

## Can DEP Be Transformed?

Paul Schneider

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In the years since its inception in 1970, the Department of Environmental Protection (“DEP”) has developed a reputation as an inflexible, delay-ridden bureaucracy, with a culture hostile to business and a staff that seemed trained to find reasons to say “no” to development proposals. All that will soon be history according to an ambitious “DEP Transformation Plan” released by Commissioner Robert Martin in October 2010. Declaring that environmental protection and economic growth are not mutually exclusive goals, the Transformation Plan is a self-styled “quick and bold roadmap” in which DEP promises “fundamental changes in how we function and in how we think about what we do daily.”

Reflecting Commissioner Martin’s long career as a business and technology consultant, the Plan promises to replace DEP’s “antiquated business practices”, with re-engineered management techniques that maximize information technology and eliminate unnecessary and duplicative functions that are not “mission critical.” In order to assure “responsive customer service,” all DEP managers and staff are undergoing customer service training.

Of particular interest to the business community, the Transformation Plan requires that DEP “consider the costs and benefits associated with our regulatory actions,” and promises “expeditious” and “predictable” permit decisions, based on a flexible interpretation of regulations by a staff newly empowered to exercise best professional judgment. The Plan also promises science-based decisions based on input from a science advisory board and the State’s colleges and universities.

The Transformation Plan recognizes that the problems of the past lie not with the DEP’s many highly skilled professionals, but with a management and culture that have long encouraged a narrow and inflexible interpretation of rules, without a focus on the environmental benefits those rules are intended to achieve. The Plan makes clear that top level DEP leadership and mid-level managers will be held accountable for the needed changes in culture and business practices.

To be sure, the Transformation Plan makes clear that there will be no compromise when it comes to protecting the public health and environment. The goal is a “net environmental benefit.” But for those long accustomed to being told “that’s the way we’ve always done it,” the Transformation Plan promises a fresh look at past environmental policies and business decisions to determine whether they are truly beneficial from today’s environmental, economic and social perspectives. Recognizing that DEP has all too often “tied its own hands” with regulations that adopt a “one-size-fits-all approach,” the Plan promises to review and rewrite rules to make them simple, straightforward and flexible.

Many provisions of the Plan are already being implemented. For example, DEP has been holding a variety of work group meetings to which various stakeholder constituencies are invited: representatives of the business, planning, government and environmental communities. DEP uses this process to seek input prior to developing rule proposals, as well as to vet rules prior to formal proposal. For example, DEP has held a series of work group meetings on a so-called “waiver” rule. This rule, if proposed and adopted, would be broadly applicable across all DEP programs. The rule would expressly authorize DEP to waive strict compliance with regulatory requirements in appropriate situations based on hardship, conflicting regulatory requirements, or where a waiver would result in a net environmental benefit.

While the current plan to remake DEP may be the most ambitious in its history, it is certainly not the first. Prior plans have met with partial success at best. History has repeatedly shown that it is difficult for any one commissioner, no matter how determined and how strong his management team, to change the culture of a 40 year old bureaucracy. As we all know, commissioners come and go in at most a few years, while many career DEP professionals have been on the job for decades. Only time will tell whether this latest plan will deliver the fundamental transformation it promises.

*Paul H. Schneider is an Officer and Shareholder at **Giordano, Halleran & Ciesla, P.C.**, where he focuses on environmental, land use real estate and regulatory litigation. Visit Giordano, Halleran & Ciesla, P.C. on the web at [www.ghclaw.com](http://www.ghclaw.com).*