

FISCAL YEAR 2009 BUDGET STATEMENT

OF

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DEPARTMENT OF ENVIRONMENTAL PROTECTION**

BEFORE THE

ASSEMBLY BUDGET COMMITTEE

APRIL 17, 2008

Good Afternoon, Mr. Chairman and members of the committee. I want to thank you for the opportunity to come before you today to discuss Governor Corzine's proposed Fiscal Year 2009 budget for the Department of Environmental Protection.

The FY 2009 budget marks a turning point to help reset state finances and bring true balance to the budget without raising taxes and resorting to short-term fixes. The public's message has been crystal clear: Cut government spending and cut spending on government. The budget put forward by Governor Corzine for the DEP keeps this overall message in mind while at the same time ensures that we continue to perform the core functions necessary to meet our mission.

The State budget proposed by the Governor includes \$2.7 billion in reductions to bring overall spending more than \$500 million below the current year. For the DEP, the Fiscal Year 2009 funding level has been set at \$421.0 million, or \$59.5 million less than the adjusted Fiscal Year 2008 funding. Our operating budget of \$230.0 million (including \$2.7 million for the Palisades Park Commission) reflects an overall decrease of \$19.6 million from Fiscal Year 2008.

The DEP's Grants in Aid budget of \$19.5 million reflects a \$16.5 million drop from adjusted Fiscal Year 2008 levels. Similarly, our State Aid funding of \$19.2 million is \$2.0 million less than the 2008 level, reflecting the budget reductions to the County Environmental Health Act, the Pinelands Commission, and the Highlands Council.

The reductions to our Capital budget reflects the fact that capital improvements in our parks, forests and wildlife management areas and site remediation are dependent on the year to year funding levels of dedicated CBT resources. For Fiscal Year 2009 these levels are projected to be less than the adjusted Fiscal Year 2008 amounts.

While the task is unpleasant, the cuts in this budget are what the times demand. The Governor has made his priorities clear: education, public safety and protecting the most vulnerable. Preserving resources for these priorities means that reductions must be found everywhere else. Each department, including the Department of Environmental Protection, has been cut and hundreds of programs have been eliminated or trimmed. As we evaluate each proposed reduction and how much we would like to be able to restore it, we must confront the stark reality that any restoration of funding requires a commensurate reduction in spending in another area.

With these efforts, the FY 2009 budget helps to reverse the effects of past decisions that have made present-day budgeting so painful, and move New Jersey closer to eliminating its chronic structural imbalance.

Last year at this time, I reported to you that the DEP could meet the challenges put forward by Governor Corzine without any diminution of the services we offer to our various constituencies. I wish I were coming before you today with the same message. I wish I were able to solely concentrate on how the Department will be accomplishing its mission – protecting human health, protecting natural environment, protecting and conserving resources – in the upcoming year within the constraints of the proposed budget. While I believe we can perform the functions necessary to protect the environment and public health, I cannot make the same claim this year. After years of adhering to the mantra that we “do more with less”, the current budgetary situation combined with decades of statutory mandates – many funded, but many not – is forcing us into a “do less with less” approach.

As of January 2008, the DEP filled position complement was 3,220. During the past 27 months, we lost 404 employees to separation, attrition or retirement. Against this loss we backfilled 77 positions. We converted 16 hourly employees to full time and we had 99 new hires, thus offsetting 192 positions in the gross count of position changes. The new hires were authorized staffing increases to meet legislative mandates in child care facility inspections, diesel emission reductions, administration of the underground storage tank (UST) grant program, the Highlands Act permitting staff, Land Use permitting staff and expansion of the UST inspection and enforcement program.

Still, while the above scenario represents a “doom and gloom” picture, the DEP is implementing whatever measures it can to ensure that our programs are operated as efficiently and effectively as possible to serve the people of this State. Let me focus on a few of the major priorities the Governor and I have set for the Department, discussing both the impacts that the proposed budget will have on furthering that priority and the measures we are taking to advance our goals.

