10 years. Examples include upgrades necessary to process renewals under general stormwater permits. NJEMS cannot handle the 2,000-plus renewals that must be processed simultaneously, so the system has to be shut down, and the work done manually. There are also data retrieval problems with NJEMS.

RECOMMENDATIONS

- 31.1 On March 17, 2008, the DEP proposed regulations that would allow Division of Water Quality permit applications to be submitted electronically. Make it a top priority to ensure that applications can be accepted and processed in this manner. With regard to sealed plans, the plans can be submitted electronically and reviewed. A hard copy of sealed plans then can be submitted prior to the issuance of the permit.
- 31.2 Direct more resources to NJEMS and prioritize NJEMS upgrades to achieve maximum efficiencies.

FINDING

32. The regulated community finds that it is difficult and costly to achieve many of the effluent limits established by the DEP and challenges the limits by performing studies and through litigation. The challenges to the limits, both the review of individual studies and the costly litigation, are inefficient for the DEP, because staff must review studies, participate in adjudications and perform other functions in addition to permit writing.

RECOMMENDATION

- 32.1 The renewal cycle for permit holders within watersheds should be the same or coordinated. The DEP could adjust the renewal dates so that they are synchronized by watershed. The permit holders would then be better able to get together to perform the various studies necessary to confirm that the permit limit is appropriate for the various permit holders. The DEP could facilitate the coordination. Completing the studies on a watershed basis would result in better studies and a more efficient and predictable system. In addition, the study would continue to be paid for by the regulated community, thus not increasing the burden on the DEP.

FINDING

33. Conflicts sometimes exist between drinking water and wastewater utilities when one introduces substances that cause difficulties for the other. This can happen because the objectives of the federal and state water pollution control and safe drinking water laws and programs are different and might result in the development of standards that are not harmonized. For example, a substance might be added by the drinking water utility for the purpose of minimizing corrosion so that drinking water standards are met, while that substance must be removed or treated by the wastewater utility in order to meet surface water effluent limits. Similarly, compliant discharges from upstream wastewater utilities can potentially cause difficulties for downstream drinking water utilities. The different objectives of the drinking water and wastewater programs can therefore lead to permitting and economic inefficiencies as well as a tension between the protection of drinking water and surface water quality. If the program objectives were considered together, such concerns could be

reduced or eliminated, which, in turn, could reduce the frequency of permit challenges and associated litigation.

RECOMMENDATION

33.1 Identify those standards that might cause conflicts between drinking water and wastewater utilities. Work with utilities to develop implementation plans to address difficulties that arise. Drawing from existing advisory groups, convene a working group of relevant stakeholders, including the DEP's drinking water and wastewater programs; the utilities; and the ratepayers through their representatives and through the Division of Rate Counsel. The objective of such a working group would be to identify areas where a coordinated approach and operational changes would enable both drinking water and wastewater utilities to achieve and maintain compliance with applicable standards in a way that is most efficient overall.

FINDING

34. Permit writers within the Division of Water Quality are faced with complex technical issues regarding implementation of new and existing water quality criteria, which results in delays in issuing permits. The criteria development process historically has not included implementation as a consideration prior to rulemaking. The NJPDES and Standards programs struggle to reconcile implementation issues, which creates friction that contributes to inefficiencies.

RECOMMENDATION

34.1 Re-examine the rulemaking process to determine if there is a better way to ensure that rule writers closely interact with permit review staff so that the ramifications and implementation logistics of all new and amended rules are fully understood. The new rules can be written in a manner that facilitates implementation.

FINDING

35. The Division of Water Quality has a number of problems with rule writing resulting in inefficient use of permitting staff time.

RECOMMENDATION

35.1 Designate and provide training for specific rule writers within the Division of Water Quality. Rule writers with expertise in certain water quality areas could be dispatched to other programs to assist when workloads fluctuate, which is typically around the time of rule changes or massive renewals.

