



## Stormwater Management

- ▶ Green Infrastructure in NJ
- ▶ Stormwater Management Rule
- ▶ Stormwater Management Rule FAQs
- ▶ NJ Stormwater BMP Manual
- ▶ Maintenance Guidance
- ▶ BMP Manual Chapters for Comment
- ▶ MTD Certifications and Guidance
- ▶ Additional Guidance Documents

## Stormwater Permitting

- ▶ Municipal Stormwater Regulation
- ▶ General Stormwater Permits
- ▶ Individual Stormwater Permits
- ▶ Permit Applications and Checklists

## Program Links

- ▶ NJ Stormwater.org Contacts
- ▶ Stormwater Training
- ▶ Bureau of Nonpoint Pollution Control
- ▶ Division of Water Quality
- ▶ Clean Water NJ

## Stormwater Management Rule

### Frequently Asked Questions

New Jersey's Stormwater Management rules (N. J. A. C. 7:8) are implemented by the New Jersey Department of Environmental Protection (Department) through the review of permits issued by the Division of Land Use Regulation (DLUR) (Flood Hazard, Freshwater Wetlands, CAFRA, Waterfront Development and Coastal Wetlands). The Stormwater Management rules (Stormwater rules or rules) are also implemented by local authorities through the Municipal Land Use Law (MLUL) and the Residential Site Improvement Standards (RSIS). Per the New Jersey Department of Community Affairs, the RSIS are applicable to any residential application that goes before a local board. Through the RSIS, the Stormwater rules are activated whenever a municipality requires the control of runoff from a site that is the subject of a site or subdivision application. Therefore, consistent with its duly adopted ordinances, a municipality may require compliance with the Stormwater rules through the RSIS whether or not a development is a "major development" as defined in the Stormwater rules. Please note that local implementation may differ, particularly with regard to their jurisdiction. Consequently, the municipal ordinances must be examined to determine development thresholds at which the Stormwater rules will apply. The rule clarification and interpretation offered herein are consistent with the current application of the Stormwater rules by the Department, and do not supersede local authority under the MLUL.

Section 1.0	General
Section 2.0	Single Family Dwellings
Section 3.0	Exemptions and Grandfathering Provisions
Section 4.0	Redevelopment
Section 5.0	Nonstructural Strategies
Section 6.0	Groundwater Recharge
Section 7.0	Water Quality
Section 8.0	Category One Waters
Section 9.0	New Jersey Stormwater BMP Manual
Section 10.0	Impervious Surfaces
Section 11.0	Division of Land Use Regulation Review
Section 12.0	Stormwater Review by Municipalities
Section 13.0	Stormwater Review in Pinelands Areas

### Section 1.0 General

- 1.1 What are the new Stormwater Management Rules?
- 1.2 When did the rules go into effect?
- 1.3 What do the Stormwater Management rules require of new development?
- 1.4 Is all new development required to comply with the Stormwater Management Rules?
- 1.5 What are the jurisdictional thresholds for the Stormwater Management rules?
- 1.6 Do the rules apply to all lots that are one-acre or larger throughout the State?
- 1.7 How big is an acre?
- 1.8 At what point do the various standards in the Stormwater Management rules apply?
- 1.9 Do the Stormwater Management Rules establish a new regulatory program?
- 1.10 What is a "major development"?
- 1.11 An applicant has lawfully paved several acres of a site prior to February 2, 2004 and another developer now wants to subdivide an undeveloped portion of the site and sell it to site prior to February 2, 2004 count toward the thresholds?
- 1.12 Do temporary projects need to meet the Stormwater Management rules?

### 1.1 What are the new Stormwater Management Rules?

Two sets of Stormwater rules were published in the February 2, 2004 issue of the New Jersey Register. Together the two sets of rules establish a comprehensive framework for addressing water quality impacts associated with existing and future stormwater discharges.

