

PUBLIC NOTICE

ENVIRONMENTAL PROTECTION

OFFICE OF LEGAL AFFAIRS

Notice of Receipt of Petition for Rulemaking

Department Organization

Request for Amendments Requiring Disclosure of Department Senior Staff Members' Scheduled Meetings with Non-departmental Entities and Individuals, and Records Related to Such

Meetings; and Repeal of Portions of Rule Describing Function of Department's Press Office

N.J.A.C. 7:1

Petitioner: Public Employees for Environmental Responsibility

**Take notice** that on July 27, 2009, the Department of Environmental Protection (Department) received a petition for rulemaking from Jeff Rush, Executive Director of the Public Employees for Environmental Responsibility (petitioner), seeking amendment of the Department Organization rules, N.J.A.C. 7:1. The petitioner identifies itself as "a national support group for professionals in state and federal agencies." The petition requests amendments to require the Department to disclose various information related to meetings with representatives of regulated industry, as described in more detail below, and that portions of the rule that describe the functions of the Department's Press Office be repealed.

The petitioner first requests that the Department Organization rules be amended to include provisions that require disclosure of Department employee calendars to allow monitoring of meetings held with representatives of regulated industry and others. Petitioner further requests that

the rules require that all meetings of the Department's Commissioner, Deputy Commissioners, Chief of Staff and Assistant Commissioners with any non-Departmental person be publicly disclosed. This disclosure should be posted on a dedicated page on the Department's website and should include meeting attendance sheets, meeting objectives, meeting minutes, and all presentations, notes or written materials distributed or discussed at the meeting. Additionally, the identities of private, non-governmental employees and specific projects, Department approvals sought and clients represented should be identified on the website.

In addition to disclosure of this information regarding meetings of the identified Department officials with non-governmental persons, the petitioner requests that the rules be amended to mandate that all other meetings, correspondence and/or communications between regulated private individuals and Department Assistant Commissioners, Deputy Commissioners and Division Directors be defined as public records subject to disclosure under the Open Public Records Act.

Petitioner asserts that these changes are supported by Executive Order No. 1, the Conflicts of Interest law, N.J.S.A. 52:13D-12 et seq., and the Legislative and Governmental Process Activities Disclosure Act, N.J.S.A. 52:13C-18 et seq. Petitioner asserts that the Executive Order and cited statutes reflect an intention for increased transparency. It is asserted that the Legislative and Governmental Process Activities Act particularly seeks to promote this transparency through mandatory public disclosure and reporting requirements, including disclosure of all activities that may influence government processes. Petitioner asserts that the definition of lobbyist under that Act has been expanded to include those who seek to influence government processes and that the Act requires disclosure of activities to influence governmental processes, which are broadly defined.

Petitioner additionally requests that portions of the Department Organization rules that describe the Department's Press Office functions be repealed. Petitioner points particularly to

portions of the rule which provide that the Press Office serves as a single point of contact between the Department and media for the purpose of facilitating release of accurate and timely information to the press and assuring that all Department communications with the press reflect the current policies and priorities of the Commissioner. Petitioner asserts that this policy is inappropriate because it limits the content of what staff can express to the media and requires that they conform such communication to the policies and priorities of the Commissioner, which may force them to violate the ethical standards that are applicable to the professions of which they are members. Petitioner asserts that such a rule is inconsistent with the public interest, restricts the free flow of public information, violates professional ethical standards and duties to the public interest and limits the public's right to know and have access to the best available science, in addition to chilling the free speech rights of Department employees.

In accordance with the provisions of N.J.A.C. 1:30-4.2, the Department will subsequently mail to petitioner and file with the Office of Administrative Law a notice of action on the petition.