

**Final Report**  
**Department of Environmental Protection Transition**  
**Subcommittee**  
**Marcia A. Karrow, Chair**  
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When the Department of Environmental Protection Transition Subcommittee began its intensive investigation five weeks ago into how the Department operates, based on our collective experiences we were skeptical if it could possibly be reinvented and survive. The Department has created cumbersome, confusing and often conflicting regulations that in some cases go beyond legislative intent, and in others, have no enabling legislation at all. Furthermore, inappropriate political interference from all levels of government has at times, influenced decision making. This has tied the hands of staff trying to issue permits and consequently, the hands of those both trying to develop and redevelop NJ as well as environmental organizations trying to improve the quality of NJ's natural resources and historic sites.

The Department has failed to fulfill its own mission statement of protecting our State's vital natural resources while taking into consideration economic vitality. As policy makers, it is important to realize that baselines have shifted. The Department has driven economic investment out of this State often with policies that, ironically, provide little or no environmental benefit. The DEP cannot have a "one size fits all" regulatory structure that treats both urban and rural New Jersey's environmental baselines the same. Some areas of our State may be irreversibly degraded while others may be impaired at a level that is largely recoverable. These resources should be managed differently and not necessarily held to one universal standard. New Jersey's residents deserve clean air, clean water, and a high overall standard of environmental quality. New Jerseyans also deserve opportunities for financial and personal success that a robust State economy can provide. These goals and expectations are not, nor should they be, mutually exclusive.

The changes that are outlined in this report are a comprehensive approach to reinventing the Department, taking into consideration the realities of the current economy. Significant changes in policies and practices are urgently needed to 1) accelerate improvements to the environment,

2) remove unnecessary obstacles to economic growth and 3) more effectively manage limited fiscal and human resources. Taken together, the recommendations will create operational and permitting efficiencies, facilitate comprehensive regulatory reform and reestablish the DEP's focus on its core mission which includes preserving, protecting and enhancing public health and the environment with an understanding that environmental policy impacts our economy. New Jersey will once again be competitive and attractive to business investment, while at the same time improve air and water quality, incentivize the clean up of contaminated sites and better manage the State's natural resources. Simply put, the DEP must "do less with less," and do it better.

### **Overview of the DEP**

To meet its mission, the DEP implements numerous statutes designed to protect public health and natural resources; these statutes delegate to the DEP substantial authority to establish programs and requirements through the adoption of regulations in accordance with the Administrative Procedures Act (APA). Many of these statutes allow the DEP to implement programs delegated by the federal Environmental Protection Agency (EPA) and are subject to EPA oversight, including programs to ensure clean air and safe drinking water, wetlands protection and the management of hazardous waste. DEP also implements statutes governing the remediation of contaminated sites, the regulation of land use and development, including the protection of wetlands, streams, waterfront and coastal areas and other natural resources, and the regulation of commercial activities to prevent oil spills and accidental releases of hazardous substances to the environment. In addition, DEP manages numerous State parks, forests and wildlife habitat, and acquires and preserves land for both passive and active recreation.

To implement all of the environmental statutes, the DEP has adopted and enforces a complex body of rules regulating a wide range of economic activities in the State which generally require the prior approval of the Department through the issuance of permits. Under these statutes and rules, DEP

has sweeping authority to monitor and enforce compliance with permits and regulations through inspections, the imposition of Administrative Orders and penalties for alleged violations, the commencement of civil actions to enjoin violations, and the referral of matters to the Attorney General for investigation and possible criminal prosecution. To implement these regulatory programs and manage State parks, forests and natural resources, the Department employs approximately 2,900 people and has an annual operating budget of \$215 million dollars. The DEP is supported by approximately 60 Deputy Attorneys General in the Department of Law and Public Safety who provide counseling and legal representation in all civil and administrative proceedings. The Department's major stakeholders include environmental advocacy organizations, sportsmen, local governments, farmers, developers/redevelopers, those in the energy, industrial and commercial sectors of our economy, property owners and others who are subject to DEP regulations.