FINDING

36. The DEP often conducts reviews of applications that are also reviewed at the local or regional level, resulting in redundancies. In addition, in the case of stormwater, the DEP also has different divisions issuing stormwater permits and interpreting the stormwater management regulations, resulting in inconsistencies and confusion in the regulated community.

RECOMMENDATIONS

- 36.1 Consider increasing the regulatory threshold for sewer extensions when the sewage utility or authority endorses the design. This procedure could also apply to water distribution line extension permits, which is a land use function.
- 36.2 Clearly identify and make known to the public all stormwater functions currently performed by the DEP.
- 36.3 Strive to consolidate all stormwater functions under one program. At a minimum the stormwater management rule and interpretations should be within the NJPDES program. The municipalities, counties and state agencies could then have one point of contact for stormwater issues. This would assist these entities in complying with their responsibility to enforce the stormwater management rules on projects.
- 36.4 When the DEP believes it must perform stormwater management reviews, it must ensure that all stormwater management rule interpretations are consistent with the NJPDES program interpretations.
- 36.5 The DEP has an established stormwater BMP manual technical review committee consisting of representatives from all stakeholder groups. Use this committee to review and respond to questions regarding rule interpretation.
- 36.6 Conduct a voluntary pilot program to identify where duplication of stormwater management reviews could be eliminated.

FINDING

- 37. Renewal of individual NJPDES permits is very time consuming. The appropriate use of general permits can greatly reduce staff time spent on permit renewals.

RECOMMENDATION

- 37.1 Many individual discharge-to-groundwater permits for domestic wastewater facilities have the same permit requirements. Consider issuing a general permit for these existing facilities, which would allow the DEP to renew the permits for these facilities through one permit renewal action.

FINDING

- 38. Efficiencies could be achieved if more projects were to be fully evaluated early in the planning and permitting process.

RECOMMENDATIONS

- 38.1 Expand the role of the Office of Permit Coordination and allow preferred project types to have this office facilitate all of their permit reviews and approvals.

PRIORITIES RECOMMENDATIONS

PRIORITIES FOR PERMIT PROCESSING

FINDING

39. Certain projects will result in development that furthers the state's goals and policies and will support other statewide initiatives. In addition, the permitting of certain regulated projects will result in minimal impacts and, in some cases, clear environmental benefit and should therefore be considered for priority processing. However, no mechanism currently exists to identify these projects and allocate resources to move them efficiently through the permitting process.

In response to the need to expedite some permits, attempts have been made to establish a priority system of permit reviews, albeit without much success. For example, the DEP Land Use Management programs process permit applications as individual permits, general permits and permits by rule, with the scope of applications and associated time frames ranging from high to low, respectively. Beyond these categories of permits, which have varying process timeframes, the programs do not distinguish between permit types or project locations in terms of processing and priority. As a result, all projects tend to be processed based on a first-in, first-out system, with no formal mechanism to prioritize these reviews.

In the absence of a process to establish DEP permit review priorities, individuals and representatives of various constituencies frequently seek to establish preferences in permit review schedules. Such activities are rarely transparent to the public and can add to inefficiencies in the permitting process.

RECOMMENDATIONS

- 39.1 Establish a priority system to manage permit application processing according to the following criteria:

Threshold Criteria (mandatory)

- a. Completion of the Readiness Checklist.
- b. If a sanitary discharge is required for the project, the area proposed for development is located in an updated sewer service area.
- c. Water and wastewater capacities are available, applicable only if sewer and water service is required for the project.
- d. The development footprint, including any areas of disturbance, will not adversely impact natural resources, such as dedicated open space, floodplains, steep slopes, stream corridors, threatened and endangered species habitat and wetlands, except as follows:
 - i. Any impacts are limited to those permissible under the General Permits of the Land Use Division, listed in Exhibit 3 herein, except for the following: CAFGP7 (Voluntary Reconstruction); CAFGP8 (Single Family or Duplex); CAFGP18 (Bulkhead Construction); FWGP4 (Hazard Site Invest/Cleanup); FWGP6 (Filling of NSWC); FWGP9 (Airport Sightline Clearing); FWGP13 (Lake Dredging); FWGP23 (Expand Cranberry Growing Operations); and FWGP27 (Redevelop Disturbed Site). On a case by case basis, the DEP may determine that a project requiring one of these excluded General Permits may still qualify as a priority based on the anticipated environmental impact of

- that project, as long as the impact is from the ancillary (e.g., road crossings, utility crossings and outfall structures) and not from the primary development footprint; or
- ii. The impacts to a natural resource result in an improvement to the environmental conditions of the specific resource impacted. Where the project involves site remediation, the resource to be cleaned up is exempt from the impacts analysis.

