

The New Jersey Utilities Association (NJUA) represents the investor-owned utilities in the state that provide regulated drinking water, electric, gas, wastewater and telephone service. The companies all are regulated by the BPU and conduct numerous activities that are subject to DEP permits. Our 16 member companies include: PSE&G, JCP&L,

Atlantic City Electric, Rockland Electric, Elizabethtown Gas, New Jersey Natural Gas, South Jersey Gas, Verizon, Embarq, United Water, NJ American Water, Middlesex Water, Aqua-NJ, Gordon's Corner Water, Shorelands Water and Atlantic City Sewerage.

Below is a compilation of the main land use permitting issues that have surfaced when we canvassed the companies. Please review and let me know what opportunity there might be to have these issues addressed in the context of the Task Force.

Context: Utility projects that require DEP permits are typically conducted for the public good, that is to provide or improve the service to customers. Additionally, utility projects follow development, they are not undertaken to lead or promote development. Irrespective of the development status of an area, utilities nevertheless have an affirmative duty to serve their customers wherever they are located. Given the importance of utility service to public health, safety and wellbeing, utility projects should be given priority review by the Department. We are not requesting that reviews be waived, or that utility projects be reviewed to a lesser standard, but we do believe that utility projects should be given higher priority to assure more timely review since they are typically conducted in the public interest.

Below are problem areas utilities have encountered that we would recommend be among those considered for action by the Task Force.

1) Permit review timeframes:

- a) Even wetlands general permits are requiring 4 1/2+ months to obtain.
- b) On 90-day act permits (Flood Hazard Area/FHA), we are experiencing with increasing frequency reviewers "suggesting" the applicant request a 30 day extension to the review period (since the Department does not have the authority to grant itself the extension) or the application will be denied.
- c) Highlands Applicability Determinations (HAD) of exemption taking 6+ months just to confirm the activity qualifies for the exemption.

2) On projects located within the Highlands Preservation Area (HPA), the Department's inability/unwillingness to review a wetlands application until after the utility has obtained a HAD exemption determination, even though routine utility work is covered under Exemption 11 of the Highlands regulations. This needlessly prolongs the overall permit process for any utility activity in the HPA.

3) Prohibiting the use of herbicides for ROW maintenance. The FHA rules recognize the need for utilities to conduct routine vegetation maintenance of their rights-of-way, and while those regulations provide a permit-by-rule for conducting this activity, that PBR does not allow the use of herbicides within the riparian zone. This precludes the use of an important vegetation management tool that actually helps reduce the overall impact to the riparian zone by enabling more effective targeted control of undesirable species.

4) In the Flood Hazard Area rules, the allowed vegetation clearance standards (of Table C) are too restrictive to allow a utility project that requires an Individual Permit to clear or maintain a ROW of sufficient width to meet the NJBPU, FERC and NERC standards for ROW clearance. This leaves the

utility in the position of having to request a hardship waiver from the NJDEP in order to conduct proper ROW clearance to meet the clearance standards imposed on it by other regulatory agencies. A utility should not have to plead hardship to get one regulatory agency to grant authorization to undertake an activity that is being required by another regulatory agency.

5) The standard/ test/ requirements for the construction of drinking water improvement projects (and utility projects in general) regarding LURP/ C1 should and must be different and far less stringent than for projects that are residential, commercial, or industrial developments.

6)The new Riparian Zones are going to create a whole host of permitting issues. As a consequence, we anticipate some of the issues identified above will be magnified.

Recommendations:

1) Give priority treatment to utility projects that are for the purpose of providing/restoring/maintaining service.

2) Establish a tiered permit system whereby the "quick hit" permits could be granted under one division in the DEP and then the other more involved permit projects could be prioritized using a standard system that is communicated to the regulated community. Perhaps this would prevent some of the backlog and get the more straight forward jobs permitted in a timely fashion.

3) Formalize sharing of information and information requests internally to ensure that duplicative activities/requests are minimized. There appears to be a general lack of communication between NJDEP bureaus and within the bureaus themselves to the effect that information may be requested by different individuals within a same bureau handling a permit without the knowledge that each one had asked for the same thing. Each bureau seems to be in a silo which creates obvious inefficiencies in the process.

I am copying Steven Cook, with Elizabethtown Gas who chairs NJUA's Environmental Committee. Steve and his committee members can help elaborate on any of these points from a technical perspective.

Thank you for your consideration.

Karen

Karen D. Alexander
President and Chief Executive Officer
50 West State Street, Suite 1117
Trenton, New Jersey 08608
Phone (609) 392-1000
Fax (609) 396-4231