

## NJDEP Common Sense Waiver Rule To Become Effective August 1, 2012

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*Greenbaum, Rowe, Smith & Davis LLP Client Alert*

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Despite fierce opposition from the Senate Environment Committee and environmentalists, the New Jersey Department of Environmental Protection ("NJDEP") has announced that it plans to adopt the "Common Sense Waiver Rule," which will be published on April 2, 2012 and will become effective on August 1, 2012.

The Waiver Rule was adopted in response to Governor Chris Christie's Executive Order No.2, which mandates the use of "common sense principles" by state agencies and is intended to promote flexibility in the application of NJDEP regulations.

The Rule permits NJDEP to waive strict compliance with agency rules under four circumstances:

1. The rule sought to be waived conflicts with another NJDEP or other State or Federal agency rule;
2. The rule sought to be waived would be unduly burdensome;
3. The project that would be enabled by the waiver would benefit the environment; or
4. Waiver is necessary in order to respond to a public emergency.

A large number of waiver applications will likely be based upon a claim of "undue hardship." The proposed rule, published in March 2011, defines "undue hardship" as involving situations where actual, exceptional hardship would result or where the cost of complying with the rule would be excessive compared to alternative methods of compliance that would have similar or better results.

There are certain categories of rules that NJDEP is not permitted to waive, including those concerning numeric standards, a remediation funding source or NJDEP oversight costs. Waiver will also not be permitted if it will violate a State or Federal statute or Federal regulation.

### Attorneys

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NJDEP advises that online reports will be available to the public to track NJDEP's receipt and determination of waiver applications.

If you have any questions regarding the applicability of the new Waiver Rule to your project, please contact the attorneys in our **Environmental Department**:

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