

March 1, 2010

Dear Governor Christie,

We, the undersigned groups, understand the incredible challenge you face in governing this state in such difficult times. Our organizations greatly appreciate the commitments you made during the campaign to tackle the state's persistent environmental problems and to grow the state's economy.

As advocates for New Jersey's environment, we share both your unwavering commitment to this state and its people and your strong desire to improve it. It is our sincere hope that this shared aim will serve as a commonality upon which we can have a positive working relationship with you and your staff.

This letter is intended to open a dialogue with you about the Executive Orders issued on your first day, the transition team reports prepared for your Administration's consideration, and the principles these documents create for future actions and decisions. We have concerns about what we have read thus far, and what we do not read in these documents. In tone and content we believe these documents do not reflect the positive environmental agenda you made public during your campaign. We are hopeful that our concerns can be addressed through dialogue with you and we want to hear more about your concerns for the state.

An overriding concern we have is with the tone of much of your Executive Orders 1 – 5 which seem to implicate the state's environmental protection policies as the fundamental cause for its businesses' economic struggles. We know you agree that the collapse of the housing and credit markets, not just in New Jersey, but around the world, is primarily to blame here and that New Jersey environmental regulations placed on businesses played no significant role in the current recession.

Further, we agree that environmental protection is not only important for the public health and quality of life for all New Jerseyans, but of the utmost importance to the economic health of businesses operating in our state, especially over the long term. As you know, food processing and fishing, tourism, and pharmaceutical manufacturing, New Jersey's top industries, all rely on clean and plentiful water to flourish and help drive the state's economy. Further, environmental standards can also be a means of growing our economy, as we have seen with the growth of the clean energy market in our state.

However, these Executive Orders appear to suggest that providing the public with certain environmental protections may not be worth the cost to regulated businesses. What is missing each time the EOs reference the burden of compliance with regulations to the businesses of this state is the acknowledgement that not having and enforcing environmental standards has the potential to be exponentially more costly to businesses and the general tax paying public.

Therefore, we respectfully ask that you convene a meeting with us to begin a dialogue about environmental protection and how it might specifically be affected by your desire to reform the regulatory process. As a starting point, we have outlined some of the concerns we have with EOs 1 – 5 and the actions that follow them.

Thank you in advance for taking the time to consider the environmental community's input in your governing decisions.

Executive Order #1

Frozen Rules Proposals - We recognize that the Red Tape Review Group has been reviewing proposed rules and releasing them from the freeze. We urge you to understand the importance of these and other proposed rules now frozen under EO 1. Please finalize adoption of these rules quickly.

- **The Department of Community Affairs's proposed energy saving building code standard - 41 N.J.R. 3140(a)** – This rule updates the energy code for the state to the model national code for 2009, which will reduce energy use in all newly constructed residential and commercial buildings by an estimated 12% over New Jersey's current building code. This is a powerful energy saving measure that can reduce New Jersey's electricity use by as much as 3% of the state's *total* projected demand in 2020. We urge you to understand the importance of such a sweeping energy savings policy to both the state's environment and economy, as the savings reduce homes and businesses energy costs by an estimated 30% a year, allowing them to increase their investment in their businesses and the economy. Further, the American Recovery and Reinvestment Act of 2009 requires the State to adopt a building energy code for residential buildings that meets or exceeds the national 2009 codes for residential and commercial buildings. (International Energy Conservation Code (the IECC / 2009); and ANSI / ASHRAE / IESNA Standard 90.1-2007.)
- **The Department of Environmental Protection's proposed update to the Safe Drinking Water Rules - 41 N.J.R. 4381(a)** – this rule update would establish a maximum contaminant level (MCL) of five micrograms per liter ($\mu\text{g/l}$) for perchlorate, a chemical compound of concern for which no Federal or State drinking water standard has yet been established. The proposed amendments to the SDWA rules also specify monitoring, compliance, and public notification requirements for perchlorate. This rule will expire on March 16 if the freeze stays in place, expanding the impact of the freeze. The required re-adoption process would considerably delay the adoption of this crucial drinking water standard; perchlorate is particularly dangerous to children and pregnant women by causing permanent damage to the mental and physical development of infants making timely action on this proposed rule a public health imperative.
- **The Department of Environmental Protection's proposed update to the Surface Water Quality Rules - 41 N.J.R. 4587 (N.J.A.C. 7:9B-1.4, 1.5 and 1.14)** – sets a phosphorus policy for waters statewide, the leading cause of freshwater pollution. This is an important first step in tackling one of the leading problems facing the state's waterways. In addition, the rule extends the Narrative Nutrient Water Quality Criterion to marine waters, which is long overdue. The extension of criterion will help bring recognition to nutrient problems in marine waters, such as nitrogen, and should reduce nutrient loadings to coastal waters.
- **The Department of Environmental Protection's forestry rules, N.J.A.C. 7:3 N.J.A.C. 7:50-6.46**– this rule amends the forestry standards by the Pinelands Commission, part of a larger effort on the Commission's part to review, clarify and refine the forestry provisions previously contained in the CMP. Among other things, the adopted amendments clarify forestry application procedures and requirements, expand the definition of "forestry", identify Pinelands Native Forest Types, define acceptable silvicultural techniques and set limits for a wide variety of site preparation, harvesting and reforestation practices.