General Fund Support of DEP Programs

Over the past decade and a half, the DEP has, with the Legislature’s approval, steadily weaned much of our operations away from General Fund support by systematically increasing the reliance on fees and user charges. This reliance shifts the burden to those specific parties that either are responsible for the problems we are working to correct or benefit from the services we provide. As a result, the percentage of the DEP’s Fiscal Year 2009 operating budget covered by the taxpayers will be only 24.7 percent, significantly down from 41.3 percent in Fiscal Year 2002.

However, there are areas in the budget that receive substantial support from the General Fund in the Fiscal Year 2009 budget. They include: parks operations, forestry management, dam safety, shellfish regulation, and our science and research efforts. These are all broad-based, public functions for which it only makes sense for the State to support. Also, there is not a base on which fees for services can reasonably be applied. Furthermore, some of the funds we receive in these programs are used to leverage and match federal funds.

Therefore, those DEP programs not fully supported by fees will most likely be impacted by the reduction in state funding as part of the Fiscal Year 2009 budget. This has forced us to evaluate the resources that are necessary to operate our State Park Service. We are also looking closely at other areas elsewhere in DEP that are paid for by the General Fund. Other programs that will be impacted include DEP’s Management and Administration, my Office of Communications, and the Divisions of Science & Research and Fish & Wildlife.

The Parks capital budget is funded out of the constitutional dedication of the Corporate Business Tax (CBT). This money is dedicated for buildings, trails and capital funding. We anticipate continuing our efforts to improve the infrastructure at many of our parks, wildlife management areas and historic sites. However, we cannot offer the exact same services when it comes to the operations of our parks. The services that cost the most in the parks system are the ones that require the most intense staffing: swimming and camping areas. Although they bring in revenue, they do not bring anywhere near in what they cost us in staffing.

As I'm sure you have read, I recently announced that we had developed a plan that would include closing a number of parks and drastically reduce services at some others. The Parks budget for Fiscal Year 2008 was \$34.5 million. However, the fees we collect only amount to around \$5.1 million. The rest of the money must come from the General Fund. Therefore, the plan we put together called for a 25% reduction, representing \$8.8 million, in state funding for the State Park Service General Fund appropriation. Since approximately 80% of the State Park Service budget supports its staffing complement versus operating needs, we unfortunately had to consider staffing reductions to achieve the targeted cuts.

Two weeks ago, I met with the staff that run our State Park System to advise them that we may be forced to take this action. Last week, we submitted our Reduction in Force (RIF) plans to the Department of Personnel.

Today, due to the hard work of Governor Corzine and the Legislature in evaluating alternative scenarios, I am pleased to report that we may not have to take the drastic actions of closing our parks. I thank you for working closely with us on this important issue. I shall keep the committee advised of the progress we make over the upcoming weeks.

Right growth in the right places

The DEP is fully aware that, for the State to be strong and vital, we need to promote smart economic growth and development. We also need to ensure that this growth is done responsibly, for example, by doing such things as incorporating renewable energy at the planning and design stages of projects. We also need to be cognizant of other societal goals. For example, how do we take the Governor's goal and the constitutional requirement for affordable housing and make sure that it is affordable, safe and sustainable and decent and sanitary. Nor should it be located in environmental sensitive areas, in flood planes, etc.

We are also fully aware that, as a regulatory agency, our permitting and planning processes can play a key role in determining where and how that growth and development can proceed. While we work hard with many of our public and private partners to advance environmentally-responsible development, at times I must admit that the DEP, with its complex array of regulatory requirements and a stretched-thin workforce, can be a hindrance rather than a help in this regard. For this reason, I recently signed Administrative Order 2008-06, which creates the DEP Permit Efficiency Review Task Force.

The deliberations of this Task Force will be an important element of our efforts to achieve many of the Department's goals dealing with smart growth and sustainable development. This Task Force, which is headed by former DEP Commissioner Christopher Daggett, is conducting a comprehensive analysis of DEP permitting programs. It will develop recommendations for restructuring and re-engineering that will result in enhancing timely and efficient service and enhancing this Department's ability to advance sustainable development projects. The Task Force will develop its important recommendations over the next 120 days.