Evaluative Criteria

Site Performance (minimum of one)

- e. Improves existing water quality, e.g. due to run-off and recharge solutions.
- f. Remediates, restores or adaptively reuses a brownfield, grayfield or contaminated site.
- g. Restores and/or improves natural resources and habitat on the site.
- h. Improves public infrastructure affecting public health and safety.

State Priorities (minimum of one)

- i. Building and site design incorporates meaningful sustainable design features that reduce greenhouse gas emissions and conserve critical resources.
- j. Located in an urban aid municipality, a Transfer of Development Rights receiving district, an Urban Center or Urban Complex, an approved redevelopment plan or in a growth area or center of a State Plan Endorsed Plan approved by DEP, or other state supported growth program, e.g. Transit Village.
- k. Project includes an onsite affordable housing set-aside of at least 20 percent of all units for residential developments.
- l. Project provides significant municipality approved or county approved public benefits, such as cultural or community amenities, mixed use development or pedestrian oriented public spaces.
- m. Public infrastructure projects protective of public health, safety and welfare.

39.2 The DEP's administrative processing should provide a unique point of entry to facilitate reviews of priority projects.

39.3 Provide project concept review, a team approach to multiple permit projects and a case manager to follow the project from inception to decision. Additionally, identification of permit critical path parameters, including identification of fatal flaws and establishment of timelines for action by DEP and the applicant, should be implemented to bring more predictability, transparency, timeliness and efficiency to the review process.

39.4 Update the Readiness Checklist to incorporate the criteria set forth in Recommendation 39.1, above.

CONCLUSION

As referenced in the Background section of this report, there is no silver bullet in the effort to improve the efficiency of the permitting process at the DEP. There are numerous issues – some large, others small – whose cumulative effects have a negative impact on permit efficiency. Some of the recommendations to address these issues can be implemented with no additional resources while others necessitate new funding and possibly regulatory or statutory changes.

It would be easy to focus only on those recommendations not needing additional resources. However, this would be overly simplistic and a real mistake. Likewise, it would be a mistake and unfair to the regulated community if the DEP were to focus primarily on those recommendations that address permit application improvements and enhance the DEP's ability to quickly reject poor quality submittals without also focusing on recommendations that address the clarity of application requirements and the staff training necessary to avoid inaccurate or improper application of rules. These recommendations and many others throughout the report go hand-in-hand.

The Task Force highlights four key recommendations: Technology, Rulemaking and Resource Management from the General Recommendations and the entire Priority section. Implementing these recommendations would significantly improve the permitting efficiency of the DEP.

Of the four key recommendations, upgrading the IT capabilities of the DEP is the only one that requires significant additional funding. This recommendation is emphasized recognizing concerns about constraints of the state budget discussed in the Background section. However, on a cost-benefit basis, the expenditures would be justified.

While the cost has not been formally estimated, \$25 million over five years, or \$5 million per year, would be sufficient to develop state-of-the-art capabilities, such as hardware, software and training and contract services, in e-permitting, electronic sharing of files and data retrieval – essential components in the successful implementation of Task Force recommendations and the expected improvements in efficiency. The Task Force has recommended the establishment of permit fees that are sufficient to cover not only the direct costs of program implementation, but also indirect costs such as IT.

The Task Force recognizes that there will not be an increase in DEP staff levels in the near future. While there is an argument that certain areas of the Land Use and Water Quality Divisions are understaffed, those problems can be offset at least partially by the recommendations in this report. Only after implementing the recommendations over the next 18 months should an analysis be made of baseline staffing needs.

