

Environmental Alert

NJDEP Changes Municipal Stormwater Management Regulations

On March 2, 2020; the New Jersey Department of Environment Protection (NJDEP) published revisions to its Municipal Stormwater Management regulation (N.J.A.C. 7:8) in order to incorporate new concepts in water management commonly called “Green Infrastructure.” (or GI). The purpose of these regulations are wide spread, but essentially the rules aim to accomplish the following:



- Reduce flood damage
- Minimize stormwater runoff from new and redevelopment
- Reduce soil erosion
- Assure the adequacy of existing and proposed culverts and bridges
- Maintain groundwater recharge
- Prevent or reduce nonpoint pollution
- Maintain the integrity of stream channels
- Protect public safety
- Restore, enhance, and maintain the chemical physical, and biological integrity of the States’ waters, including for recreation, scenic value, biological integrity, and to protect fish and other aquatic life.

Background

New Jersey is a densely populated state with a great deal of impervious cover such as buildings, asphalt, and concrete. As a result, rainstorms create a great deal of stormwater runoff rather than allowing the water to infiltrate back into the soil and groundwater underneath. With stormwater runoff comes greater risks of flooding in low lying areas and having contaminants on the ground surface swept along, impacting local rivers and streams. The NJDEP estimates that more than 60 percent of the water pollution created in the State comes from stormwater runoff. Managing this source means reducing the pollutants available by using pollution prevention measures as well as managing the physical impacts of stormwater. The NJDEP has two different sets of rules to manage stormwater:

- **Stormwater Pollution Prevention Planning (or SPPP under N.J.A.C. 7:14a)** - regulations and a permit process for managing municipal contributions to water pollution
- **Stormwater Management (N.J.A.C. 7:8)** - managing water retention, recharge and flood prevention

These new changes specifically impact Stormwater Management.

Municipal Stormwater Management

Since 2004, municipalities have been required to develop and maintain a stormwater management plan (SMP). This plan requires “structural and non-structural elements,” such as detention and retention basins to trap and control surges of stormwater, and municipal ordinances that implement and enforce the SMP for new and redevelopment projects. The intent is to capture, retain, and recharge into the soil any of the stormwater runoff created by the project so that there should be no net gain in stormwater runoff. Methods for achieving this can be found in the NJDEP Stormwater Best Management Practices manual found here: https://www.njstormwater.org/bmp_manual2.htm The SMP should already be posted on the municipal website and will need a few changes to meet the new requirements. In addition, municipalities will need to revise their stormwater ordinance to be consistent with these amendments. The effective date for these changes is March 3, 2021. Specifically, these new changes require the replacement of the current use of non-structural stormwater management strategies to the ‘maximum extent practicable’ with a requirement that Green Infrastructure (GI) be utilized instead. Green infrastructure refers to practices and construction of systems that are intended to mimic natural conditions and tend to use infiltration and vegetation more than traditional manufactured stormwater management methods.

“Major Development”

The revisions to New Jersey’s stormwater management regulations change how stormwater is dealt with during development and redevelopment projects, specifically for those considered “major development” projects. According to the amended rule, “major development” now refers to any individual development or multiple developments that individually or collectively result in:

1. The disturbance of one or more acres of land (since February 2, 2004)
2. The creation of one-quarter acre or more of “regulated impervious surface” (since February 2, 2004)
3. The creation of one-quarter acre or more of “regulated motor vehicle surface” (**NEW – March 2, 2021**)
4. A combination of 2 and 3 above that totals an area of one-quarter acre or more (**NEW – March 2, 2021**)

Training

To help municipalities better understand these requirements, the NJDEP provides training materials for Post-Construction Stormwater Management on their website training page: <https://www.nj.gov/dep/stormwater/training.htm>. Specifically, training is offered for individuals responsible for reviewing major development projects on behalf of the municipality. Required training is also offered for “Municipal Board and Governing Body members” through an interactive training tool called “Asking the Right Questions in Stormwater Review Training Tool.” The purpose of this is that any public official that will review a proposed development project will understand the stormwater management rules well enough to ask the right questions during that review. Also of interest is a link to a list of individuals that have successfully completed the Stormwater Management Design Review course, in case you want to see if your engineer qualifies. The list of people that have completed their design review training, along with the expiration date of their certificate, can be found here: https://www.nj.gov/dep/stormwater/pdf/SWMDR_Reviewers_Training.pdf

Costs

Creating green infrastructure can be more expensive than traditional manufactured stormwater management devices, but it can also be used in more locations and can have a smaller footprint than a retention basin. Like traditional best management practices (BMPs), green infrastructure can require maintenance; for systems such as pervious paving systems, that maintenance can become a headache if the system doesn’t operate as expected. The rules do require that major developments create a maintenance plan for green infrastructure that must include preventative maintenance tasks and schedules; including cost estimates for maintenance and potential replacement. Further, N.J.A.C. 7:8-5.8 requires the responsible party to perform the maintenance tasks listed in the maintenance manual, retain logs of the maintenance performed, and to re-evaluate the effectiveness of the maintenance plan at least yearly. The intent here seems to keep the developer responsible for the cost of maintenance, but those familiar with the SPPP requirements will also remember that it is the municipality’s responsibility to develop and enforce a plan that ensures the long term operation and maintenance of stormwater management measures. If a developer walks away after the project is complete, the municipality risks becoming responsible for what started out as private infrastructure. The NJDEP does say that municipalities can require performance and maintenance bonds for new GI in accordance with their authority under the Municipal Land Use Law at N.J.S.A. 40:55D-53.

Funding

The NJDEP supports the advancement of green infrastructure in New Jersey and there is much to be gained in water quality and resiliency if this is done well. Reducing the runoff impact on areas served by combined sewer systems alone could have a significantly positive impact on water quality by reducing the overflow of partially treated wastewater into our waterways. The NJDEP offers both technical and financial assistance for green infrastructure projects. This includes loans with some principal forgiveness and low interest rates for green infrastructure projects using State revolving loan funds. Some technical assistance to municipalities on implementing green infrastructure in their communities is also available. Green infrastructure and stormwater management are ambitious targets with a potentially high return but managing the costs in a state with other demanding infrastructure needs will be challenging indeed.

This newsletter is for information purposes only and does not represent legal or technical advice.

If you need a more detailed explanation of this topic or need assistance in interpreting how it may impact your municipality, the EJIF suggests that you contact the EJIF environmental consultants for further information.

All EJIF members please feel free to contact Richard Erickson at rerickson@firstenvironment.com or Sunita Dhar at sdhar@firstenvironment.com of First Environment, respectively or 973.334.0003.