I am personally excited about establishment of this Task Force. I am extremely pleased with the caliber of the individuals who have agreed to participate in the Task Force as well as their

commitment to this Department and its mission. I am eager to work with these talented individuals over the course of the next several months.

At the end of 120 days, I am confident their evaluation will result in sound recommendations to strengthen this Department and its efforts to protect public health, the environment and New Jersey's precious natural resources. While I anticipate that many of the recommendations will involve administrative or regulatory changes that the DEP can implement under current authority, we may have to come to the Legislature for statutory changes. I will keep you advised as this effort proceeds.

Site Remediation Program Reform

Another DEP program that strongly influences where, when and how development can proceed is in relation to the cleanup of contaminated sites. New Jersey has always been a leader in the field of site remediation. We regulate more categories of cases than any other state and lead the way in utilization of innovative remedial technologies for remedial investigations and environmental cleanups.

New Jersey is now home to over 20,000 known contaminated sites. These range from underground storage tanks (UST) in backyards all the way up to complex Superfund sites. Unfortunately, due to a very prescriptive review process, extremely large case loads, new regulatory issues (vapor intrusion, day care regulations and pesticides in school yards) and pressures associated with economic redevelopment, stakeholders have conclusively agreed that we cannot meet the expectations of the regulated community and general public. Many cases linger in the system for years as case managers struggle with competing priorities. Cases remain unassigned as resources dwindle. Recalcitrant responsible parties, aware of our resource issues, take advantage of the system knowing we do not have the resources to devote to enforcement. As a result, contaminated sites remain unremediated. Some developers proceed without SRP oversight, resulting in residential developments on unremediated sites. Other developers forfeit redevelopment opportunities due to the liability associated with offsite contamination.

In October 2006, I testified before the Senate Environment Committee to describe the program's shortcomings. Since then, the DEP has hosted a series of stakeholder meetings and developed a series of white papers detailing the major issues that required evaluation and reform. In many cases, legislative reform will be required. On April 15, we appeared before a joint hearing of the Senate Environment Committee and the Assembly Environment and Solid Waste Committee to describe a series of legislative proposals we feel necessary to improve the effectiveness of the site remediation program.

A key legislative measure that we support would be to authorize the adoption of a licensed site professional (LSP) program, similar to that enacted in Massachusetts, but modified for the needs of New Jersey. This would be a cornerstone of true SRP reform. Such a program would, for the first time in New Jersey's history, hold environmental consultants accountable for their work, similar to that of a Professional Engineer. An LSP will be required to adhere to a strict code of ethics with provisions for license revocation, suspension and penalties. SRP case oversight would still be provided, but to a lesser degree for most cases, and would be based on the complexity/sensitivity of the case. For high priority cases, SRP would actually expand its

oversight and take more control over the license site professional, the remedial process and remedy selection.

The above-mentioned changes coupled with strengthened enforcement authority, a greater say in remedy selection and tighter controls on financial assurances will result in a more protective program as well as one that promotes economic redevelopment. It would allow the DEP to adequately address more cases and move cases more expeditiously through the system while still adhering to strict clean up standards.

The legislative reform package we have compiled addresses many of the issues raised by all stakeholders. However, we acknowledge it does not go far enough for many. It is comprehensive and touches on all the issues raised in the stakeholder sessions except for cumulative risk, ecologically based standards and acute standards. The decision to not focus on these limited issues at this time is based on the fact that the science required to address these issues does not currently exist.

I look forward to working on this important package with the Legislature over the upcoming months.

Climate change

Another priority for Governor Corzine and the DEP is for New Jersey to significantly reduce its greenhouse gas emissions to meet the goals laid out in the "Global Warming Response Act." This summer, the Department will be providing the Legislature, pursuant to the Global Warming Response Act, our recommended suite of measures to reduce green house gas emissions in our state by 20% from 1990 levels by 2020, along with an eye towards 80% reductions by 2050. This will begin dialogue about the suite of measures – legislative, voluntary, incentives, regulatory – we will need to pursue to achieve measurable, meaningful real reductions in green house gas emissions.