- **The Department of Environmental Protection's air quality management sulfur in fuels rule - 41 N.J.R. 4156(a) -- N.J.A.C. 7:27-9.2** – This rule is designed to help New Jersey reduce unhealthy air pollution and make progress toward the state's effort to comply with air quality standards. Specifically, the rule would lower, and thus make more stringent, the maximum sulfur content standard and maximum sulfur dioxide (SO₂) emissions standards for fuel oil sold for use in New Jersey. Both the existing and the proposed amended standards are based on the grade of the fuel oil; that is numbers 1, 2, 4, 5 and 6 grade fuel oils. The Department is also proposing to repeal N.J.A.C. 7:27-9.5, which allows the use of high sulfur oil for units being converted to coal.

Executive Order #2

Time of Decision — Since the early part of the last century, New Jersey Courts have held that the rules in place at the time a decision is made are the rules that govern the decision unless equity requires a different result. Your EO 2 directs state agencies to reinterpret the New Jersey Courts' findings on the time of decision rule by asserting that regulations and standards in effect at the time an application is filed be those governing development projects. This would create a situation whereby your agencies will be permitting things to proceed knowing it to be inconsistent with duly adopted regulations. Whether decades of law can be changed by the execution of an EO is one question; whether it is in the public interest is another. We firmly believe that the answer to the latter question is no.

Agency Heads Waiver Rights - Part of EO 2 requires adoption of rules that allow for waivers from strict compliance with regulations. The EO requires all state agencies to publish a policy describing the circumstances under which it will grant such waivers. Currently, all DEP regulations contain provisions for waivers under hardship provisions and that are applied when regulations would deprive applicants of all reasonable use of their property/ies. Certain rules, for example the Freshwater Wetlands rules, provide for specific waivers to deal with transition areas and to provide a flexible approach to the regulated community. The waiver rights of agency heads need not exceed this already reasoned and transparent approach. Broadening this right beyond hardship is excessive and will likely lead to conflicts between agencies and the laws they enforce, creating more rather than cutting through red tape, and allowing one agency to prevail above another, while the other is left unable to enforce its laws and regulations, however important to the public interest.

Turning the Role of Federal Law and State's Rights Upside Down - Your EO 2 suggests the floor of federal standards should really be a ceiling and we could not disagree more. New Jersey has often been a leader on environmental protection and we believe the state has every right, and often an obligation, to offer its citizens protections that go beyond federal minimum standards. Indeed, in New Jersey, almost every resource – our air, land and water --- is more seriously threatened than the resources of other states. The sheer density of our state's development, the proximity of the public and neighborhoods to industry and the large industrial sector presence clearly set New Jersey apart from other parts of the country. As such, protecting public health and the environment often means exceeding minimum standards set by the federal government. Over the years, examples of this are New Jersey's adoption of the Low Emission Vehicle Program (LEV II) and the New Jersey Wetlands Law. These and others must be preserved. Looking ahead, there are several areas where we believe state standards should be set above those set federally, and we hope you will view these necessary actions favorably.

