



COMMERCIAL REAL ESTATE  
DEVELOPMENT ASSOCIATION

NEW JERSEY CHAPTER

## ***News Release***

### **NJDEP Officials, Industry Experts Discuss Evolving Rules Complicating Redevelopment, Remediation**

#### ***NAIOP NJ Program Examines Impact of Regulatory Changes, Legislative Initiatives on CRE Development***

**EDISON, N.J., July 26, 2022** – Rapidly changing regulatory standards and legislative initiatives have a tremendous impact on how the commercial real estate industry approaches development in the Garden State. [NAIOP New Jersey](#) recently invited officials from the New Jersey Department of Environmental Protection (DEP) and experts in the public and private sectors to explore some of the most critical pending changes and provide insight into what companies must do to be compliant. Priority issues included the A-901 licensing program, emergency flood hazard and stormwater (NJPACT) rules, environmental justice rules and emerging water contaminants (PFAS).

A highly-respected industry resource, NAIOP NJ advocates on behalf of the CRE sector for effective legislation and advancing responsible, sustainable development. “We collaborate with members of the Administration, Legislature, other business groups and labor leaders to identify and overcome obstacles and to ensure that policy decisions are made to support sound and sustainable growth,” said CEO Michael McGuinness. “Programs like this are essential for keeping our members informed about rules and regulations that directly impact their day-to-day businesses.”

Topping the list of the commercial real estate development association’s legislative priorities is a third-party construction inspection extension bill that was conditionally vetoed by Governor Murphy last year. According to NAIOP NJ Public Affairs Consultant Anthony Pizzutillo, “We are working closely with stakeholders and the governor’s office on crafting a piece of legislation that I think is going to be better with regards to its clarity in providing the kinds of options for a developer in pursuing inspections as well as streamlining and expediting the inspection process.”

The following are key takeaways from the program’s four panel discussions.

#### **“Dirty Dirt Law”: Registration Responsibilities for Soil and Fill Recycling Services**

In 2020, the state’s A-901 solid waste licensing law was expanded to impose licensing and background check requirements on businesses that provide soil and fill recycling services. The “Dirty Dirt Law” required any such business to register with the DEP by mid-April of 2022 and apply for an A-901 license, which must be approved in order for the company to continue to operate.

“As a result of confusion within the regulated community regarding the Act’s applicability in specific circumstances, we delayed some of the application deadlines,” said Janine MacGregor, DEP’s director, Division of Sustainable Waste Management. “Companies must register by July 14 and apply for an A-901 license no later than one month after rules are promulgated.” Businesses that can prove they exclusively handle non-contaminated material must register but do not have to apply for a license.

#### Pending Rules for Flood Hazard Areas and Stormwater Management

Vincent Mazzei, DEP’s assistant commissioner for Watershed and Land Management, addressed the aim of New Jersey’s PACT (Protecting Against Climate Threats) emergency rulemaking to protect against future climate-related flooding – as well as its potential impact on commercial real estate development.

Noting the agency’s goal of developing regulatory standards that strike a balance between facilitating resilient development and protecting the public, Mazzei said, “We are raising the flood elevation by two feet and ensuring there is a connection between the national flood insurance program and our program so there’s no gap in federal funding. In addition, all stormwater BMPs (Best Management Practices) must be designed for future storms as well as today’s storms.”

Mazzei anticipates filing the proposal for the emergency rulemaking within the next month or so after concluding a series of target presentations to stakeholders to solicit feedback. “We understand this expands jurisdiction and we want to get this right. The plan is to apply the new standards in a gracious manner. We recognize that the standard we are shooting for may have changed but you may not be able to meet all of the requirements. It’s not black and white – we will work with you.”

#### Implementing the NJ Environmental Justice Law

Described as “groundbreaking” by discussion leader Emily Lamond of Cole Schotz P.C., the NJ Environmental Justice Law requires that the DEP evaluate the environmental and public health impacts of certain facilities on overburdened communities when reviewing permit applications.

“In the implementation of this law and the development of regulations, the department is seeking to correct a legacy of inequitable siting of pollution-generating facilities in low income and communities of color,” said Sean Moriarty, DEP’s deputy commissioner for Legal, Regulatory and Legislative Affairs. “We are looking at the stressor levels in particular and comparing them to communities that are not otherwise similarly situated.”

In terms of applicability, Moriarty emphasized that the agency has established specific criteria and a suite of tools to help developers identify communities of concern and the types of facilities subject to the regulations. “The idea that this rule will prevent all development in overburdened communities is absolutely and completely false. It opens up opportunity for new development and new facilities that are not pollution-generating.”

#### PFAS and Emerging Water Contaminants

Hundreds of everyday products are made with highly toxic fluorinated chemicals called PFAS that never break down in the environment and travel easily via air, groundwater

and surface water. According to Cole Schotz's Lamond, "As of today, there is no enforceable drinking water standard and there is no enforceable remediation standard for any of the PFAS chemicals on the federal level. The EPA is working very hard to change that."

The risks of exposure to PFAS have been making headlines, and even very small doses have been linked to cancer and other diseases. "We are dealing with extremely low concentrations when we talk about these compounds – a couple of drops in an Olympic-size swimming pool," said Donald Richardson, president of EWMA. "Another challenge is, with the possibility that three or four thousand different chemicals have been released into the environment, where does it end? We are currently regulating three out of those in this state."

Richardson cautioned developers doing due diligence "to be on guard in regards to the definitions. Because federally these are not banned as hazardous substances, it is considered a non-scope issue when you're doing a Phase I for the newest standard that's out there. However, if you are in a state jurisdiction it could be regulated as a hazardous substance. Be mindful about addressing PFAS and work closely with your consultants when writing the reports."

Lamond added, "Our advice to clients is you need to be thinking about PFAS at every phase of the deal process."

###

[About NAIOP New Jersey](#)

317 George Street, #220, New Brunswick, NJ 08901

Follow NAIOP New Jersey on [Twitter](#), [Facebook](#), [LinkedIn](#) and [Instagram](#)

**Media Contacts:**

Emma Ackel / Maxine Aviles

Caryl Communications

Phone: 201-796-7788

Email: [emma@caryl.com](mailto:emma@caryl.com) / [maxine@caryl.com](mailto:maxine@caryl.com)