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NJ Highlands Coalition Reacts to DEP Reversal of Christie Era Weakening of Highlands Development Standards

The Department of Environmental Protection announced today that it has reversed the Highlands Septic Density Provisions of its Highlands Rules that the Department adopted under the Christie Administration, and that the New Jersey Legislature invalidated last January, by using a rarely employed provision of the NJ Constitution whereby after passing concurrent resolutions finding a state agency violated legislative intent, the Legislature, by a second concurrent resolution, can invalidate a rule or rule provision, without being subject to a Governor's veto.

Before leaving office in January, DEP Commissioner Bob Martin responded that the action of the Legislature was unconstitutional, essentially ignoring the Legislature. The provisions that his DEP had adopted in June, 2017, which increased the amount of new septic systems allowed in the environmentally sensitive Highlands Preservation Area, remained on the "books" when Catherine McCabe succeeded Bob Martin as DEP Commissioner under the new Governor, Phil Murphy. McCabe wanted to review the data that her predecessor had used to justify the loosening of the provision.

"We applaud Commissioner McCabe for today's announcement. Fortunately, the return to the stronger septic density provisions in the Highlands Preservation Area has occurred before any permits were issued under the weaker standards", said Elliott Ruga, Policy & Communications Director for the New Jersey Highlands Coalition, an organization that had strongly opposed the weakened provisions when they were first proposed 2015, leading an opposition that generated thousands of written comments to DEP and engaged the northern NJ cities that heavily rely on the Highlands for its water supply, including Bayonne, Jersey City and Newark.

Commissioner Martin had reduced the minimum lot sizes required to construct a residential unit that depended on a septic system to process wastewater, going from 88 acres to 23 acres. The Highlands Act mandated that DEP come up with a septic density standard so that there would be enough land for septic effluent to be adequately diluted by precipitation, so that zero degradation of groundwater would result. Using the standard model for determining "nitrate dilution", the 88 acres was scientifically derived. Subsequently the New Jersey Farm Bureau sued the Department, claiming the data used to arrive at the 88 acres was inadequate. The Court remanded the challenge back to DEP, to revisit the data, but without demanding any changes in the provision. Bob Martin significantly increased the data points, but the Coalition argued, and subsequently, the Legislature, that the data was highly flawed, by including samples from non-forested areas and developed parts of the Highlands, using data supplied by unverifiable sources, and using samples taken after the date of the Highlands Act, which could have included elevated levels of pollutants, and therefore not indicative of groundwater quality the Highlands Act intended to protect.

“In the announcement today, Commissioner McCabe indicated that the Department would further evaluate the data and possibly reconsider the most appropriate septic density standard for the Highlands,” said Ruga. “We welcome any reconsideration of the data, if it is well guided by the legislative intent of the Highlands Act and relies on appropriate and verifiable data sources, because we are confident the conclusions will be the same, if not more restrictive, as embodied in the original rule.”

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