The Regional Greenhouse Gas Initiative, or RGGI, which was also passed by the Legislature last session, is one part of this effort. I serve as vice chair of RGGI, Inc. So, the desire of the Legislature to have New Jersey in the forefront of implementing a cap and trade program is paying off. RGGI anticipates holding its first auction sometime this year. Predictions are that this will generate approximately \$50 million that will come back to the state to fund energy conservation and efficiency projects.

We are confident that we will be able to pursue this priority using existing resources.

Recycling Enhancement

At the end of the last session, the Legislature passed the "Recycling Enhancement Act", from which the Department anticipates distributing over \$16 million in grants to municipalities and counties this calendar year. This compares to less than \$10 million in recycling grants made in recent years to these same entities. And we fully expect to distribute even more recycling grants in 2009 and beyond.

As detailed in the Statewide Solid Waste Management Plan, current recycling efforts in the state conserve considerable available landfill assets. Nearly 18 million cubic yards of landfill space were saved in 2005 alone from the recycling that occurred in the state. Additionally, in terms of natural resource conservation, in 2005 our citizens saved nearly 3 million tons of iron ore, coal, limestone, sand, soda ash and feldspar by recycling scrap metal and glass. The recycling of over 1.3 million tons of paper is equivalent to the forest carbon sequestration benefits of over 94 million tree seedlings grown for 10 years, and “delayed” the harvesting of some 19 million mature trees to make new paper.

Recycling saves energy in the production process when recycled feedstock replaces virgin raw materials. The 11 million tons of various materials recycling in 2005 by New Jersey residents saved over 113 million MBTU’s of energy, or approximately 24% of all energy used by industry in the state. It represents the amount of energy that would be required to power over 1 million homes for one year.

Also, these energy savings equate to greenhouse gas emissions savings. Nearly 3 million metric tons of carbon equivalents (MTCE) were avoided by utilizing the materials separated for recycling in New Jersey during 2005, compared to what would have been produced if these materials were not available in the production of new goods worldwide. By achieving our goal of reducing the municipal solid waste stream by at least 50% through recycling, from the current 33%, we will realize an additional reduction of 1.4 million MTCE. Pursuing an aggressive recycling goal is appropriate for many environmental reasons.

Finally, recycling is good for the economy. Nearly 3 times as many jobs are produced by recycling waste than by disposing of it. We estimate nearly 27,000 jobs exist in New Jersey right now because of our recycling efforts, and we anticipate another 7,000 jobs will be created as we achieve our statutory goals.

Using Data For Better Decision Making and Providing Transparency

The key to managing and advancing our efforts in any of the priority areas I have outlined above or in any of the DEP’s endeavors require that we properly and efficiently manage, use and share our data. This not only makes good sense for the DEP but is essential for the regulated community and the general public to meaningfully interact with the department.

During the past year, DEP enhanced its electronic submittal capabilities by retooling its ePermitting system to reduce DEP’s dependence on contractor support and provide new electronic permits online for regulatees, faster. This service allows an applicant to submit application and payment electronically, provides automated completeness checks, and processes the application. In some cases like Air Pollution Control General Permits, the application is processed entirely online, generating an approved permit on the spot. In other cases, it completes the application in the department’s enterprise data system, New Jersey Environmental Management System (NJEMS), and assigns it to a permit reviewer for immediate tracking. In all cases, the applicant receives emails notifying them of receipt, application completeness and processing status. Diesel Retrofit, one of our first Green House Gas initiatives is now online, Land Use Permits will go online soon for the first time ever.

This system is being linked to the DEP's iMap tool allowing the applicant to evaluate the proposed project with over 60 GIS data layers before they submit. This will provide the applicant with a way to easily determine if environmentally sensitive areas would be impacted. For example, it will notify the submitter when a proposed well is located within an area of ground water contamination immediately, so a new location can be proposed.

