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2017 Environmental Law Roundup

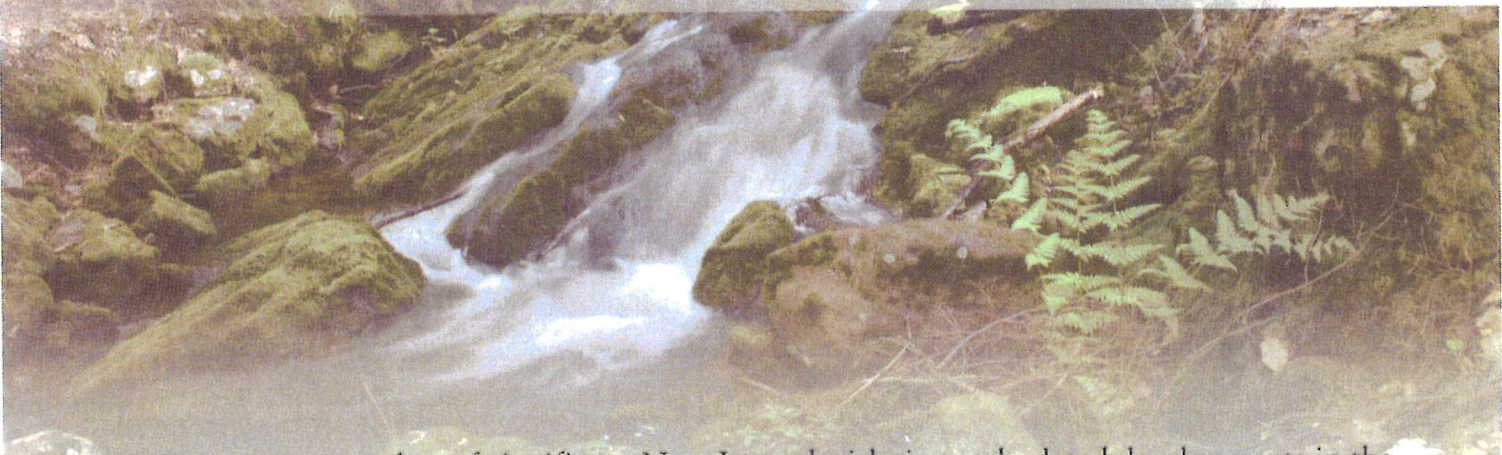
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Major New Jersey 2017 Environmental Legislation/Developments

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In 2017, we saw a number of significant New Jersey legislative and related developments in the environmental area during the last year of the Christie Administration. The New Jersey State Legislature blocked the Christie Administration and the New Jersey Department of Environmental Protection (NJDEP) from loosening septic system density requirements in the Highlands and placed a question on the November 2017 ballot calling for an amendment to the State Constitution dedicating the use of State environmental natural resource damage settlement funds only for environmental restoration purposes, which was approved by State voters.

Governor Christie vetoed the Legislature's passage of a bill to require owners or operators of trains carrying petroleum products to have emergency discharge, response, and cleanup plans. Significantly, Governor Christie signed into law the Water Quality Accountability Act, which requires infrastructure maintenance for public water supply systems, signed a Bill approving the expanded use of recycled asphalt pavement materials, and vetoed the Legislature's attempt to require New Jersey's participation in the Regional Greenhouse Gas Initiative (RGGI). At the end of the 2017 Legislative session, a Bill requiring State oversight of the budgets of regional sewerage authorities was passed and signed into law by the Governor.

While all this was happening, incoming Governor Murphy released the Report of his Environment and Energy Transition Advisory Committee, which provides a roadmap of the environmental initiatives we can expect to see from his new Administration.

All of this signals increasing attention to environmental issues at the State level, and we can anticipate that this momentum will accelerate with the new Administration.

1 State Constitutional Amendment Dedicating Natural Resource Damages Settlement Funds for Environmental Restoration

In December 2016, the State Assembly passed ACR-127 (McKeon/Benson/Eustace) which called for New Jersey voters to approve a constitutional amendment ballot question calling for the dedication of funds recovered from State environmental lawsuits to environmental projects. That resolution was introduced after the Christie Administration had collected more than \$350 million from companies responsible for polluting the Passaic River in the Passaic River litigation and spent less than 20% of those funds on restoration products, and settled the Exxon Mobil environmental litigation for \$225 million—far

less than what environmental advocates claimed the case was worth.