In some regards, suggesting the state will endeavor to meet minimum federal requirement but no more is contrary to federal law itself. For example, the Clean Water Act states that lower jurisdictions must

comply with the act but, can have stricter regulations. Indeed, the poor condition of New Jersey's waterways as a result of our status as the most developed state in the nation requires standards that go beyond the floor set by federal law for very serious public health reasons.

Responsibility of State to Protect the Public -- EO 2 has a lot to say about clearing the way for economic growth and relaxing regulatory compliance that businesses find burdensome and costly. Later in the Executive Order, you direct the agencies to consider the regulated community its customers. We are concerned at the singular focus on regulated entities as customers. Certainly, the effect of the state's regulations on the entire public must be considered. There may be times when compliance with a regulation is considered costly and time consuming by the regulated entity, but necessary to protect the public interest. Indeed, we urge you to consider that there are times when the least burdensome and costly approach to regulated businesses is in direct conflict with public health and safety. There is a balance to be achieved between business friendly, customer – oriented service for regulated entities and service to the broad public interest. While we understand that you too strive for the right balance, we will be watching closely to see that this Executive Order does not tip away from service to the broad public's interest.

Cost / Benefit Analysis – The tenor of the EO's generally and EO2 specifically is talk of burdens and costs to businesses but minimal to no attention to environmental/public health costs and burdens. This stands in stark contrast to what you stated in the campaign:

"Current rule impact statements are inadequate and unsupported. In a Christie administration, impact statements will be more detailed with supporting expert analysis and will require a more accurate cost/benefit analysis. These analyses will include better evaluation of the benefits, economic and otherwise, of lives saved, illnesses avoided, natural resources preserved, work and school days not lost due to sickness, and health care costs reduced to the more traditional and legitimate costs to taxpayers and businesses to implement public health and environmental regulations. Proposed rules will also contain a true "risk analysis" supported by actual data to ensure the proposal is serving an actual and critical public need." (Source: <http://christieforj.com/images/enoironment3.pdf>)

When conducting a cost / benefit analysis, you must factor in all costs when judging the economic impact of environmental protection. Any accurate evaluation must include all external and internal costs and benefits, both long-term and short-term, including the economic values of ecosystem services. For example, forests and wetlands safeguard our water supply. The value of services provided by New Jersey's forests is estimated at \$2.2 billion per year excluding timber value. Wetlands contribute another \$10.6 billion per year in water filtration and supply, and protection from flooding and storms. Ecosystem service values should be part of every economic calculation. That calculation must factor in the cost of replacing lost ecosystem services in the future. It is much less expensive to protect natural functions now than to shoulder the greater, ongoing cost of replacing them.

Fair Enforcement – EO 2 directs agencies to forgive regulated businesses for small technical and paper work compliance lapses. This provides an unfair advantage for businesses that do not comply with the law – a policy that does not square with either your goal of consistency in regulation or your background in enforcing the law. It also opens the door to favoritism and abuse. Timely and accurate reporting (paper work) is important to providing the public with its right-to- know and thus should not be relaxed. Finally, the NJDEP has already adopted several "Grace Period" provisions for many of its regulations.

Clarifying the Role of the State Plan – In several places, EO 2 suggest that state agencies may not establish conflicting regulations, and further gives agency heads the ability to waive regulations to resolve a

conflict between one state agency's regulations and another's. We want to confirm our understanding that the State Planning Commission is not a state agency with the authority to assert that other agencies comply with the State Development and Redevelopment Plan. Although the Plan has clear environmental policies, the use of the policy map as a regulatory tool fails to acknowledge the location and importance of critical environmental resources in delineated growth areas and centers. For example, there are waterways in need of protection in every planning area of the State Plan, there are forests that sequester global warming gases in every planning area, there are farms in every planning area even the most urban. Further, the existing map is based on decades old data and does not reflect proposed changes made during the recent cross-acceptance process. Using these map delineations as a blanket basis for decision making around environmental protection and where growth should go, without acknowledging these shortcomings, leads to unexpected conflicts and delays in permitting and endangers the people's right to a clean and safe environment. Thus the State Planning Commission's role as a planning organization intended to coordinate all levels of government and state agencies can help to inform the setting of regulatory standards, but it should not be given the authority to compel waivers or changes to regulation or the enforcement of regulation.

