

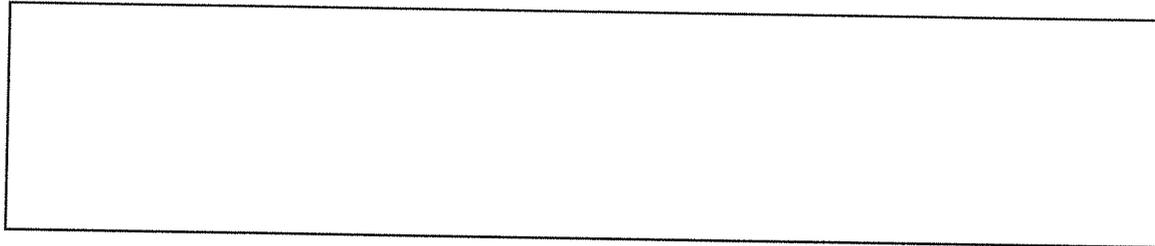
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Masser, Michelle

From: Lashway, Lisa
Sent: Friday, March 22, 2013 9:27 AM
To: Canning, Sean; Masser, Michelle
Subject: FW: Appellate Division upholds DEP Waiver Rule, Strikes Some Guidance Documents

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From: NJLM to Municipal Officials [mailto:njlm-clerks@njslom.org]
Sent: Friday, March 22, 2013 9:22 AM
To: Lashway, Lisa
Subject: Appellate Division upholds DEP Waiver Rule, Strikes Some Guidance Documents



Mayors Advisory

March 22, 2013

Re: Appellate Division upholds DEP Waiver Rule, Strikes Some Guidance Documents

Dear Mayor:

An Appellate Division panel yesterday upheld the substantive portions of the “waiver rule” adopted by the Department of Environmental Protection (DEP.) The regulations were challenged by a coalition of environmental advocates, who argued that the regulations exceeded the DEP’s authority and that the guidance documents posted on its website were invalid because they were de facto rulemaking without going through the process required by the Administrative Procedures Act (APA).

On the first point the Court upheld the waiver rule itself and stated the regulation provided adequate standards. The Court, however, struck the guidance documents posted on the DEP’s website since the documents bypassed the APA.

The waiver rule resulted from Governor Christie’s Executive Order 2, which directed the State Government to, *“Adopt rules for “waivers” which recognize that rules can be conflicting or unduly burdensome and shall adopt regulations that allow for waivers from the strict compliance with agency regulations and such waivers shall not be inconsistent with the core missions of the agency.”*

DEP subsequently adopted NJAC. 7:1B (Waiver Rule), on March 6, 2012 and was effective as of August 1, 2012. The rule establishes four limited circumstances under which the Department will consider a waiver of strict compliance with certain Department rules. The process for obtaining a waiver is described in detail on the DEP’s website at www.nj.gov/dep/waiverrule/. However, please be aware that the online guidance documents are no longer valid as a result of this decision and the DEP will, presumably, adopt such guidance through the APA in the upcoming months.

The Appellate Division decision is online at: www.judiciary.state.nj.us/opinions/a3514-11a4098-11.pdf. It is likely that the appellants will seek an appeal with the State Supreme Court.

Questions on this can be directed either to Mike Cerra at mcerra@njslom.com or 609-695-3481 x120 or Matt Weng at mweng@njslom.com or 609-695-3481 x137.

Very truly yours,
William G. Dressel, Jr.
Executive Director

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