### **Overview of DEP Performance, Problems and Challenges**

While the Subcommittee acknowledges that New Jersey has significant environmental problems including but not limited to impaired water bodies, thousands of contaminated sites and air quality that often fails to meet federal standards, there is a widely held view that DEP's mismanagement and ineffectual leadership both compromises the Department's ability to protect the environment and hinders economic growth. This stems from a variety of factors including the failure to adhere to the Rule of Law, the misuse of science, the lack of real economic impact analysis, and the lack of transparency in the rulemaking process. Also, the Department needs to establish clear environmental goals and policies and focus on its core mission, absent of politics. This failure of leadership to set priorities and establish performance metrics has resulted in virtually no accountability for the DEP, or a method to assess the progress and the effectiveness of the DEP's programs. Further, in the face of the State's declining fiscal condition and the erosion of its own resources, the Department has in recent years inappropriately expanded its jurisdiction and assumed new responsibilities with no direct statutory authority and no staff to do so, while at the same time

neglected to make critical investments in Information Technology or maintain its physical assets, including many buildings owned and operated in State parks.

Collectively these failures have adversely affected essentially every aspect of the DEP's operations, resulting in rapidly escalating fees, the delay in reviews of permit applications, and massive backlogs in both the remediation of contaminated sites and contested cases (e.g., administrative appeals of permit conditions, permit denials and enforcement actions), the deterioration of buildings and grounds in State parks, and the curtailment of public services. Ultimately, these conditions have retarded both environmental progress and economic growth, frustrated the regulated community, environmental groups and the public and have drawn criticism from EPA in its oversight of delegated federal programs.

### **Overview of Recommendations**

Accordingly, the recommendations that follow address these critical problems and are intended to accelerate environmental progress, remove unnecessary obstacles to economic growth and more effectively manage limited fiscal and human resources. Most of the recommendations advanced herein may be implemented immediately through executive action, while some may require legislative action.

The recommendations are summarized under the following six principle categories:

(1) **Leadership and Management:** Establish environmental goals and priorities to both protect natural resources and provide for a stable and predictable business climate for the regulated community; establish performance metrics to ensure both accountability and the prudent allocation of both vital and limited human and fiscal resources. In other words, establish a vision for the Department that all employees understand and that is supported by quantifiable goals and deadlines.

(2) **Regulatory Reform:** Require that all decisions be made with transparency, the Rule of Law, and the proper use of sound science, economic and fiscal analysis; create a regulatory process that is easily understood and easy to navigate; and promote environmentally beneficial projects, such as renewable energy and green building projects, through a streamlined permitting process.

(3) **Land Use Management Reinvention Without Compromising Protections:** Streamline permitting procedures through Information Technology investment and the implementation of greater on-line permitting; increase the use of General Permits and Permits by Rule and develop a single cross-program Land Use Permit.

(4) **Site Remediation Reform:** Continue to advance major reforms pursuant to the Site Remediation Reform Act (SRRRA) and re-examine risk management strategies.

(5) **Natural Resource Stewardship:** Establish a comprehensive and strategic approach toward public lands management, forest stewardship and management of Threatened and Endangered species habitat.

(6) **Additional policy recommendations:** Recommendations by the subcommittee on issues that are important but fall outside the previous five categories.

## **POLICY RECOMMENDATIONS**

### **1. Leadership and Management**

*Issue:* The lack of clear goals and metrics has resulted in steering the DEP away from its core mission. Furthermore, the DEP has created new programs and regulatory requirements that provide little to no environmental benefit, but drastically add to the responsibilities of an already overburdened staff. Coupled with new legislative mandates that have provided no funding or resources, such actions have resulted in an ineffective and inefficient State agency. Finally, prior administrations' strategies to deal with chronic funding shortfalls, have resulted in environmental trust funds being raided, bond funds being skimmed to cover operating costs, and fees being significantly increased. At the same time, backlogs in the cleanup of contaminated sites, the review of permit applications and the adjudication of contested cases have all skyrocketed.