The first set of rules are the Phase II [New Jersey Pollutant Discharge Elimination System Stormwater Regulation Program \(NJPDES\) rules \(N.J.A.C. 7:14A\)](#). These NJPDES rules are intended to address and reduce pollutants associated with existing stormwater runoff. The NJPDES rules establish a regulatory program for existing stormwater discharges as required under the Federal Clean Water Act. These NJPDES rules govern the issuance of permits to entities that own or operate small municipal separate storm sewer systems, known as MS4s. Under this program, permits must be secured by municipalities, certain public complexes such as universities and hospitals, and State, interstate and federal agencies that operate or maintain highways. The permit program establishes the Statewide Basic Requirements that must be implemented to reduce nonpoint source pollutant loads from these sources. The Statewide Basic Requirements include measures such as: the adoption of ordinances (litter control, pet waste, wildlife feeding, proper waste disposal, etc.); the development of a municipal stormwater management plan and implementing ordinance(s); requiring certain maintenance activities (such as street sweeping and catch basin cleaning); implementing solids and floatables control; locating discharge points and stenciling catch basins; and a public education component. More information about this NJPDES rule is available elsewhere on this website.

The second set of rules are known as [the Stormwater Management rules \(N.J.A.C. 7:8\)](#). These rules set forth the required components of regional and municipal stormwater management plans, and establish the stormwater management design and performance standards for new (proposed) development. The design and performance standards for new development include groundwater recharge, runoff quantity controls, runoff quality controls, and buffers around Category One (C1)

waters. Details of the performance standards can be found in Subchapter 5 of the [Stormwater Management rules](#).

[Return to Section 1.0](#) | [Return to Top](#)

#### 1.2 When did the rules go into effect?

The Stormwater Management Rules became effective on February 2, 2004. At that time, the design and performance standards of these rules became incorporated into the Residential Site Improvement Standards. For residential development, the design and performance standards established in these rules become immediately effective for local approvals through the Residential Site Improvement Standards. For non-residential development, these Rules will not be applied at the local level until a municipal ordinance is passed adopting these standards. However, if that non-residential development requires one of the Division of Land Use Regulation permits listed at N.J.A.C. 7:8-1.6(c), the rules will be applied under that review.

Specifically, if your project is: 1) a "major development", 2) a residential site improvement and 3) not otherwise exempt from these rules, then the requirements of the rules will be applied to your project when you apply for municipal approval.

If your project is 1) a "major development", 2) for a non-residential use and 3) does not require any of the Department's Division of Land Use Regulation (DLUR) permits, then the design and performance standards apply once a municipal ordinance is adopted that incorporates them or upon application for a DLUR permit, whichever comes first.

[Return to Section 1.0](#) | [Return to Top](#)

#### 1.3 What do the Stormwater Management rules require of new development?

The rules set forth the stormwater management design and performance standards for proposed development. The rules emphasize, as a primary consideration, the use of nonstructural stormwater management techniques including minimizing disturbance, minimizing impervious surfaces, minimizing the use of stormwater pipes, preserving natural drainage features, etc. The rules also set forth requirements for groundwater recharge, stormwater runoff quantity control, stormwater runoff quality control, and the prohibition of major development to be located within or to discharge runoff from the major development into a 300-foot riparian zone without prior authorization from the Department under the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13.

[Return to Section 1.0](#) | [Return to Top](#)

#### 1.4 Is all new development required to comply with the Stormwater Management Rules?

No. Only new development that will ultimately result in the disturbance of one or more acres of land, or increased impervious surface by one-quarter acre or more (i.e. "major development") and is not exempt from the rules, must comply with the rules. New development with cumulative impacts below these thresholds, major development that is exempt under N.J.A.C. 7:8-1.6 and development that does not require any local or Division of Land Use Regulation permits are not required to comply with these rules.

