

March 30, 2011

NJDEP Commissioner Bob Martin
401 E. State Street, P.O. Box 423, Trenton, N.J. 08625
Via email bob.martin@dep.state.nj.us

Re: Stakeholder Problems, Suggestions, Meeting Request

Dear Commissioner Martin,

As the leaders of New Jersey's environmental community, we understand that DEP is seeking to provide more transparency and meaningful participation through numerous rulemaking and transformation stakeholder processes. Given the predominant role these processes will play in DEP's interaction with the public, we would like to meet with you to discuss them.

We see the potential for these processes to be productive and move critical environmental protections forward. However, we also see how they could easily lead to rationalizing major rollbacks. For example, certain business interests reject that buffers and the Landscape Project, i.e., protecting the state's water supplies and endangered species, are part of DEP's core mission!

We are extremely concerned and greatly frustrated with the substance and process of the transformation and rule stakeholder efforts over the past year. While the problems vary from one stakeholder process, subject and meeting to the next, the vast majority of these lack clear, consistent direction and include a multitude of problems including but not limited to:

- **Poor selection of environmental stakeholders** – those with expertise not included, those without expertise included, very limited input from the environmental community, and resistance from DEP to correct this;
- **Unbalanced representation of stakeholders:** business interests often outnumber environmental invitees and participants with ratios ranging from 3-20 to 1. This isn't about "voting" but when one group so outnumbers another it distorts the outcome from control of the floor to the disproportionate impact when an environmentalist isn't present;
- **Weak disclosure of invitees and participants** to each other and the public at large;
- **Poorly timed, thought out and/or communicated agendas** for invitees and public at large precludes proper preparation, maximum participation, and better dialogue;
- **Little to no useful communication of end results** (both notes of meetings themselves and ultimate outcomes) to participants and public;
- **Emphasis of economics over environmental protection** despite rhetoric to the contrary;
- **Participation being viewed as support;**
- **Lack of clarity on how to follow up with substantive information in a meaningful way** that will positively inform DEP staff and efforts; and
- **Lack of clear goals, policy objectives, consistency, time frames and commitment** within and between stakeholder processes - inconsistency and confusion abound due to DEP's lack of notification and coordination (with itself and with outside interests) of all meetings planned here, their timing and goals with new ones being launched regularly. This makes it impossible to make informed choices about which ones to engage how.

While many of us have repeatedly communicated these concerns and proposed solutions to all levels of DEP over many months (in some cases over a year), only recently have some improvements resulted and even these are more than offset by continuing and new problems as the stakeholder processes continue and expand. In other words, it's getting worse not better.

These are many of the same concerns better articulated in the NJ Environmental Justice Alliance's recent letter (attached for your convenience) informing you of their understandable decision to boycott further participation in these proceedings unless and until they are corrected.

Unless these processes' fundamental flaws are corrected, the regulatory reform process will increasingly fail and lose credibility. Accordingly, we recommend the following along with NJEJA's suggestions:

1) Expectations, Goals, and Time Commitment - Define DEP-wide, and release publicly, monthly what areas are having stakeholder meetings over the ensuing 3 months, their goals, schedule, and policy objectives (e.g., major re-writes and/or minor adjustments to strengthen/weaken rules, efficiency, transformation, etc.). For each process, how many months, how many meetings/month, how many hours/meeting? Wanting to know what to expect over the next 3 months, the scope of possible outcomes, and what you're being asked to do is not unreasonable.

2) Representation - Specify the number of environmental slots for each area and who you have invited/plan to invite to fill those slots? We fully understand the need to keep things tight, to have continuity and commitment, and will strive for that but given resource constraints, expertise, etc. we must have more flexibility to determine who should be our representatives in any given process on any given day within reason. If someone can't make a meeting and/or we need to bring in a technical expert, we should be able to do that by default without prior approval by DEP and without fear of being blocked from participating or escorted out by security.

3) Balance - Reveal and lower the ratio of business interests v. environmental slots in each process. For example, the air transformation group, the farthest along, is unacceptable -- very unbalanced from the outset (a 3-5:1 ratio) and now approaching 20:1. An exact 1:1 ratio isn't necessary but such lack of balance goes way too far, and puts the environment (and DEP to the degree that it wants fair, honest dialogue) at a tremendous disadvantage.

4) Content/Transparency -

- a) Make public (email invitees and post to the DEP website with a user-friendly interface):
 - meaningful agenda, supporting documents, list of invitees, etc. with enough lead time to effectively prepare
 - notes of meetings and attendees within a week of occurrence
- b) Facilitate meetings to ensure all voices are heard and discussion stays on track
- c) Outcome – once the process concludes, email and post per 4a above regular updates on DEP next steps (too often too many interested parties never know, or don't find out for months or years). No statement of consensus by the group.

5) Messaging/Truth in Advertising/Legal Proceedings - Any participation in stakeholder meeting must not be used against participants in the media or legal proceedings. DEP press releases like the one on the waiver rule cannot occur again and that one should be retracted. That release prioritizes the economy over the environment, is against DEP's core mission, exaggerates the environmental communities' involvement and implies our concurrence to provide credibility

to a result we oppose, and inaccurately suggests the rule provides a net environmental benefit when DEP top staff have admitted privately that it does not.

We urge speedy correction of these deficiencies. A failure to vigorously pursue remedies will hasten the failure of DEP to fulfill its core mission – something none of us can afford. Please help us help you by ensuring rigorous corrective action beginning today.

To that end and as we understand DEP is working now to impose consistency across these meetings, we ask that you immediately pause these proceedings until our concerns are addressed.

To have appropriate outcomes, DEP needs to have appropriate stakeholder processes. We respectfully request a reply to our concerns and a meeting with you by April 15 scheduled by the end of this week. To make arrangements, please have your staff contact Sandy Batty (973-539-7547, sbatty@anjec.org,) and/or David Pringle (dpringle@cleanwater.org, 732-996-4288).

Sincerely,

Sandy Batty, Association of NJ Environmental Commissions
Tim Dillingham, American Littoral Society
Cindy Zipf, Clean Ocean Action
Maya K. van Rossum, the Delaware Riverkeeper
Dena Mottola Jaborska, Environment New Jersey
Alison Mitchell, NJ Conservation Foundation
David Pringle, NJ Environmental Federation
Julia Somers, NJ Highlands Coalition
Debbie Mans, NY/NJ Baykeeper
Jeff Tittel, Sierra Club -- NJ Chapter
Carleton Montgomery, Pinelands Preservation Alliance
Bill Kibler, South Branch Watershed Association
Jennifer Coffey, Stony Brook-Millstone Watershed Association

cc: NJDEP staff: Irene Kropp, Ray Cantor, Magdalena Padilla, Angelene Taccini, Magdalena Padilla, Janice Brogle, Ray Bukowski, and Annie Dunham
USEPA: Administrator Lisa Jackson, Regional Administrator Judith Enck, Lisa Plevin
NJ Environmental Justice Alliance Executive Committee, Environmental Summit members