**Recommendation:** *The DEP must tightly focus its limited resources on those strategies that contribute most to environmental progress, align its workload with realistic, sustainable funding levels and better harness the competency and professionalism of current staff. To accomplish this, the Department must establish and use performance metrics to set priorities and ensure*

***accountability. Note: The recommendations that pertain to staffing and reorganization can be accomplished without reforms to Civil Service. However, the Subcommittee strongly recommends that the new Administration research any and all possible changes that could be made in this area. Civil Service has not only hampered the ability of good managers to make staffing decisions, it has demoralized employees and stagnated their professional development.***

DEP must take the following actions:

- Establish environmental goals consistent with its core mission and identify the strategies that will contribute the most to the achievement of these goals, and adequately staff and fund these strategies.
- Integrate performance metrics into the DEP's formal planning, budgeting, and management processes, personnel performance reviews, rulemaking, and negotiations with EPA regarding the implementation of delegated programs.
- Adjust the overall workload to align with realistic, sustainable funding levels and to the extent permitted by law, scale back or eliminate selected strategies that contribute the least to environmental improvement.
- Reexamine regulations to ensure they are properly focused on specific, well defined goals, and minimize or eliminate peripheral requirements. An example of this is the waterfront Public Access rule adopted by DEP in 2007 without direction from the Legislature, which completely changed the existing waterfront public access framework and imposed onerous new fees without standards for how the fee would be applied or calculated.

The Subcommittee recommends several changes to the organizational structure of Department, in order to facilitate these recommendations:

- Eliminate the Office of Policy, Planning and Science and allocate policy and planning responsibilities to the appropriate regulatory programs (e.g., land use regulation) and assign science staff to an Office of Science Research.
- Establish an advisory panel of external experts to advise DEP on matters of scientific and technological innovation.

- Reinstatement of the Alternative Dispute Resolution program under the Counselor to the Commissioner which had helped expedite settlements, thus reducing the number of disputes referred to the Office of Administrative Law (OAL) as contested cases.
- Establish an Office of Economic Analysis at the Department of State or the Office of the Governor as a shared service for all State agencies and tasked to provide advice directly to commissioners regarding economic drivers including the projected economic effect of new regulations. This office should also assist in risk assessment analysis for when agencies are setting regulatory policy.
- In addition, to ensure the timely and efficient adjudication of contested cases, the DEP should seek legislation to remove redundant and inefficient procedures established under the Administrative Procedures Act (APA). For example, currently the Commissioner can issue a Final Decision regardless of the factual findings made by an Administrative Law Judge (ALJ) in an Initial Decision. The subcommittee recommends revising the APA so that the decision of an ALJ is Final Agency Action reviewable directly in the Appellate Division.

## **2. Regulatory Reform**

*Issue:* Coupled with conflicting and contradictory environmental statutes, the DEP has created an unwieldy regulatory system that not only hampers its own ability to adequately protect and enhance environmental quality, but also creates confusion for the regulated community and unnecessarily hinders economic growth. In many cases the rules are not based on sound science, rely on redundantly conservative assumptions, are formulated without peer review and with little or no substantive input from the general public. Furthermore, documents that are supposed to help the regulated community comply with the rules (commonly referred to as “guidance documents”) instead are improperly used by the DEP to establish additional regulatory conditions. Using “guidance documents” in this manner is an egregious abuse of the regulatory process and circumvents the transparency provided by the Administrative Procedures Act. Finally, the DEP has consistently failed to accurately estimate the economic impact that their rules have had on both the regulated community and the economy of our State.

**Recommendation:** *DEP must fundamentally overhaul the policy making structure, to ensure that all decisions align with strategic priorities, are fully supported by sound science, are grounded in a comprehensive analysis of public health, environmental, economic, workload and fiscal impacts, and are developed and implemented in an inclusive and transparent manner in full compliance with the APA.*

DEP should immediately:

- Review all existing guidance documents and revise them as needed to ensure that no guidance document imposes a regulatory requirement in violation of the APA.
- Issue a legal memorandum to all Assistant Commissioners on the proper use of guidance documents, emphasizing the importance of compliance with the APA, and require the same stakeholder process as recommended for the formulation and proposal of regulations.
- Require the Counselor to the Commissioner to approve the issuance of any new guidance documents to ensure that they do not violate the APA.
- Prohibit reliance on any guidance document to support any DEP decision unless it is available on Department's website.

