

**New Jersey Department of Environmental Protection
Flood Hazard Area Control Act Rules (Stream Encroachment)
N.J.A.C. 7:13**

**Proposal Launch Memorandum
Revised March 11, 2003**

Type of Rule Action:

Proposed repeal and repromulgation

Statutory Authority:

N.J.S.A. 58:16A-50 et seq., 58:10A-1 et seq., 13:1D-1 et seq. and 13:1D-29 et seq.

Chapter/Subchapter Description:

These rules govern construction activities within flood hazard areas and adjacent to stream corridors in order to protect the public from the hazards and damages of flooding and to preserve the quality of surface waters.

Description of Rule Action:

The current rules will be repealed and completely rewritten. Changes include clarifying and reorganizing the rules, incorporating new construction standards in flood hazard areas, increasing protection of stream corridors, introducing means for verifying and approximating flood hazard areas where no State flood mapping is available, restructuring the fee schedule, and improving coordination with the freshwater wetlands and coastal permit programs.

Proposed initiatives related to Big Map include:

1. Expanding near-stream buffer/riparian zone (currently 25 ft or 50 ft) to:
 - 300 ft along all Category 1 waters
 - 150 ft along all other streams in Red Light Area
 - 100 ft along all other streams in Yellow Light Area
 - 75 ft along all other streams in Green Light Area
2. Prohibiting construction within 25 ft of streams in Red and Yellow Light Areas.
3. Allowing only low intensity/park-like development within 25 ft of streams in Green Light Area.
4. Reducing net-fill allowance (currently 20%) to 0% in Red Light Area and 10% in Yellow Light Area.
5. Prohibiting creation of new fill-credits and restricting use of existing fill-credits in Central Passaic Basin.
6. Introducing a number of permits-by-rule in Green Light Area to encourage certain types of low-impact development. Also introducing some permits-by-rule in Red and Yellow Light Area to accommodate redevelopment and normal maintenance activities.
7. Extending current 5-year term of permits to 10 years for all permits in Green Light Area and to large projects in Yellow Light Area.

Other Chapters/Subchapters Affected:

Application review procedures and fees will be relocated from the 90-day rules at 7:1C-1. Inconsistencies with the coastal rules at 7:7E-3.25 will be corrected. Combined freshwater wetlands/flood hazard area permits will be clarified. Obsolete provisions of the water resource management rules at 7:21 will be deleted.

Persons/Entities Regulated:

All persons, including individuals, businesses and governments, proposing activities within flood hazard areas and riparian zones are regulated by this rule.

Persons/Entities Impacted:

Since large portions of New Jersey lie within flood hazard areas and associated riparian zones, all citizens in the State may be potentially affected by the flood hazard area rules and these amendments. However, those persons living within or proposing construction within these areas will be the most impacted.

Affected DEP Programs:

Since these rules supersede any other State regulations governing flood hazard areas, there should be no other DEP programs directly affected by these amendments. The Department of Transportation, however, will be affected since they frequently apply for flood hazard area permits for highway projects and the proposed amendments will affect net-fill and other standards applicable to road crossings. All other government agencies will be affected only if they propose projects in flood hazard areas or riparian zones.

Anticipated Sources of Controversy:

Greatly expanding the riparian zone outside the flood hazard area, and thus regulating activities outside flood hazard areas under this program, may prove controversial. The construction industry will likely object to the proposed added restrictions to net-fill and the elimination of fill-credits in the Central Passaic Basin.

Policy Issues:

We will continue to exempt expansions and improvements to public roadways from the net-fill restrictions. Experience has shown that requiring public entities to compensate for fill associated with road improvements forces them to condemn private land in order to compensate for even small amounts of fill, which greatly increases construction costs and yet yields little benefit to the public.

Policy Calls:

1. In what cases will road crossings be permitted in the Red Light Area? *New roads should have the same standards as the freshwater wetlands rules, which should require an alternatives analysis in red light areas.*
2. The proposed rule places strict guidelines on the removal of vegetation in riparian zones.

However, some small lots may lie completely within the proposed riparian zones, especially along Category 1 waters and in the Red Light Area. What type of development shall we permit in such areas, since allowing no construction whatsoever may lead to takings? ***Look at proposed stormwater rules for guidance for single family homes. However rules should require that disturbance be minimized and house/disturbance be as far back from stream as possible, even though stormwater rules don't include this requirement.***

3. In Red Light Areas, where no net-fill will be allowed, how will hospitals, schools and other public buildings raise access roads above the flood hazard area, as is currently required? ***They should be exempt from the no net-fill requirement. Define public buildings narrowly, related to use.***

Experience of Other States:

Few States regulate flood plain development Statewide. The majority instead rely on local building codes and regional planning to govern construction in areas particularly subject to flooding. Maryland, for example, regulates development within FEMA-mapped 100-year flood plains of streams draining greater than 400 acres. This is much more lenient than New Jersey's regulation of all streams, whether mapped or unmapped, draining 50 acres or more.

FEMA has developed a voluntary program whereby municipalities are eligible for federal flood assistance provided the local government faithfully implements various construction standards. However, these standards generally focus on ensuring that structures are flood-resistant, and do not consider the effects of flood plain development on the community as a whole.

With regard to Big Map, it is believed that no other State has methodically applied differing standards under one law in order to affect development patterns Statewide.

Resource Needs:

Personnel: The proposed rules require a higher level of engineering and environmental review for permits, which may necessitate additional man-hours and possibly require additional staff.

Data: a breakdown of each municipality according to Big Map zones, and an estimate of the size of the mapped flood hazard areas that exist in each zone in each municipality. A detailed map of the Central Passaic Basin showing each Big Map zone is also requested.

Public Involvement:

In June 1999, the Department held an open forum to solicit ideas and comments from the regulated community regarding these rules. Several other outreaches were subsequently made to local governments and agencies, including NJDOT, USDA and the New Jersey Builders Association, all in an attempt to identify areas of concern and to develop effective and reasonable rules.

In anticipation of the release of the Big Map, the construction industry and environmental community received briefings from the Department regarding potential rule changes. However there was no involvement by any group in the actual rule amendments being proposed here

Members of the Rule Writing Team

Director: Mark Mauriello

Rule Manager Name: Vince Mazzei
Technical Staff: None
Legal Affairs Contact: Gary Brower
Deputy Attorney General: Brian Weeks

Rulemaking Schedule

PROPOSAL

Conceptual Approval: 1/17/03 and 2/21/03
Launch Meeting: Original launch meeting held in 2001
Launch Memo: 3/10/03
IPR Notice Published: 3/3/03
IPR Close of Comments: 4/2/03
Draft Proposal Completed: 4/9/03
AC/Senior Staff Briefing: 4/9/03
Rule Document, Proposal Briefing Memo and Governor's Office Briefing Memo: 4/11/03
File with OAL: 4/21/03
Published in NJR: 5/19/03

ADOPTION

Public Hearing: 6/4/03 and 6/18/03
Close of Comments: 7/18/03
Adoption Launch Meeting: 11/19/03
Adoption Launch Memo: 11/19/03
Draft Adoption Completed: 11/26/03
AC/Senior Staff Briefing: 12/3/03
Rule Document, Proposal Briefing Memo and Governor's Office Briefing Memo: 12/13/03
File with OAL: 12/23/03
Published in NJR: 1/20/04