

Permit Efficient Review Task Force Meeting
Commissioner's Conference Room
401 E. State St., Trenton
April 9, 2008
12:15 p.m.

Task Force members present: Chairman Christopher Daggett, Frank Banisch, Anthony DiLodovico, Richard Dovey, Christine Foglio, Toni Griffin, Ernest Hahn, Richard Johnson, Peter Kasabach, Jane Kenny, Karen Kominsky, Julia LeMense, Jack Lettiere, Ed Lloyd, Bob Medina, Walter Mugdan, Jong Nee, Mark Remsa, Joe Riggs, Gail Smith, Jeff Tittel

Others present: Commissioner Lisa Jackson, Jay Watson, Jeanne Herb, Mark Mauriello, Nancy Wittenberg, Cathy Tormey, Liz Semple, Eric Wachter, Nancy Belonzi

Commissioner Jackson welcomed the Task Force members and thanked them for volunteering their time to join the Task Force.

Chairman Daggett echoed Commissioner Jackson's remarks and asked the member to focus on what they can fix effectively.

Daggett read from a list he generated from introductory conversations with the members about issues that the Task Force might address:

- new regulations and how to manage them
- duplicative efforts between DEP and municipalities
- predictability
- timeliness
- re-energizing the permitting process for an expectation of results
- timeliness for review of COAH applications
- look at the smart permits in California's Silicon Valley
- Illinois, Oregon and Chicago also have permitting processes to explore
- DOT self certification
- Pinelands effectiveness
- a study completed by former Treasurer Feather Houstoun in 2003 on how to organize government more effectively
- DEP understaffed
- DEP regulations should follow planning, not do the planning
- permit cross training
- local and green zoning
- context-sensitive regulations

Tormey overviewed the Open Public Records Act requirements and informed the Task Force that OPRA requirements arguably do not apply to the Task Force members based upon the definitions in the statute but that transparency during this process is important to the group. She noted that any communication to or from DEP staff would be subject to OPRA and a safe assumption going forward would be that all work of the Task Force would be subject to OPRA. As the DEP's ethic liaison officer, Tormey explained that the Task Force members, because they are not state officers or employees, are technically not subject to the state Conflict of Interest law but that the spirit of the law should be honored by Task Force members. Tormey also noted that the Task Force members serve on

the group in their individual capacities, not as representatives of their respective employers even though their expertise and experience were gained through employment with those entities. Tormey also noted that Commissioner Jackson summarized her position on the above issues in an email reply to a constituent and that copies of that correspondence would be provided to the Task Force members. Commissioner Jackson noted that there was enormous pressure to have every lobbying group represented on the Task Force but that she did not invite the Task Force members to represent his or her respective group and that their presence and participations as individuals was the only the way to make the Task Force work.

A wide ranging discussion followed, with members expressing various concerns about the permitting processes at the DEP. The following issues were raised:

- transparency of reviews;
- carrying capacity of the land;
- planners that do not look at environmental issues;
- the need for DEP and local officials to look at zoning;
- the need for reviews to consider overall environmental impacts of projects, including cumulative impacts;
- the need to identify permitting problems clearly before recommendations could be made;
- understanding why current rules and regulations do not encourage sustainable projects; and
- distinguishing between policy and process issues in permitting.

Commissioner Jackson then offered her vision, both short-term and long-term:

- In the short term the permitting process should be predictable, transparent and timely. Some believe that a rushed permit is bad, particularly in a time of restrained resources.
- In the long term we need to evaluate if there are ways to tailor the DEP's processes for different categories of projects. One question for the Task Force is should different projects have different procedures and should certain cases, like warehouses, be tailored to certain outcomes.
- We also have some projects that some people do not like and use the DEP to stop them even when they do not like them because of NIMBY or other non-environmental concerns.
- One hundred-percent approval rates of permit applications are the goals because if you get to predictability and transparency, people will understand which projects are approvable and will not submit others.
- The right partnerships with the right entities have not been encouraged. We need a vision of how to get to a place where locals are included and informed in order to stop duplicative work.
- DEP absolutely should be involved in planning. There is no way to get to an end result without environmental input. What is important is to connect good, upfront planning to permitting.
- Water supply is important because the state controls water supply. The water quality management plan is crucially important.
- Wastewater decisions should address capacity but also natural resource constraints.
- Land-use constraints should be respected.
- It is frustrating that the state plan does not fully include environmental constraints, and, as such, it cannot be the basis for regulatory programs at DEP.
- How do we get there? What is myth versus reality? We are defined by our outliers, by our failures, not our successes, such as the readiness checklist, our IT work, brownfields program and SRP.
- Commissioner stressed that the purpose of the Task Force is not to look at weakening environmental laws and regulations. The Commissioner said the primary job of the Task Force

is not to make recommendations on regulatory and statutory changes but, rather, to give recommendations on how to improve permit processes and priority setting and, as part of that review, if the Task Force finds regulatory and statutory recommendations to make, that would be appropriate.

Wittenberg offered her report:

- Wittenberg said her program is not broken and that overall there are few complaints regarding the processing of the water quality permits.
- With reallocation of resources staff could better address environmental impacts by looking at things like water reuse and mandatory conservation.
- There are efficiencies in renewals.
- She would be interested in also talking about the EIT funding program and permit coordination.
- The Office of Permit Coordination currently exists and serves as the central point of contact for applicants.
- The Office implements the Readiness Checklist, identifies fatal flaws and timing constraints that may arise with all permits required for the project.

Mauriello offered his report:

- LUR implements many statutes with varying administrative process standards and requirements that, if amended to be uniform, would increase efficiency in process (time frames, notice, comment periods, hearings, etc).
- All permit submissions are paper and need to migrate to electronic submissions, on-line reviews, electronic payment of fees, etc.
- Many rules are intentionally rigid with clear standards (predictable) but there is little room for variance (flexibility) in cases where some flexibility would help achieve other and sometimes more important environmental goals.
- We cannot prevent applications from being submitted and reviewed even if we know there is a fatal flaw in the application that will result in denial. There is a desire to use the checklist as a screening tool and to be able to reject applications up front when there is a fatal flaw. This would allow staff to focus on applications that are approvable and not spend limited resources reviewing applications that cannot be approved.
- While we have established a specific urban permit review team in LUR to handle applications in urban areas, many other permit applications are treated the same in terms of process and priority without consideration of what and where the project is (first in, first reviewed).

The Task Force decided on four subcommittees: water quality, land use, priorities and models. Wittenberg will serve as the contact for the water-quality subcommittee. Mauriello will serve as the contact for the land-use subcommittee. Herb will serve as the contact for the priorities and models subcommittees.

At the next Task Force meeting, scheduled for 9 a.m.-12 p.m. on Wednesday, April 23, staff will present an overview of the proposed changes in the Site Remediation Program and of the role of information technology in the DEP permitting process.