In 2017, the ballot question was revised to require only the dedication of State natural resource damages settlement funds for environmental repair and restoration purposes. New Jersey voters approved the amendment of the State Constitution for this purpose by a vote of 69% to 31%.

2 Blocking NJDEP's Highlands Septic System Density Standards

On Jan. 8, the New Jersey State Legislature passed Senate and Assembly Concurrent Resolutions (SCR-163) (Smith/Bateman) and ACR-255 (McKeon/Eustace) reflecting the Legislature's finding that NJDEP's proposed rule to revise the septic system density standards in the Highlands Water Protection and Planning Act Rules published for public comment on May 2, 2016, was not consistent with Legislative intent. NJDEP's proposed rules would have increased development in the Highlands Preservation Area and involved the levels of nitrate which could be absorbed into the soils in the Highlands Preservation Area.

NJDEP's proposed Highland's septic system density standard rule was blocked.

3 Water Quality Accountability Act

Possibly the most important environmental development in 2017 was the enactment of the Water Quality Accountability Act, P.L. 2017, c.133. The Act was signed into law by Governor Christie on July 21, 2017. The Act applies to public water systems with more than 500 service connections. Among other things, the Act requires periodic inspections of public water system infrastructure including valve inspections, the development of cybersecurity programs for cyber risks to public water supply systems, the requirement to develop mitigation plans to address water quality violations, and asset management plans for the maintenance, repair and renewal of water supply infrastructure.

The Water Quality Accountability Act will have far reaching consequences for public water systems in this state. (See the February issue of *NJ Municipalities'* Water Infrastructure focus features for more details.) The Act's passage is also part of what we see as increasing attention being paid by the State to water quality and water supply.

4 Oil Trains

In 2017, the Legislature continued to pay attention to the transport of crude oil by trains transiting northern New Jersey counties. This led to the passage of S-806 (Feinberg/Gordon), which required owners and operators of oil trains to have emergency response and cleanup plans. The Bill passed the Legislature, but was conditionally vetoed by Governor Christie on July 13, 2017. During the last part of the 2017 Legislative session, A-4031 (Huttle/Eustace) was passed by the Assembly.

This Bill called for the creation of a New Jersey Crude Oil by Rail Safety Task Force to study the risks and impacts of the transport of crude oil by rail, and to make recommendations for emergency response measures. It can be

anticipated that this or a similar Bill will be passed in some form during the 2018 Legislative session and possibly signed into law by the new Governor.

5 State Oversight of Budgets of Regional Sewerage Authorities

As one of his last acts as Governor, Governor Christie signed into law as P.L.2017, c.290 a Bill, S-848 (Stack/Oroho), providing for State oversight of the annual budgets of regional sewerage authorities created under the Sewerage Authorities Law, N.J.S.A. 40:14A-1 et. seq.

The new law imposes limits upon the growth of fee-funded appropriations in the annual budgets of those authorities and on increases in the amounts permitted to be billed to customers, and requires the approval of the annual budgets of the authorities by the Director of the Division of Local Government Services.

It also limits the percentage of growth of fee-funded appropriations in a regional sewerage authority's annual budget to not more than 2% per year and requires that the amount billed to customers of the authority or the amount billed to a local unit for its proportional share of the authority's expenses cannot exceed



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the amount billed in the authority's previous budget year to each customer or local unit by more than 2% for comparable usage of the sewerage system. This provides a control on sewerage authority charges. The sewerage authorities had previously operated on a quasi-independent basis without State oversight.

6 Recycled Asphalt Pavement Legislation

Also among the last acts of Governor Christie was his signing into law a bill which allowed for the expanded use of recycled asphalt pavement millings, P.L. 2017, c.325. The Bill, S-3521 (Gordon/Oroho), permits the expanded use of asphalt millings to be used:

(i) Unbound as a surface material for parking lots, farm roads, pathways, for quarry reclamation, or underneath guardrails; or,

(ii) Mixed with other materials as a base or sub-base material. The user must demonstrate to NJDEP that the environment in which the material is used has a PH level greater than 4 or a PH level less than or equal to 4 if the user demonstrates that releasable levels of polycyclic aromatic hydrocarbons (PAHs) and metals are at or below NJDEP and U.S. EPA drinking water quality standards. Many municipalities use asphalt millings and the new law permits them to expand that use.