Perhaps the most important criterion for the successful implementation of this report is securing the engagement and buy-in of staff. Toward that end, a concerted effort first should be made to review the report and its findings with staff over the next month, then to develop an implementation plan with milestones over the following 18 months and finally to convene a group of DEP and outside advisors to review the success of the effort.

On a parallel track during the first month following release of the report, the DEP should make it a priority to brief the executive office, legislative leaders, the regulated community, environmental groups and other community leaders on the details of the report and solicit their support for the effort and their ideas for implementation. The DEP also should carry out a public outreach program which includes media outlets and editorial boards.

In the course of Task Force deliberations, two issues arose which were outside the charge of the Administrative Order but which directly impact the efficiency of the DEP. The first is the quality of science and research that provides the underpinning of the policies, guidance, directives and regulations of the DEP. Through the first two decades of the DEP's history, the Office of Science and Research was one of the most highly regarded programs in the country. However, during the past two decades, budget cuts and reorganizations have undercut the quality of the program. While the Office still does excellent work, the staff simply cannot keep up with the breadth and scope of DEP needs. Accordingly, the Task Force recommends that the DEP convene a study group that examines this issue and addresses possible ways to restore the stature of the Office, with a particular focus on collaborative efforts with academic research institutions and outstanding practitioners to minimize or avoid significant budget and staff increases.

The second issue, which has been mentioned in several places in the report, concerns the sometimes overlapping, conflicting and too often overly complex maze of regulations governing the workings of the DEP. As with many governmental bureaucracies, little attention was paid over the years to the cumulative impact of new statutes and regulations. The Task Force recommends that with outside assistance from an organization such as the Environmental Law Institute, the DEP should undertake a complete review of the statutes and regulations governing the DEP, with the goal of streamlining them whenever possible by identifying conflicts, overlaps and gaps. The Task Force recognizes that this would be a multi-year effort at a potentially significant expense, but the outcome could markedly improve the efficiency of the DEP.

Finally, if the recommendations of the Task Force are fully implemented, it will move the DEP a long way toward improving the environmental review of projects. The environment is an interconnected network of natural systems. An environmental review, when possible, should more closely reflect an understanding of those systems. Long discussed as a more holistic approach to assessing the impacts of a project, such an environmental review could significantly improve the efficiency of the DEP's work.

EXHIBIT 1
ADMINISTRATIVE ORDER 2008-06



State of New Jersey
DEPARTMENT OF ENVIRONMENTAL PROTECTION
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JON S. CORZINE
Governor

LISA P. JACKSON
Commissioner

ADMINISTRATIVE ORDER 2008-06

WHEREAS, as a highly industrialized and densely populated state, yet gifted with an irreplaceable and precious complement of biodiversity and natural resources, New Jersey has had a long tradition of being a national leader in aggressively identifying and addressing new threats to public health and the environment, while working to enhance the overall quality-of-life of New Jersey residents; and

WHEREAS, the Department of Environmental Protection (DEP) has many diverse constituencies, which at many times have competing interests and goals that can create conflicts as the agency strives for environmental and public health protection while also acknowledging other priorities, including bolstering economic growth in New Jersey; and

WHEREAS, the DEP has responsibility for issuing permits and approvals related to development projects based on scientifically sound standards that ensure the protection of New Jerseyans' health, welfare, environment and property and those approvals can have significant impacts on land use and development patterns, including at the local community level; and

WHEREAS, over the years, the DEP has made significant strides in upgrading its electronic capabilities which have improved the efficiency of the DEP's services and the transparency of its decision-making and I have identified improvements in "efficient service" as one of my current priorities as articulated in the department-wide "Action Plan";

WHEREAS, DEP permitting programs that affect land use are not specifically designed to provide incentives for sustainable development projects that contribute to achieving statewide greenhouse gas limits, economic growth opportunities in urban areas and meaningful affordable housing and that, as a result of their location and design, have little or no impact on public health and safety, the environment or natural resources;

WHEREAS, in the State's current budget situation, I recognize that it is essential to maximize and realign existing resources to innovatively deliver tangible results in efficient service as well as in achieving the State's mutually inclusive goals of creating meaningful affordable housing, ensuring economic growth in our cities, and reducing our natural resource footprint, energy consumption and greenhouse gas emissions, while complying with all mandates of environmental protection statutes.

