

June 2, 2011

Gary Brower, Esq.  
Office of Legal Affairs  
New Jersey Department of Environmental Protection  
401 East State Street, Fourth Floor  
P.O. Box 402  
Trenton, NJ 08625

Re: DEP Docket No. 05-11-03  
Comments on the Coastal Zone Program Coastal Zone Management Proposed Public  
Access Rules

Dear Mr. Brower:

The New Jersey Environmental Justice Alliance (NJEJA) would like to submit these comments in opposition to the proposed rule amendments N.J.A.C. 7:7-1.3, 7.5-7.14, 7.17,7.18,7.24, 7.26, 7.29; proposed rules N.J.A.C. 7:7E-1.8, 3.22, 3.23, 3.43, 3.48, 3.50, 7.2-7.4, 7.7, 7.11, 8.11, 8.12; and proposed rule repeal N.J.A.C. 7:7E-8A. These comments will refer to these proposed amendments, rules and repeal as the “proposed public access rules” or simply as the “proposed rules.”

NJEJA is the only statewide environmental organization in New Jersey that focuses solely on environmental justice (EJ) issues. It is also the only statewide New Jersey environmental organization in which a majority of both its membership and leadership are people Of Color. NJEJA typically attempts to improve the health of residents of communities Of Color and low-income communities by reducing the pollution burden that is imposed on their communities. Most of these communities are located in urban areas of the state. However, while carrying out this work we have also learned that open space and access to waterfronts is essential for the health of communities and their residents. Unfortunately, in many urban areas of our state, such as Newark, Trenton and Camden, access to urban waterfronts is generally limited and needs to be improved. The New Jersey Department of Environmental Protection (NJDEP) appears to agree with this statement since it comments in the proposed public access rules summary (at page 8) that “The Department also recognizes that more meaningful public access to tidal waters in urban areas must be provided and enhanced...”.

NJEJA does not believe that the proposed public access rules accomplish this goal. More specifically, NJEJA opposes the proposed rules for three reasons: 1) Commercial and industrial space that is being renovated in urban areas should have to provide onsite public access to waterfronts, or make a financial contribution to offsite public access, even if the property does not currently provide such access; 2) A procedure should be established for approving an exemption from providing waterfront public access at homeland security locations and if an exemption is granted a financial contribution toward offsite public access should be required; and 3) There was insufficient public

participation from urban residents and EJ organizations during the formation of these proposed rules. Each of these points will be discussed below.

NJDEP is missing a critical opportunity to expand urban waterfront public access by not requiring commercial and industrial space that does not currently provide onsite access to do so upon renovation, or to make a financial contribution toward offsite access. Requiring this type of access or financial contribution might be the most effective way to increase access along heavily developed urban waterfronts. While NJDEP's concern with the cost of providing access for newly renovated space is understandable, to raise it to the level of a preoccupation that prevents the expansion of waterfront access in urban areas is a mistake.

We understand that in general there could be legitimate issues with providing onsite waterfront public access at homeland security locations. However, we feel that some type of procedure should be developed to determine if it is inappropriate to provide onsite public access at a specific homeland security location. We suggest that at the very least the federal Department of Homeland Security and state Office of Homeland Security and Preparedness should have to approve an exemption from onsite public access at a specific location. But even if this exemption is granted, the developer of the location should still have to make a financial contribution toward offsite public access.

It appears that the public outreach intended to provide input into the development of these proposed rules was inadequate with respect to urban residents. The rules summary (at page 3) states that NJDEP sought input from representatives of "marine trades, environmental and recreational interests, business and industry, and coastal zone municipalities" but it does not indicate that urban community groups or EJ organizations were contacted as well. NJEJA was not contacted and we doubt that community groups such as the Eyes of Trenton Civic Association in Trenton, Concerned Citizens of Long Branch, or the Peoples' Organization for Progress in Newark were asked for their ideas and input during the development of the proposed rules.

Due to insufficient participation by community groups and EJ organizations in the outreach process, inadequate waterfront public access to renovated commercial and industrial space, inadequate requirements for financial contributions to offsite public access, and the absence of a procedure for granting an exemption from waterfront public access for homeland security locations, NJEJA recommends that NJDEP withdraw the proposed public access rules. This would provide NJDEP with the opportunity to initiate a process that would gather ideas from urban residents and EJ organizations and to make needed substantive changes in the proposed rules. Expansion of access to, and use of, urban waterfronts should be encouraged by NJDEP; however these proposed rules do the opposite. Because they exempt certain locations from providing onsite access or financial contributions to offsite access, we believe the proposed rules actually have a chilling effect on the use of, and access to, urban waterfronts. Evidence of this is the episode detailed by comments submitted by the Ironbound Community Corporation in which companies that had been negotiating possible financial contributions to offsite access broke-off these discussions when the proposed rules were made public. NJDEP should

develop a new set of proposed rules that would bring these companies back to the table and increase public access to urban waterfronts.

Respectfully submitted on behalf of the New Jersey Environmental Justice Alliance and prepared by:

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