[Return to Section 1.0](#) | [Return to Top](#)

#### 1.5

#### What are the jurisdictional thresholds for the Stormwater Management rules?

Any project that proposes 0.25 acres of "new" impervious surface and/or 1 acre of disturbance overall is considered a "major development" and triggers the rules. See [Section 11.0, Division of Land Use Regulation Review](#) below to determine which portions of a site must be counted and compared to these thresholds for Division of Land Use Regulation (DLUR) permits (which includes CAFRA, Waterfront Development, Flood Hazard and Freshwater Wetlands permits). For municipal review under the requirements of the Stormwater Management rules, the jurisdictional threshold is dependent upon each municipality's adopted ordinances. See [Section 12.0, Stormwater Review by Municipalities](#) below and [Section 10.0 Impervious Surfaces](#).

[Return to Section 1.0](#) | [Return to Top](#)

#### 1.6 Do the rules apply to all lots that are one-acre or larger throughout the State?

No. The rules regulate "major development" only, regardless of lot size, which, as explained above, is defined by thresholds related to proposed disturbance of land on a given lot rather.

[Return to Section 1.0](#) | [Return to Top](#)

#### 1.7

#### How big is an acre?

An acre is equivalent to 43,560 square feet. A square 200 feet by 200 feet is just less than one acre. A quarter of an acre is 10,890 square feet. A square 100 feet by 100 feet is just under a quarter of an acre.

[Return to Section 1.0](#) | [Return to Top](#)

#### 1.8 At what point do the various standards in the Stormwater Management rules apply?

The groundwater recharge standards at N.J.A.C. 7:8-5.4(a)2 apply for "major development", that is, if either the 0.25-acre or 1-acre threshold is exceeded, except for certain cases described at N.J.A.C. 7:8-5.4(a)2ii and 2iii (urban redevelopment areas, high pollutant loading, and runoff from source material).

The runoff quantity standards at N.J.A.C. 7:8-5.4(a)3 apply for "major development", that is, if either the 0.25-acre or 1-acre threshold is exceeded, unless the receiving waterbody is tidal and existing structures will not be subject to increased flood damages by increases in runoff (as detailed at N.J.A.C. 7:8-5.4(a)3iv).

The water quality standards at N.J.A.C. 7:8-5.5 apply only if there is a net increase of 0.25 acres or more of impervious surface onsite.

Note that some linear development projects may qualify for exemptions at N.J.A.C. 7:8-5.2(d) or waivers at N.J.A.C. 7:8-5.2(e).

[Return to Section 1.0](#) | [Return to Top](#)

#### 1.9

#### Do the Stormwater Management Rules establish a new regulatory program?

No. The Stormwater Management rules set forth the stormwater management design and performance standards to be applied under other existing regulatory programs. The regulatory programs that apply these rules are local approvals under the

Municipal Land Use Law, and the Department's Division of Land Use Regulation permits under the Flood Hazard Area Control Act, Freshwater Wetlands Protection Act, Coastal Area Facilities Review Act (CAFRA), the Coastal Wetlands Act of 1970, the Highlands Water Protection and Planning Act and the Waterfront and Harbor Facilities Act (Waterfront Development). The rules do not expand or create new jurisdiction for these existing permit and approval processes; rather they establish certain environmental performance standards to be met once the requirements of the rules have been triggered by a development proposal or permit application.

[Return to Section 1.0](#) | [Return to Top](#)

#### 1.10 What is a "major development"?

Major development is new development that will ultimately result in the disturbance of one or more acres of land, or increase impervious surfaces by one-quarter acre (or 10,890 square feet) or more. [See the rule for a detailed definition.](#)

"Development" means: Construction, reconstruction, conversion, structural alteration, relocation or enlargement of any building or structure; mining, excavation or landfill; or use/change in use of any building, other structure, land or extension of use of land that requires permission under the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.).

"Disturbance" means" the addition of impervious surface (e.g. pavement); exposure or movement of soil or bedrock (e.g. grading, excavation); or clearing, cutting, or removing vegetation.

If you have a project that is below the threshold for "major development", or if no local or Department permits or approvals are required to proceed, then the requirements of the Stormwater Management rules do not apply to your project.

[Return to Section 1.0](#) | [Return to Top](#)

#### 1.11 An applicant has lawfully paved several acres of a site prior to February 2, 2004 and the applicant now wants to subdivide an undeveloped portion of the site and sell it to another developer who plans to construct a shopping center; does development on site prior to February 2, 2004 count toward the thresholds?

