



**ASSOCIATION OF ENVIRONMENTAL AUTHORITIES**

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April 24, 2019

The Hon. Phil Murphy, Governor  
Office of Governor  
PO Box 001  
Trenton, New Jersey 08625

Dear Gov. Murphy:

I am writing on behalf of the 85 municipal and county authorities, regional sewerage authorities, improvement authorities and municipal water/sewer utilities that are members of the Association of Environmental Authorities (AEA) regarding Executive Order No. 63(EO63), signed April 2. AEA commends you for issuing EO63, which outlines a fair, transparent, and comprehensive approach to the regulatory process. In light of EO63, AEA is writing to express concerns about how the Department of Environmental Protection (DEP) has handled a current regulatory matter— Surface Water Quality Standards, N.J.A.C. 7:9B, Category 1 Designation Proposal (DEP Docket No. 01-19-01).

AEA agrees with the principles set forth in EO63. The executive order articulates a thorough and thoughtful approach to regulation. EO63 states that regulations should be built on common sense and should be well framed. They should be written based on dialogue with stakeholders, and they should rely on the best available scientific data. EO63 makes “open government” a priority, and it values “ease of access” and communication between regulated communities and the agencies regulating them.

EO63 also articulates the importance of viewing regulatory proposals within a larger context. The overarching purpose of regulations is to protect and promote “the environment, health, safety, and welfare of New Jersey, its resources, its people, its businesses, and its economy.” EO63 directs State agencies to weigh costs and benefits and to consider economic impact and innovation. It identifies the importance of engaging with stakeholders in a timely manner and states that State entities should “tailor” the regulatory process for proposals that will have “significant” or “expansive” impact. In these cases, “the benefit from extensive stakeholder outreach will be greater.”

AEA supports extending the Category 1 designation and protecting New Jersey waters. However, AEA wrote to Commissioner McCabe expressing serious concerns about the transparency of the Category 1 Designation proposal process, the adoption schedule, the quality and completeness of the data backing it, and AEA members’ ability to assess the proposal’s implications. We do not believe the DEP has not been as forthcoming as it could be with certain background documentation and data AEA members need to assess the impact of the Category 1 Designation proposal, including mapping that shows the tributaries being affected by the upgrade, in addition to the segment named. AEA does not believe the DEP gave due consideration to how the Category 1 Designation proposal will affect redevelopment, CSO remediation, affordable housing and other factors the EO63 news release calls “distributed impacts.”

AEA and other stakeholders requested a second public hearing and an extension of the comment period by 60 to 90 days. In response, the DEP extended the comment period by 30 days, but it declined the requests for an additional public hearing. This is disappointing given the outstanding issues noted above. The effective date of EO63 is June 1, which is after the DEP initiated the rule process but before the end of the recently extended comment period. Given that timing, the DEP should be guided by EO63 principles. In our view, the C1 rulemaking matter

clearly has “significant” and “expansive” impact and so is an instance contemplated by EO63, when the process should be tailored to have the benefit of “extensive stakeholder outreach.”

AEA and the DEP staff have a long and productive history of working together on water quality regulations, asset management and other matters. Commissioner McCabe has taken the time to get to know AEA leadership, and she spoke at our fall 2018 conference. The Commissioner also invited AEA to participate with her in small-group stakeholder listening sessions. We appreciate these efforts very much. Nevertheless, we wanted to bring to your attention our concern that the DEP approach to the Category 1 Designation proposal in many ways runs counter to EO63 and could create an unfortunate precedent.

Very truly,

Peggy Nolting Gallos  
Executive Director

CC: David Harpell, AEA President