NOW, THEREFORE, I, Lisa P. Jackson, Commissioner of the New Jersey Department of Environmental Protection by virtue of the authority vested in me by N.J.S.A. 13:1B-3 do hereby ORDER and DIRECT:

1. There is hereby convened the DEP Permit Efficiency Review Task Force, hereinafter referred to as the Task Force, which shall be convened for the duration of 120 days following its initial meeting;
2.
 - a. Within 120 days of its initial meeting, the Task Force shall conduct a comprehensive analysis of the permitting programs of the DEP and shall submit a report to me, with recommendations for restructuring and re-engineering department permitting and other programs to ensure that it is providing timely and efficient service to the residents of the State and the regulated community while maintaining public health and protecting the environment;
 - b. The report of the Task Force shall also provide recommendations for operational, policy and regulatory changes at the department to provide incentives for and to advance sustainable development projects that contribute to achieving statewide greenhouse gas limits, economic growth opportunities in urban areas and meaningful affordable housing and that, as a result of their location and design, have little or no impact on public health and safety, the environment or natural resources; and
 - c. As part of its deliberations, the Task Force may also identify possible statutory changes that would result in enhancing the DEP's timely and efficient service or the DEP's ability to provide incentives for sustainable development projects that contribute to achieving statewide greenhouse gas limits, economic growth opportunities in urban areas and meaningful affordable housing and that, as a result of their location and design, have little or no impact on public health and safety, the environment or natural resources.
3.
 - a. In conducting its analysis of and developing its recommendations, the Task Force shall review and consider opportunities to:
 - i. upgrade electronic processing in programs, expand electronic applications and reporting in those programs where, to do so, results in significant program efficiencies, and enhance electronic systems to improve processing time and the sharing of information across programs to improve decision-making and to provide greater public access to the data used by the DEP to make decisions;
 - ii. eliminate redundancies in application reviews, to apply uniform definitions, policies and procedures concerning the permit review clock in relevant permit programs, and other opportunities to make the permit review process more efficient;
 - iii. develop general permits, delegate appropriate approvals and authorizations to local government, authorize use of third parties for permit and compliance verification; and
 - iv. give greater priority, coordinated reviews, regulatory flexibility, and other incentives to projects that result in reductions in our natural resources

footprint, energy consumption and greenhouse gas emissions and enhancement of public health protections while providing meaningful opportunities for affordable housing and economic growth in urban areas, as well as giving greater priority, coordinated reviews, regulatory flexibility, and other incentives to towns that are implementing sustainable development approaches including those that have DEP-approved Plan endorsements, updated Water Quality Management Plans and/or center designation under the Coastal Area Facilities Review Act (CAFRA); and

- b. As part of its deliberations, the Task Force shall consider the resources necessary to implement its recommendations;
 - c. As part of its analysis, the Task Force shall note the opportunities identified in i. through iv., above, that can be accomplished under existing statutory and regulatory authority and those that require statutory or regulatory amendments; and
 - d. The Task Force may form committees and work with interested members of the public that include individuals and entities with experience in developing meaningful affordable housing opportunities, urban redevelopment and revitalization, and land use planning as well as with constituent groups who have regular contact with the DEP.
4. The Task Force shall not include as part of its scope, the DEP site remediation program which is currently undergoing a separate public analysis but the Task Force will review and consider policies and recommendations being considered as a result of the site remediation stakeholder meetings in its deliberations.
 5. As part of its scope, the Task Force may also make recommendations regarding policies to more comprehensively align state infrastructure investments to areas and projects that are consistent with urban redevelopment and revitalization and smart growth principles.
 6. I am directing senior staff within the Department to provide sufficient and adequate resources to the Task Force to ensure its efficient and effective operation and to provide relevant and important background, to the maximum extent allowed by law, needed by the Task Force to analyze DEP operations and programs.
 7. This Order shall take effect immediately.

