



LEGAL Q&A

Q Do parties responsible for environmental cleanups in New Jersey have a method to seek a “variance” or “exception” from strict application of a regulation?

A Yes. Under new rules proposed by NJDEP, parties responsible for cleanups in New Jersey may avail themselves of the so-called “Waiver Rule.” This is the State’s intention to provide for a relaxation of standards when “strict compliance with a regulatory provision can, in limited circumstances, lead to unreasonable, unfair and unintended results, which can adversely affect prospective applicants, the public and the environment”. The spirit of the rule would provide relief to applicants demonstrating unique conditions, or a hardship, especially where application of the rule would prevent the “desired environmental benefit”. In considering the merits of a waiver application, NJDEP will assess (i) whether there is a conflict in applicable or competing regulations (ii) the particular hardship involved (iii) the “net environmental benefit” achieved through use of the waiver and (iv) whether a public emergency exists. Implementation of waiver provisions have been a long time coming and will facilitate appropriate amendment of existing regulations which, in turn, will obviate the need for waivers in many instances.



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