No. Only those activities approved after February 2, 2004 count toward the jurisdictional threshold. It does not matter how much of the site is already developed, provided it was approved prior to February 2, 2004.

[Return to Section 1.0](#) | [Return to Top](#)

#### 1.12 Do temporary projects need to meet the Stormwater Management rules?

Temporary projects do not have to comply with the Stormwater Management rules in the following cases:

- All temporary disturbance is removed, and all disturbed areas are restored to pre-activity topography and vegetated cover, within 6 months of the start of work; or
- The temporary disturbance is necessary for a roadway construction project undertaken by a government entity or public transportation agency, provided:
  1. The applicant demonstrates that there is no feasible alternative that would minimize or eliminate the need for the temporary disturbance;
  2. The applicant demonstrates that the temporary disturbance, including any proposed stream crossings, will not cause erosion or increase flooding; and,
  3. The applicant restores all disturbed vegetation and topography to the maximum extent practicable.

[Return to Section 1.0](#) | [Return to Top](#)

### Section 2.0 Single Family Dwellings

2.1 Are single-family dwellings subject to the requirements of the Stormwater Management rules?

2.2 Do the rules apply to all single-family lots?

2.3 Can an individual homeowner be responsible for maintaining a stormwater BMP?

#### 2.1 Are single-family dwellings subject to the requirements of the Stormwater Management rules?

If construction associated with a single family dwelling requires a planning and/or zoning approval and disturbs one or more acres, the proposed project is subject to the Residential Site Improvement Standards (RSIS) and the requirements of the Stormwater Management rules. Please note that a zoning permit, which may be required as part of a building permit, is considered a zoning approval under the MLUL. Furthermore, if a new single family dwelling needs a permit from the Division of Land Use Regulation (DLUR) and meets the definition of "major development", it is subject to stormwater review by the Department regardless of the extent of municipal jurisdiction, unless otherwise exempt (see [Section 3.0, Exemptions and Grandfathering Provisions below](#)).

[Return to Section 2.0](#) | [Return to Top](#)

#### 2.2 Do the rules apply to all single-family lots?

No. A single-family dwelling on an existing single-family lot would not be subject to the requirements of these rules unless a new "major development" is proposed on the lot. In other words, if the proposed development involves less than one acre of disturbance, involves less than one quarter-acre of new impervious surface and is not part of a larger development, then the project is not regulated. However, a project on a single-family lot with a single-family dwelling that constitutes "major development" must comply with these rules except for those exempted at N.J.A.C. 7:8-1.6 (see [Section 3.0, Exemptions and Grandfathering Provisions below](#)).

[Return to Section 2.0](#) | [Return to Top](#)

#### 2.3 Can an individual homeowner be responsible for maintaining a stormwater BMP?

An individual homeowner cannot be listed as the responsible party, but can have responsibilities in the maintenance of specific BMPs. For example, a homeowner's association may be the responsible party for specific BMPs, but under an agreement, the homeowner is required to mow or perform other maintenance activities. However, the homeowner's association is the responsible party to ensure that maintenance is occurring in an appropriate manner.

[Return to Section 2.0](#) | [Return to Top](#)