To address the breakdown in rulemaking, DEP should immediately require the following:

*Fiscal Impact/Workload*

- For every rulemaking action, require an assessment of the number of full time employees and costs that will be incurred by the DEP to implement the rule or rule amendments.
- Require the Assistant Commissioner for Management and Budget to sign off on the human and fiscal resource assessment and to indicate whether the necessary resources are available.

*Science*

- For every rule proposal, require a comprehensive discussion and peer review of the science the DEP considered in support of each element of the proposal, and for every rule adoption, the science relied upon by those commenting to support different policy choices, and any agreement, disagreement and uncertainty regarding the science.
- Compare any proposed criteria or standards utilized by the DEP to those utilized by EPA and other states.

*Environmental Goals and Performance Metrics*

- For every rule proposal, require a discussion of the environmental goals the proposal will help to achieve, the strategy the rule will help to advance and how the progress toward that goal and the effectiveness of that strategy will be measured.

#### *Economic Impact*

- For every rulemaking, require a comprehensive discussion of the economic impacts the rule is expected to have in New Jersey.
- Require the Office of Economic Analysis to evaluate the economic and financial impacts of proposed rules or other major regulatory decisions, including the potentially adverse impacts associated with taking no action.
- Require the Office of Economic Analysis to evaluate the analyses of economic impacts received from interested parties during the public comment period.

#### *Transparency*

To ensure transparency and the use of the best available information and analysis to support the formulation of rules, and to ensure the public has access to the scientific and economic information relied upon by DEP in its development of rules, the Department should take the following actions for every rule adoption:

- Establish a rulemaking docket and post on the DEP's website copies of the scientific and economic papers, studies and their analyses and other technical information considered or relied upon by DEP to support a proposed rule, and ensure the information is posted prior to the commencement of the public comment period.
- Include in the docket and make available on DEP's website copies of all comments and supporting papers, studies and similar documents received from interested parties.
- Convene one or more informal meetings with stakeholders to discuss rulemaking objectives and accept input on policies, and whenever appropriate, distribute draft rule text to stakeholders for comment prior to the preparation of rule proposals.

### **3. Land Use Management Reinvention**

*Issue:* The DEP is the single most influential department impacting development, business investment and economic growth in our State. However, navigating this regulatory maze is a struggle at best, especially when complex projects need a variety of different permits from the DEP and other

State agencies. Furthermore, the land use permitting program has been severely impaired by a myriad of factors, some of which are process oriented, while others pertain directly to the regulations.

Specifically, the DEP has been unable to invest in critical Information Technology which has resulted in unmanageable workloads and excessive delays in the review of permit applications. The complexity of the land use regulations themselves also inhibit the timely and efficient review of permit applications. Furthermore, in many cases, the land use regulations have been written by DEP staff who are located outside of the land use program, and have no understanding of how the regulations will be implemented or enforced. Many of the land use regulations that govern the review of permit applications for development projects in New Jersey are internally inconsistent, conflict with other State land use policies, establish unachievable requirements, are not grounded in sound science and exceed the DEP's statutory authority. This combination of factors has created a process that is unpredictable and confusing to both land use regulation staff and permit applicants, ultimately stagnating the permit application process.

**Recommendation:** *The DEP must fundamentally overhaul the way development projects are regulated and streamline the permitting process. The State must create an office that provides a single point of entry with an accountable person to shepherd companies pursuing complex projects through the regulatory process. The DEP must immediately suspend the implementation of requirements that have not been properly adopted through rulemaking, and immediately reconsider existing regulations that impose requirements that are not grounded in sound science, are impractical to satisfy, and conflict with other State environmental and land use policies. Finally, the DEP must continue to implement the recommendations of the Permit Efficiency Review Task Force, including substantial investment in Information Technology.*

Accordingly, DEP must take the following actions to address this situation:

