



Enforcement Alert

Making You Aware of Anticipated Enforcement Activities

Compliance and Enforcement

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DEP Adopts Waiver Rule

NOTE: ABSOLUTELY NO REQUESTS FOR WAIVERS WILL BE ACCEPTED BEFORE AUGUST 1, 2012.

Strict compliance with rules can sometimes produce unreasonable, unfair or unintended results that may actually undermine, rather than advance, the legislative intent of its enabling statutes or rules. In response to Governor Christie's Executive Order No. 2, which directs State agencies to implement common sense principles, the DEP will accept requests for waivers of a rule requirement beginning August 1, 2012.

The adopted waiver rule will be published in the April 2, 2012 *New Jersey Register* and becomes operational on August 1, 2012. No requests for waiver will be accepted prior to August 1, 2012. The DEP will conduct external training sessions on implementation of the rule beginning in April 2012.

In the meantime, the DEP is developing:

- An internal process that will ensure consistency
- Standardized submission forms
- Electronic systems for the receipt and tracking of all requests
- Online reports that will provide transparency by allowing the public to know when applications are received and to access the DEP's decisions

To apply for a waiver, the requester must demonstrate that at least one of four criteria is met:

1. There is a public emergency that has been formally declared.
2. Conflicting rules (between Federal and State agencies, or between State agencies) are adversely impacting a project or preventing an activity from proceeding.
3. A net environmental benefit would be achieved.
4. Undue hardship is being imposed by the rule requirement(s).

There is no automatic right to a waiver. Waivers will be granted only on a case-by-case basis after careful review by technical staff and approval of the Commissioner. DEP will not compromise its core mission of protecting public health, safety and the environment, and will continue to make decisions based on science, facts, data and common sense. A waiver cannot violate State or Federal statutes or Federal regulations.

There is no timeframe within which the DEP must act on waiver requests, and waiver requests will not be processed on a first-come, first-served basis. The DEP will prioritize review of waiver requests after evaluating the number and type of requests received after August 1, 2012.

COMPLIANCE ADVISORY

Where can I get more information?

The Department has created a special web page for updated information on the waiver rule: <http://nj.gov/dep/waiverrule>