### Section 3.0 Exemptions and Grandfathering Provisions

- 3.1 Are there any exemptions or "grandfathered" activities?  
 3.2 Are there any limitations on the exemptions?  
 3.3 Is a project subject to the rule if it already has municipal approval for a subdivision?  
 3.4 If a subdivision received approval prior to the enactment of the Municipal Land Use Law (MLUL), and does not need any permits from the Department, is it exempt from the Stormwater Management rules under N.J.A.C. 7:8-1.6?  
 3.5 My project is a government project that does not require approval under the MLUL, can I still be exempt?  
 3.6 How long does the exemption last?  
 3.7 If a project is exempt from these rules but is later modified or requires modification of one of the qualifying permits or approvals, is it still exempt?  
 3.8 An applicant received all necessary DLUR permits and local approvals for a major development prior to February 2, 2004. At the time of approval, no stormwater review was necessary to obtain the DLUR permit. No change to the project has occurred, which would require the applicant to resubmit to the Department or the local government and all approvals are still valid and have not expired. Is this project grandfathered, even without a stormwater review?  
 3.9 Are agricultural activities exempt from these rules?  
 3.10 An applicant received a FWGP6 (the placement of fill in an isolated wetlands) and all necessary local approvals prior to February 2, 2004. Since the Division of Land Use Regulation (DLUR) did not review stormwater management under the FWGP6, would the project be grandfathered if another DLUR permit were needed for the site?  
 3.11 Are projects that received approval as a General Development Plan, or from Delaware River Basin Commission, Delaware and Raritan Canal Commission or the Pinelands Commission exempt from these rules?  
 3.12 Do projects approved by the local Soil Conservation District automatically comply with these rules?

#### 3.1 Are there any exemptions or "grandfathered" activities?

Yes. The rules contain a grandfathering provision at N.J.A.C. 7:8-1.6. The following approvals must have been issued prior to February 2, 2004 in order for a major development to be exempt from these rules.

1. One of the following Municipal Land Use Law approvals:
  - a. Preliminary or final site plan approval;
  - b. Final municipal building or construction permit; or
  - c. Minor, preliminary or final subdivision approval where no subsequent site plan approval is required; and, if required
2. One of the Department permits approved under the following statutes, provided that the permit included a stormwater management review:
  - a. Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq.;
  - b. Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq.;
  - c. Coastal Area Facilities Review Act, N.J.S.A. 13:19-1 et seq.;
  - d. Waterfront Development and Harbor Facilities Act, N.J.S.A. 12:5-3.

[Return to Section 3.0](#) | [Return to Top](#)

#### 3.2 Are there any limitations on the exemptions?

For phased projects, only the portion of the project that has obtained the necessary qualifying local and Department approvals prior to February 2, 2004 is exempt or grandfathered. All new elements of a phased project that do not have approvals prior to February 2, 2004 must comply with the Stormwater rules. For example, if a developer owned a 50-acre lot and had a qualifying Department permit for a phased project on 25 of those acres, the remaining 25 acre portion of that lot without Department permits would not be grandfathered.

Projects (or portions of projects) that are exempt from these rules under the grandfathering provision are still subject to the stormwater management requirements that were in effect upon their approval.

[Return to Section 3.0](#) | [Return to Top](#)

#### 3.3 Is a project subject to the rule if it already has municipal approval for a subdivision?

If a project has a municipal approval that requires no subsequent site plan approval and still requires one of the Department permits listed above, and has not secured any of those approvals, the rules will apply if that permit review triggers the stormwater rule (one acre of disturbance or 0.25 acres of new impervious). If none of the Department permits listed above is required, then the project is exempt from the requirements of the new rules.

[Return to Section 3.0](#) | [Return to Top](#)

#### 3.4 If a subdivision received approval prior to the enactment of the Municipal Land Use Law (MLUL), and does not need any permits from the Department, is it exempt from the Stormwater Management rules under N.J.A.C. 7:8-1.6?

N.J.A.C. 7:8-1.6 specifically states that in order to be exempt from the Stormwater Management rules, the property must have received approval pursuant to the MLUL and require no subsequent site plan approval. Therefore, if the subdivision precedes the enactment of the MLUL, then this exemption does not apply.

[Return to Section 3.0](#) | [Return to Top](#)

#### 3.5 My project is a government project that does not require approval under the MLUL, can I still be exempt?

Government projects that are not subject to the MLUL, but require Department permits or approval, are also exempt if they have obtained one of the qualifying Department permits identified above prior to February 2, 2004. This applies to government projects, such as schools or municipal buildings that are defined as

"major development" and are undertaken by a government agency. Please note that under the municipal NJPDES permit these projects still may be required to meet the provisions of the stormwater rule.