7 New Jersey Participation in Regional Greenhouse Gas Initiative (RGGI)

In the 2017 Legislative session, the Legislature passed A-4701 (Eustace/Zwicker), which called for New Jersey's full participation in the Regional Greenhouse Gas Initiative (RGGI) related to global warming. Governor Christie vetoed that Bill on July 13, 2017. The Bill has been reintroduced as A-1813 in the 2018 Legislative session and will likely be signed into law by the new Governor.

8 New Jersey Sets Maximum Contaminant Levels (MCLs) Requiring Statewide Testing of Drinking Water for PFOA and PFNA Chemicals

Evidencing the increasing state concern over drinking water quality and supply,

NJDEP in 2017 proposed amendments to the Safe Drinking Water Act and Private Well Testing Act Rules to set maximum contaminant levels (MCLs) for perfluorooctanoic acid (PFOA) and perfluorononanoic acid (PFNA) in drinking water. NJDEP would use the New Jersey Drinking Water Quality Institute's recommended drinking water standard of 14 parts per trillion (ppt) for PFOA and proposed standard of 13 ppt for PFNA.

These PFOA and PFNA compounds are used in many consumer products and industrial applications, including non-stick cookware, food packaging, and stain retardants in mattresses and clothes. The compounds are also used in firefighting foams used by many municipalities. Municipalities should take steps to eliminate their use of firefighting foams which contain these PFOA and PFNA compounds.

9 Legislative Changes to Funding Provisions Under the Hazardous Discharge Site Remediation Fund

Among the bills signed during the last days of the Christie Administration was a Bill, A-1954 (Coughlin/Benson), which makes significant changes to the funding of financial assistance and grants from the Hazardous Discharge and Site Remediation Fund, a fund relied upon by many municipalities for remediation funding for brownfields and redevelopment projects. A-1954 was signed into law as P.L. 2017 c.353. While the changes are somewhat complex and beyond the scope of this article, a brief overview of them is as follows.

The new law contains limits on grants to municipalities, counties, and redevelopment entities for brownfields redevelopment projects; reduces the cumulative total amount of matching grants which can be awarded to municipalities, counties, and redevelopment entities for recreation and conservation projects; and removes language in current law which allows grants to municipalities, counties, and redevelopment entities for recreation and conservation projects, or for affordable housing, even if the public entity does not own the property. The new changes deserve careful study.

10 The Murphy Administration Environment and Energy Transition Committee Report

On January 1, Governor Murphy's Environment and Energy Transition Advisory Committee released its Report which provides an overview of the Governor's environmental priorities for his Administration. The report deserves careful review. Among other things, the Committee recommended that New Jersey rejoin the Regional Greenhouse Gas Initiative (RGGI) and commit to the goal of reducing greenhouse gas emissions consistent with the goals of the Paris Climate Agreement and become the 16th state to join the U.S. Climate Alliance.

The Committee recommended that the new Administration launch a Coastal Resiliency Initiative identifying best practices and updating key environmental laws, such as CAFRA, to address threats posted by climate change.

The Committee recommended that the State address the disproportionate impacts of pollution and contamination from an environmental justice perspective and set up an Interagency Environmental Justice Task Force.

The Committee recommended that the Governor launch a comprehensive initiative to upgrade the State's aging water infrastructure, including drinking, wastewater, and stormwater.

Finally, the Committee recommended that the Governor reverse environmental rollbacks in NJDEP rules, remediate toxic waste sites, and renew the State's commitment to open space, fish and wildlife protection, and parks and aggressively pursue natural resource damages cases and insure that settlement funds remediate local impacts.

As seen from the above, 2017 was a year of accelerating momentum on the environmental front and we can anticipate that this momentum will continue in the coming year. Clearly, renewed attention will be paid to environmental issues by the Murphy Administration and the State Legislature. ♣