Executive Order #3

Red Tape Review Group: We are concerned that the Red Tape Review Group may review and make recommendations about proposed rules with little input from the environmental community and the public at large. EO 3 only directs the Group to consider input from the public *if* it deems outside input "appropriate". We doubt highly that the time allotted to review so many regulations will allow the Group to seek appropriate input from outside its membership. If the Group is considering recommending to the Governor that a rule be revised or rescinded, the Group should be required to take public input as accorded through the due process of the law. We note that stakeholder groups posted on the NJDEP web page this week are a good start, but not enough, nor are the meetings broadly publicized.

Executive Order #4

Role of Mandates to Local Governments –EO 4 seeks to limit local mandates that might require local government spending to comply. Any state mandate on local governments that requires local spending must be approved by the Governor, and justified through written report. As long as land use decisions and water quality management are in the hands of local governments, while the state remains the primary steward of natural resources, this tension will exist. An attempt to overly limit state mandates to local governments on land and water use decisions puts our resources in jeopardy. For example, storm water management should be done on the local level through operations of the department of public works and the planning board review of site plans and subdivisions. But it is the state's duty under the federal Clean Water Act to set protective standards for prevention of non-point source pollution from storm water. In 2003, a federal appeals court in San Francisco upheld the EPA storm water rules requiring small cities, counties and developers to protect waterways from storm water pollution. (*Environmental Defense Center Inc. V. US EPA, No. 00-70014.*)

Executive Order #5

We urge you to consider appointing at least one economic advisor to the Governor's Council of Economic Advisors who has no direct tie to regulated business interests and who has a strong background and understanding of the value of environmental resources and environmental protection. We would be

happy to assist you with some recommendations.

In closing, we want to applaud you for outlining in your transition reports and the Executive Orders the need to establish proactive goals for environmental protection. We agree. The people of New Jersey deserve no less. New Jersey's air, land and water are all in need of better protection, and it is necessary for state government to outline what the quality of our environment should be to ensure all decisions support those goals. To that end, our community looks forwards to a dialogue that addresses what we believe the goals for environmental protection in New Jersey should be.

Thank you for your openness to engage us and our concerns. Please RSVP to Dena Mottola Jaborska of Environment New Jersey to arrange a meeting. (609) 392-5151, ex. 306.

Sincerely,

Dena Mottola Jaborska, Executive Director, Environment New Jersey

Tracey Carluccio, Associate Director, the Delaware Riverkeeper Network

Julia M. Somers, Executive Director, New Jersey Highlands Coalition

William S. Kibler , Executive Director, South Branch Watershed Association

Cindy Ehrenclou, Executive Director, Upper Raritan Watershed Association

Jeff Tittel, Director, New Jersey Sierra Club

John Weber, Surfrider Foundation

Jaelyn Rhoads, Director for Conservation Policy, Pinelands Preservation Alliance

Sandy Batty, Executive Director, ANJEC

Amy Goldsmith, State Director, NJ Environmental Federation

Cindy Zipf, Executive Director, Clean Ocean Action

Alison Mitchell, Policy Director, New Jersey Conservation Foundation

Robin O'Hearn, Executive Director, Skylands CLEAN, Inc.

Michael Keady, President, Friends of Holland Highlands

Ross Kushner, Executive Director, Pequannock River Coalition

Jim Waltman, Executive Director, Stony Brook-Millstone Watershed Association

Eric Stiles, COO and Vice President of Conservation and Stewardship, New Jersey Audubon Society

Cc: Robert Martin, Acting NJDEP Commissioner

Richard Bagger, Chief of Staff, Governor's Office

Raymond Cantor, Special Assistant to the Commissioner

Gregg Edwards, Director of Policy, Office of the Governor