

## NJ Supreme Court Refuses to Prolong Challenge to Waiver Rule

### NJDEP Application Process is Fully Functional

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**November 2013**

On October 7, 2013, the New Jersey Supreme Court brought an end to legal challenges to the New Jersey Department of Environmental Protection's (NJDEP) "Waiver Rule." In denying a request for review, the Supreme Court leaves intact a March 2013 Appellate Division decision upholding the rule.

As outlined in our March 2013 Client Alert, the Waiver Rule allows the Department to waive strict compliance with most of its regulations under the following circumstances:

- The rule sought to be waived conflicts with another State or Federal agency rule;
- The rule sought to be waived would be unduly burdensome;
- The project that would be enabled by the waiver would have a net benefit for the environment; or
- Waiver is necessary in order to respond to a public emergency.

Despite the court challenge, NJDEP has been "open for business" on the Waiver Rule since its promulgation in 2012. The Department's website provides background information and a portal through which waiver applications can be electronically submitted.

Although the Waiver Rule was upheld, the formal guidance published by NJDEP to facilitate its implementation was invalidated. The NJDEP website has been updated to remove the guidance and bring the process into compliance with the Appellate Division ruling.

To date, NJDEP has received forty-two applications under the Waiver Rule. Fifteen are still under review. Sixteen have been denied because the applications were not properly completed. Seven have been denied and four have been voluntarily withdrawn. None, thus far, have been granted.

A discussion about the need for relief under the Waiver Rule, whether the discussion is with counsel or NJDEP, often starts a conversation that leads to alternate regulatory solutions that are better suited for the problem.

If you have questions regarding the Supreme Court's recent decision, the applicability of the Waiver Rule to your project, or other environmental matters, please contact the author of this Alert, **Daniel Flynn**, or any member of our Environmental Department.