*Permitting Reinvention*

- Create a business/project ombudsman in the Office of the Governor to create a single point of entry for complex projects. The DEP should also have its own “one-stop” office that can respond to complex projects.
- Revise existing land use regulations without undermining environmental protections, to allow for the expanded use of Permits-By-Rule (permits that are similar to a checklist), and General Permits (permits that cover minor activities and do not require extensive submittal of data). This will allow staff to focus greater attention on Individual Permits, which encompass more complex activities thus allowing the permitting and approval process to be streamlined. It is the Subcommittee’s understanding that some General Permits and other approvals issued by the land use program should be available on-line within the first six months of the new Administration with further improvements coming soon thereafter.
- Continue to implement the Permit Efficiency Review Task Force recommendations including the commitment to invest in critical Information Technology.
- Establish electronic permitting (e-permitting) so that all permit applications may be submitted on-line and allow for on-line approvals where appropriate.
- Provide that jurisdictional determinations (determinations as to whether or not a permit is necessary) may be requested and provided on-line.
- Create a Single Land Use Permit that would encompass a multitude of cross-program standards. In addition to continued Information Technology enhancements, this will require statutory changes to align the permitting procedures.
- Delegate land use permitting to the Meadowlands, Highlands, and Pinelands Commissions for the areas within their jurisdiction.
- Eliminate duplicative reviews by accepting the approvals conducted under the Municipal Land Use Law (MLUL) from other governmental jurisdictions when appropriate; for example, stormwater management plans need not be subject to multiple reviews.
- Delegate land use permitting at brownfields sites to the Site Remediation Program.

#### *Other Immediate Regulatory Changes*

- Immediately suspend the inappropriate use of the Landscape Project mapping of purported Threatened and Endangered species habitat. Pending rulemaking or other action, apply regulatory protections for species habitat based upon scientifically valid data and documented habitat as defined in DEP rules and statutes. The Landscape Maps were initially designed to provide a map of the habitat that an identified threatened or endangered species needs to

survive. DEP is now using Landscape Maps as a regulatory device to restrict all development in mapped areas where threatened or endangered species could theoretically exist.

- Immediately revise the implementation of the Public Access Rules, based upon recent Appellate Court's decisions (e.g., *Borough of Avalon v. NJDEP* and *Sophie Bubis v. Jack and Joyce Kassin*) which invalidated the rule's enforcement. Pending revision, require public access to be provided only when a proposed development will diminish existing access.
- Immediately rescind Administrative Orders requiring the application of 300-foot buffers from certain streams or rivers where existing rules require a 150-foot buffer.
- Immediately suspend the practice of conditioning permits on the imposition of conservation easements on portions of property not subject to the pending application.
- Identify categories of environmentally beneficial projects, such as renewable energy and green building projects that could be promoted through a streamlined permitting process.

#### *Omnibus Rulemaking*

- Revise existing rules to allow for the greater use of waivers and exceptions to specific requirements when project applicants demonstrate that alternatives will yield the equivalent or better environmental results. Immediately direct, as a matter of policy, that hardship waivers allowed under existing rules be granted when justified.
- Reexamine buffer requirements in urban/disturbed areas and Planning Areas 1 and 2 designated for growth under the State Development and Redevelopment Plan (hereinafter referred to as the State Plan) as applied to wetlands, C-1 waters and potential Threatened and Endangered species habitat under Flood Hazard, Stormwater, and Wetlands rules.
- Revise existing regulations to address natural resource protection, such as species habitat preservation, on a regional or area-wide basis, and integrate regional plans into the State Plan.
- Revise the Water Quality Management Planning rules (WQMP); update and improve sewer service areas through regional planning and coordinate with the State Plan.

#### *Harmonize State and Regional Land Use Planning*

The DEP and all other State agencies must work cooperatively to harmonize disparate and conflicting policies and regulations. The Department has established regulations that conflict with the expressed policies of the State Plan and master plans adopted by innumerable towns in accordance with the Municipal Land Use Law (MLUL). For example, these regulations include the rules

pertaining to Public Access, WQMP rules governing sewer service areas, provisions in the Flood Hazard, Stormwater and Freshwater Wetland regulations requiring 300 foot buffers around water features in developed urban areas and groundwater quality classifications in developed, former industrial areas. These and many other regulations thwart the State's economic development policies, undermine the State Plan and confuse efforts to redevelop our cities by preventing or inhibiting investment in sound redevelopment projects. Accordingly, DEP must take the following actions:

- Work closely with all state agencies to harmonize conflicting regulations and policies.
- Include representatives of other State agencies as stakeholders in the rulemaking process.
- Utilize the previously recommended business ombudsman to overcome existing regulatory hurdles without undermining environmental protections.