Focusing on providing more public information and transparency, DEP released several new and updated web sites. Our website, DEP Data Miner, provides 24/7 public access to up to the minute information from DEP production enterprise data systems and now generates between 5,000 and 8,000 reports/day. This year we completed all Permitting Dashboards which tracks permits from application receipt to final decision, monitors permit workload and backlogs, and provides transparency for the public and increased accountability of the DEP. We also released the Enforcement Blotter and several reports tracking Site Remediation activities.

In response to DEP constituency requests, we developed the Pending Permit Status Report, showing up to the minute status on permit applications in process, the name of the staff whose desk it's on, and "permit review clock" information. The "clock" shows the number of days passed under DEP's review, review status, and whether the application is on time or backlogged. Based on standardized tasks for all DEP permit applications, it provides a consistent process regardless of program or type of application and was well received by developers, builders and business and industry constituents.

Continuing to develop new data, we completed and released the 2002 Land Use Land Cover. This GIS data is essential to DEP, DCA, DOT and DOA land use planning and permitting as well as regulatees, counties and municipalities, and the public.

Due to organizational and automation improvements, we have greatly improved our review process without sacrificing our high level of environmental review. It is now possible for DEP managers to conveniently access information on their computers from all over the DEP regarding a particular site. There is much more cross-program integration and communication than ever before. As a result, better-informed and quicker decisions are being made.

DEP Responses to State Auditor Findings

The Legislature has expressed interest in investigations conducted by the State Auditor on various DEP programs and funds and how the DEP is addressing the Auditor's findings. I would like to take this opportunity to advise you on the DEP-related reports that have been filed by the State Auditor over the past three years.

Water Funds – In 2005 the State Auditor found that the DEP had not requested approval from the U.S. Army Corps of Engineers to release funds from eight escrow accounts for construction projects that had been completed. They recommended that these accounts be closed and the balances of \$3.5 million returned to bond or general fund accounts from which they originated. The DEP should request release of escrow funds and make the balances available for use in other projects.

In response, the DEP initiated requests for the Army Corps to release the escrow. The Army Corps subsequently approved the release of escrow balances for five of the eight accounts. In 2006, a total of \$2 million was returned to accounts in the state bond fund or general fund. The Army Corps did not approve release from the other three accounts citing contingencies.

Site Remediation and Waste Management Funds – In 2006, the Auditor found that since 1998 approximately \$10 million in oversight costs have not been billed to responsible parties due to the failure to assign project cost codes in the billing system. They recommended that the DEP continue to work to improve the billing system and should attempt to collect the \$10 million not previously billed.

In response, the DEP has developed a new billing system to remedy the deficiencies of the former system. The first bills under the new system were issued late in 2007. All unbilled amounts should be billed by end of May. Due to data problems, staff is handling a large volume of inquiries. The State Auditor followed up this finding and performed limited verification on the new system in January 2008.

Selected Special Revenue Funds – The State Auditor reviewed the database tracking the annual reports required by the Community Right to Know Act. They discovered that significant numbers of reports had apparently not been filed. As of February 2007, the following reports were outstanding:

Calendar Year 2004 - 5,720 out of 25,859 - (22%)

Calendar Year 2005 - 4,461 out of 15,121 - (30%)

The Auditor recommended that the DEP impose fines for late or inaccurate filings. The potential outstanding amount to be assessed would be \$10 million.

The DEP had projected that by the end of calendar year 2007 a notice of violation would be sent to any company that had not filed its 2006 report. The primary strategies we would use to achieve this are through a change in the regulations and through improved internal processing of reports. However, due to problems with the database system, we have been hindered in taking the corrective action as planned. We are unable to use the system to produce reports that give accurate statistics for the rate of compliance for filings due in calendar year 2006. Also, we have no reports to update the compliance rates for calendar years 2004 and 2005 which were cited in the audit. DEP Management continues its policy of granting a thirty-day grace period when issuing a notice of violation. As of the end of February collections of penalties for fiscal year 2008 were about \$37,000.00.

Again, I thank you for the opportunity to appear before you today. I am available to answer any questions you may have.