March 18, 2008
Date



Lisa P. Jackson, Commissioner

EXHIBIT 2

TASK FORCE MEMBERS AND AFFILIATIONS

Christopher Daggett, Chairman
Principal
JM Sorge, Inc.

Frank Banisch
President
Banisch Associates, Inc.

Anthony DiLodovico
Principal Vice President
CMX Engineering

Richard Dovey
President
Atlantic County Utilities Authority

Christine Foglio
President
Community Investment Strategies, Inc.

Toni L. Griffin
Director of Planning and Community Development
City of Newark

Ernest Hahn
Executive Director
Delaware and Raritan Canal Commission

Richard Johnson
Senior Vice President – Development
Matrix Development Group

Peter Kasabach
Executive Director
New Jersey Future

Jane Kenny
Senior VP and Managing Partner
The Whitman Strategy Group, LLC

Karen Kominsky
President
ADV Group, LLC

Susan Kraham
Director of Policy and Counsel to the President
New Jersey Audubon Society

Julia LeMense
Executive Director
Eastern Environmental Law Center

Jack Lettiere
Jack Lettiere Consulting

Edward Lloyd
Evan M. Frankel Clinical Professor of Environmental Law
Columbia University School of Law

Robert Medina
President
Medina Consultants, P.C.

Walter Mugdan
Director, Division of Environmental Planning and Protection
U.S. EPA Region 2

Jong Nee
Policy Counsel
Governor's Office

Mark Remsa
Director
Economic Development and Regional Planning
Burlington County

Joseph Riggs
Group President
K. Hovnanian

Gary Rose
Chief, Office of Economic Growth
Governor's Office
(Mr. Rose resigned from government service on June 30, 2008, and did not continue to serve on the Task Force)

Gail Smith
Township Engineer
Montgomery Township

Kim Thompson-Gaddy
Environmental Justice and North Jersey Organizer
New Jersey Environmental Federation

Jeff Tittel
Executive Director
Sierra Club, NJ Chapter

EXHIBIT 3

LAND USE REGULATION GENERAL PERMITS

Land Use Regulation General Permits

Highlands N.J.A.C. 7:38-14

HPAAGP 1/ Habitat Creation/Enhance
HPAAGP 2 Bank Stabilization

CAFRA N.J.A.C. 7:7-7

CAFGP5 / Amusement Pier Exp
CAFGP6 / Beach/Dune Maintenance
CAFGP7 / Voluntary Reconstruction
CAFGP8 / Single Family or Duplex
CAFGP9 / Expand Single Family/Duplex
CAFGP10 / Bulkhead/Fill Lagoon
CAFGP11 / Revetment
CAFGP12 / Gabions
CAFGP13 / Support Facilities/ Marina
CAFGP14 / Reconstruct Bulkhead
CAFGP15 / Hazard Waste Clean-up
CAFGP16 / Landfall of Utilities
CAFGP17 / Recreational Facility Public Park
CAFGP18 / Bulkhead Construction
CAFGP21 / Shoreline Stabilization
CAFGP22 / Avian Nesting Structures
CAFGP23 / Electrical Sub Facility
CAFGP24 / Legalize Filling of Tidelands
CAFGP25 / Construct Telecom Tower
CAFGP26 / Tourism Ind Construction
CAFGP27 / Geotechnical Borings
CAFGP29 / Habitat Creation/Enhance

Waterfront Development N.J.A.C. 7:7-7

WDGP10 / New Bulkhead/Fill Lagoon
WDGP14 / Reconstruct Bulkhead
WDGP18 / Bulkhead Construct w/ Fill
WDGP19 / Jet, Dock/Piers, Boat Lifts
WDGP20 / Minor Maintenance Dredge
WDGP21 / Shoreline Stabilization