#### **4. Site Remediation Reform**

*Issue:* The Site Remediation Reform Act (SRRA) establishes a framework for significant reforms in the Site Remediation Program (SRP), and creates a Licensed Site Remediation Professional (LSRP) Program whereby qualified environmental consultants may be licensed and given the authority to oversee cleanups at contaminated sites without the need for DEP approvals every step of the way. The LSRP program was loosely modeled after a similar program established in Massachusetts. The Act also provides the DEP with increased authority to take over a cleanup if a responsible party, that is, the person or company who caused the contamination or is responsible for cleaning up the site, is not meeting timeframes established by the Department or other special circumstances.

While there is recognition that the SRRA and the new LSRP program will speed up the cleanup process, there is concern about the way in which DEP is implementing the Act. The problems include the overuse and prescriptive nature of "guidance documents," the lack of trust in the LSRP's to use professional judgment and an inherent inflexibility in the regulations that guide the cleanups. Some of these problems stem from the extremely short timeframes imposed on the DEP under the Act,

including the requirement to issue an Interim Rule that did not have to comply with the notice and public comment process of the APA.

The DEP is using “guidance documents” in an effort to give direction to site remediation professionals and responsible parties as they try to meet the requirements in the SRRA. However, the scope and breadth of these guidance documents is unprecedented. The DEP has issued 17 guidance documents that impose numerous substantive, legal, administrative and technical requirements that have not been adopted in accordance with the APA. Also, there is an inherent lack of trust by the DEP for both the regulated community and their engineers and consultants. Under SRRA, LSRP’s are held to a higher code of conduct, are required to meet substantial educational and professional requirements and could lose their licenses to practice in New Jersey if they misapply information or improperly conduct a remediation. Yet, the DEP is still reluctant to allow LSRP’s to use professional judgment. Finally, technical regulations that guide cleanups in New Jersey are extremely prescriptive, creating an unjustified “step by step” process that fails to take into consideration alternatives to achieve the same environmental goal. A better approach would be to establish realistic environmental standards to which sites must be cleaned, including the determination of risk and allow the LSRPs the flexibility to determine how best to achieve those standards similar to what is done in Massachusetts.

**Recommendation:** *DEP must continue to implement the Site Remediation Reform Act (SRRA), but re-examine its risk management strategies to provide for the efficient remediation of contaminated sites in accordance with standards that are protective of human health and the environment. With respect to the State’s efforts to seek compensation for damages to natural resources (NRD), we recommend that NRD efforts fall under the jurisdiction of the Site Remediation Program, and that rules be adopted to provide transparency, certainty and consistency in the assessment of those damages.*

Accordingly, to properly implement the SRRA, the DEP should take the following actions:

- Revise the Interim Rule to limit its scope to SRRA required elements. For example, the provisions of the interim rule applying new requirements for vapor intrusion were not mandated by SRRA and should be subject to fuller public review and comment before adoption. Vapor intrusion occurs when contaminants in groundwater or soil emit vapors that enter structures and could have a potential impact on human health.
- Ensure that all guidance documents are developed with stakeholder input and written and applied in compliance with the APA.
- Require Site Remediation Program documents to be submitted on line, which will expedite the document submittal process and will reduce Open Public Records Act costs and requirements.
- Ensure timely establishment of the Licensed Site Remediation Professionals (LSRP) Board.
- Apply the DEP's efforts toward compliance assistance to all site remediation professionals and responsible parties. Since this is a new program and the requirements are still being established by the DEP and assimilated by the regulated community, we would recommend that the DEP provide compliance assistance to LSRP's, recent responsible parties, as well as responsible parties at large industrial sites that were in the Site Remediation Program prior to the enactment of the SRRA.

Regarding the site remediation process, the DEP should take the following actions:

- Refrain from using overly conservative assumptions in standard setting and risk management strategies as required by law, and revise cleanup standards to be both achievable and protective of the environment. For example, groundwater classifications in certain areas, including historic fill, should be reexamined.
- Reevaluate the regulation of building interiors to provide clear guidance on the reuse of recycled materials.
- Review and revise current requirements pertaining to vapor intrusion within building structures, including how and when to test, notification, and/or mitigate.
- Encourage the reuse of concrete, asphalt and other construction materials on brownfield sites, landfills and highway construction projects, where appropriate, and establish clear rules for Class B recycling that will no longer hamper the reuse of these materials.
- Evaluate pending litigation where the purpose and benefits of the litigation are not readily apparent.

Further, DEP should take several steps to improve its implementation of the Natural Resource Damage (NRD) program. The NRD program encompasses the State's efforts to measure the costs of restoring injured natural resources through monetary compensation or other means (e.g. creation of wetlands). Recommended steps include the following:

- Transfer all responsibility for NRD assessment restoration and recovery to Site Remediation.
- Adopt regulations regarding NRD assessment, restoration and recovery that are transparent, stable and predictable.

## **5. Natural Resource Stewardship:**

Issue: The State's efforts toward proper management and conservation of natural resources have been lacking. As mentioned earlier, the DEP has increased its own responsibilities in other areas, and the Legislature has placed new, unfunded mandates that do not pertain to the management of natural resources, which has ultimately forced the Department to neglect this area. Furthermore, shortsighted policies have limited the effectiveness of the DEP to protect species habitat, actively manage forests and efficiently preserve land.

**Recommendation:** *The DEP needs a renewed focus on natural resource management and conservation. The DEP must research the feasibility of a self-sustaining Department of Natural Resources or other solutions that raise this issue area to the same level of importance as other areas overseen by the Department. Furthermore, the DEP must practice stewardship of forests and threatened and endangered species habitat. Finally, the DEP must take steps to more efficiently preserve land and be a better partner with agriculture.*

The Department should:

- Create a task force of biologists, legislators, foresters, environmentalists, DEP personnel, Department of Agriculture personnel, business persons and representatives from the United States Fish and Wildlife Management Assistance Team to perform a feasibility study for

creating a revenue oriented, self sustaining Department of Natural Resource Conservation or other potential solutions to better focus the State's efforts on natural resource conservation.

- Transfer all real estate closures (Green Acres, DOT Rights of Way, farmland preservation, etc.) to the Treasury Department's Division of Property Management and Construction to streamline the closing process, create consistency and eliminate costly and unnecessary delays.
- Establish a comprehensive public lands management strategy that includes forest stewardship and management of species habitat.
- There needs to be a recognition that agriculture, like every other business in New Jersey, has been overregulated and burdened by DEP rules. Farmers should be recognized as stewards to the land and treated as partners in land preservation not potential polluters.
- Revenue generation should be maximized through the use of concessions, camping and park rentals and forest management.

## **6. Other policy recommendations:**

### *Enforcement*

- The Environmental Crimes Bureau in the Division of Criminal Justice needs additional staff in order to rigorously pursue those who purposely flout the law and whose actions result in actual or potential environmental harm.
- There needs to be a full examination of DEP's existing self-audit policy utilized by the regulated community, to ensure it does not create disincentives for voluntary disclosure and provides adequate and appropriate time to correct violations.
- There needs to be a full examination of DEP's administrative penalty regulations to ensure they are fair and consistent.
- There needs to be a full examination of the implementation of the "Grace Period" regulations to ensure that they follow the legislative intent of the Grace Period statute. The Grace Period statute was aimed at making a distinction between minor and non-minor violations and providing an appropriate time to correct those violations. However, the DEP has inappropriately implemented the regulations by issuing automatic violations with limited time to respond.
- DEP enforcement and permitting staff should shift roles periodically to gain greater insight into their respective responsibilities.