Freshwater Wetlands N.J.A.C. 7:7A-5

FWGP1 / Main. & repair Exist Feature
FWGP2 / Utility Crossing
FWGP3 / Discharge of Return Water
FWGP4 / Hazard Site Invest/Cleanup
FWGP5 / Landfill Closure
FWGP6 / Filling of NSW
FWGP7 / Fill ditch / swale
FWGP8 / House Addition
FWGP9 / Airport Sightline Clearing
FWGP10A / Very Minor Road Crossing
FWGP10B / Minor Road Crossing
FWGP11 / Outfalls / Intakes
FWGP12 / Survey / Investigation
FWGP13 / Lake Dredging
FWGP14 / Water Monitoring
FWGP15 / Mosquito Control
FWGP16 / Habitat Create / Enhance
FWGP17 / Trails / Boardwalks
FWGP18 / Dam Repairs
FWGP19 / Dock or Pier
FWGP20 / Bank Stabilization
FWGP21 / Above Ground Utility
FWGP23 / Expand Cranberry Growing Operations
FWGP24 / Spring Developments
FWGP25 / Malfunction Septic System
FWGP26 / Channel / Stream Cleaning
FWGP27 / Redevelop Disturbed Site

Flood Hazard Area N.J.A.C. 7:13-8

FHAGP1A/Chan Clean w/o Sediment Removal
FHAGP1B/ Chan Clean w/Sediment Removal
FHAGP2A / Ag - Bank Restoration
FHAGP2B / Ag - Channel Cleaning
FHAGP2C / Ag - Road Crossing
FHAGP2D / Ag - Wetlands Restoration
FHAGP2E / Ag - Livestock Ford
FHAGP2F / Ag - Livestock Fence
FHAGP2G / Ag - Livestock Water Intake
FHAGP3 / Bridge/Culvert Scour Protection by Public Entity
FHAGP4 / Stormwater Maintenance by Public Entity
FHAGP5 / Building Relocation
FHAGP6 / Rebuild Damaged Residence
FHAGP7 / Residential in Tidal FHA
FHAGP8 / Utility Crossing w/ Drainage Area <50acres
FHAGP9 / Road/Footbridge Crossing w/ Drainage Area <50acres
FHAGP10 / Stormwater Outfall w/ Drainage Area <50acres

ACKNOWLEDGEMENTS

Change requires a willingness to closely examine current practices and a determination to act on the findings. Commissioner Lisa Jackson has shown both in establishing the Task Force and in pressing to be provided with recommendations that can be implemented readily. With so much of a commissioner's time devoted to environmental policy, it is not easy to focus also on the day-to-day management of the Department. Commissioner Jackson has done so with a commitment that has been clear and impressive.

The Commissioner's commitment was underscored by the time and effort given the Task Force by senior staff of the Department, particularly Assistant Commissioner of Land Use Management, Mark Mauriello, Assistant Commissioner of Environmental Regulation, Nancy Wittenberg, and Director of Policy, Planning and Science, Jeanne Herb. Each of them provided invaluable time and advice to the Task Force in and between meetings.

No effort of this magnitude can be completed without the help of many other people, as well. The Task Force gratefully acknowledges the efforts of numerous staff members of the DEP, and the Office of the Governor. In particular, the following individuals participated in many meetings and provided necessary background information, critical analyses and/or numerous drafts of findings and recommendations. Their work was greatly appreciated.

David Barth, Director, Office of Budget, Finance and General Services
Nancy Belonzi, Policy Advisor, Office of the Governor
Sherry Driber, Chief Information Officer, Office of Information Resources Management
Jennifer Feltis, Research Scientist, Office of Policy, Planning and Science
Ruth Foster, Environmental Scientist, Office of Permit Coordination and Environmental Review
Bryan Ianni, Executive Assistant, Environmental Regulation
Helen Owens, Supervising Environmental Specialist, Land Use Management
Ken Ratzman, Supervising Environmental Engineer, Land Use Management
Liz Semple, Manager, Office of Planning and Sustainable Communities
Cathy Tormey, Counselor to the Commissioner
Eric Wachter, Special Assistant to the Commissioner