### *Regulation*

- Diesel Engines: DEP should continue its focus on diesel exhaust, especially in densely populated areas. DEP should encourage the Legislature and the Department of the Treasury to establish financial incentives for the early retirement of older engines/equipment to accelerate the turnover of the existing fleet in favor of newer, more efficient engines. The Department should also work with DOT to establish reasonable requirements for diesel emission reductions on highway construction projects.
- Simplification of the permitting process: Title V Permits which are permits for certain large facilities, administered by the DEP as required under the federal Clean Air Act, have become extremely cumbersome and voluminous in New Jersey. Steps should be taken to reduce the complexity of these permits.
- Environmental Justice: The new Administration should make a commitment to work with the Environmental Justice Advisory Council in their efforts to protect all communities from the consequences of environmental hazards.
- Science and Technology: DEP should partner with Rutgers and other New Jersey colleges and universities to ensure that higher quality science and technical information is available to support decision making.
- Innovative Technology : The DEP needs to embrace new technology as a way to achieve clean up goals at contaminated sites and redevelopment objectives.
- Chromium Standard: Re-evaluate the current chromium standard, taking into consideration natural baseline levels and peer reviewed scientific data.

### *Budget and Operations:*

- Prevailing Wage in State Parks and Historic Buildings: In order to effectively lease State owned historic buildings and buildings located on State Park property, private investors and tenants should not be obligated to follow Prevailing Wage laws when having work done to maintain, preserve or improve those buildings. Because of this current policy, not for profit organizations and other potential partners for the State cannot afford the cost to fix up and maintain State property.
- Prevailing wage at brownfield sites: In order for the State to attract investment and compete for economic development with bordering states, New Jersey must eliminate the prevailing wage requirement under State reimbursement programs for brownfield sites.

This requirement was a giveaway to the unions, adds unnecessary costs and provides no environmental benefit.

- **Fee Revenues Should Stay Within the Programs That Collect Them:** Currently fees are collected by the DEP and immediately diverted to the General Fund. A portion of the fee revenue is then returned to the DEP through the Annual Appropriations Act. These fees were originally established to adequately fund the programs in order to not only support appropriate staffing to be responsive to the regulated community and the public, but also to meet the stated goals of the associated program.
- The Office of the Governor should examine restructuring and the costs associated with moving the State Park Police under the jurisdiction of the State Police.
- Increase the monetary threshold on purchase orders that currently require multiple approvals (currently the threshold is too low), and eliminate unnecessary, cumbersome and redundant paperwork on such orders, which will free up valuable staff time and incentivize more competition by vendors, ultimately lowering costs to the DEP.
- When allocating scarce resources, there should be a hierarchy as to the receipt of those resources. That hierarchy should include public benefit (hospitals), safety (fire and rescue squads), revenue (business and agriculture) rather than “first come first serve.”
- **Open Public Records Act (OPRA) Requirements—**The DEP processes a majority of the OPRA requests that come into the State. This is time consuming for staff, and a waste of valuable resources. The Department must better utilize Information Technology to lessen this burden. Accepting more documents on line, scanning active document requests, as well as scanning older documents should improve this process. The new Administration should work with the Legislature to review OPRA regarding both cost escalation as well as protection of proprietary information.

## **Conclusion**

Our State needs a government that fosters a predictable and stable set of rules that allow the public and the regulated community to safely plan for the future. Being environmentally friendly is not mutually exclusive from being business friendly. It is the goal of this report to demonstrate how the Governor-Elect can rebuild the DEP to do just that while remaining committed to protecting our State’s natural resources as well as the health and livelihood of its citizens.

The DEP Subcommittee met for approximately three weeks interviewing the DEP administration and staff as well as the Deputy Attorneys General who handle both criminal and regulatory cases for the Department. This was followed by meetings with over 50 different interested parties that included representatives from the regulated community, non-profits and environmental organizations. This method of information gathering has given us a comprehensive perspective from both inside and outside the Department.

At the beginning of this process, most of the Subcommittee members were skeptical about the agency's future and its ability to change in order to become effective, efficient and responsive. What was most striking was the competency and professionalism of most of the management and staff with whom we spoke. It became apparent that many of the problems come from a lack of leadership within the administration itself. The result is a department without clear goals, commissioners without clear directives and a staff that has no incentive to think "outside the box" or be innovative.

This report provides recommendations for change that will allow the incoming Administration to better utilize resources, to appropriately target growth and incentivize business investment, and ultimately meet the core mission of the DEP, which is to protect and preserve human health and the environment.

The Subcommittee wishes to thank the Governor-Elect and the Lieutenant Governor-Elect for this unique opportunity to serve the State of New Jersey.