[Return to Section 3.0](#) | [Return to Top](#)

### 3.6 How long does the exemption last?

The duration of the exemption is determined by effective life of the approval(s), which qualified the project for exemption. When the qualifying Department approval or local approval expires, the exemption also expires..

[Return to Section 3.0](#) | [Return to Top](#)

### 3.7 If a project is exempt from these rules but is later modified or requires modification of one of the qualifying permits or approvals, is it still exempt?

The Department must determine if any revision to a qualifying permit or approval would have a de minimis impact on water resources in order for the exemption to remain valid. This is necessary to ensure that changes to preliminary local approvals will not result in an adverse impact to water resources that would otherwise be prevented under these rules. N.J.A.C. 7:8-1.6(e) establishes the criteria to be considered by the Department in determining de minimis impact. If the Department determines that the impact is not de minimis, then the exemption is void and the "major development" is subject to the requirements of the rules.

[Return to Section 3.0](#) | [Return to Top](#)

### 3.8 An applicant received all necessary DLUR permits and local approvals for a major development prior to February 2, 2004. At the time of approval, no stormwater review was necessary to obtain the DLUR permit. No change to the project has occurred, which would require the applicant to resubmit to the Department or the local government and all approvals are still valid and have not expired. Is this project grandfathered, even without a stormwater review?

The Stormwater Management rules only apply if the applicant needs to resubmit to the Department or the local government for some change in design or to obtain additional permits that might be needed. If all necessary approvals have already been received, the applicant need not redesign the project to meet the Stormwater Management rules and the project can be constructed as originally approved.

[Return to Section 3.0](#) | [Return to Top](#)

### 3.9 Are agricultural activities exempt from these rules?

No. Stormwater runoff from agricultural development meeting the definition of "major development" must meet the performance standards established in these rules. Development on agricultural land means: any activity that requires a State permit; any activity reviewed by the County Agricultural Boards (CAB) and the State Agricultural Development Committee (SADC), and municipal review of any activity not exempted by the Right to Farm Act, N.J.S.A. 4:1C-1 et seq. This does not conflict with the Right to Farm Act, which recognizes the State's continuing authority to regulate agricultural development at N.J.S.A. 4:1C-9.

[Return to Section 3.0](#) | [Return to Top](#)

### 3.10 An applicant received a FWGP6 (the placement of fill in an isolated wetlands) and all necessary local approvals prior to February 2, 2004. Since the Division of Land Use Regulation (DLUR) did not review stormwater management under the FWGP6, would the project be grandfathered if another DLUR permit were needed for the site?

The project is not grandfathered because the DLUR permit did not include a stormwater review component.

[Return to Section 3.0](#) | [Return to Top](#)

### 3.11 Are projects that received approval as a General Development Plan, or from Delaware River Basin Commission, Delaware and Raritan Canal Commission or the Pinelands Commission exempt from these rules?

No. These approvals were not listed as qualifying approvals for exemptions under N.J.A.C. 7:8-1.6(b)1.

[Return to Section 3.0](#) | [Return to Top](#)

### 3.12 Do projects approved by the local Soil Conservation District automatically comply with these rules?

Reviews conducted by the local Soil Conservation Districts are typically limited in scope to the application of proper soil erosion and sediment controls during construction. Therefore, a Soil Conservation District approval does not demonstrate compliance with the Stormwater Management rules.

[Return to Section 3.0](#) | [Return to Top](#)

## Section 4.0 Redevelopment

4.1 Do the rules apply to existing development?

4.2 What is the required Total Suspended Solids (TSS) removal rate for redeveloped areas?

4.3 Does milling and/or repaving an existing road or parking lot count as "disturbance" or "redevelopment"?

4.4 A 2-acre asphalt parking lot exists on a large site, which the applicant proposes to remove and reconstruct elsewhere on the site. The new parking lot will be the same size as the existing lot, so there will be no net increase in impervious surface. Do the Stormwater Management rules apply?

4.5 An abandoned mall is proposed for redevelopment and approximately 3 acres of pavement will be removed and replaced by a new parking lot and buildings. In addition, 1 acre of new pavement will be added to expand the parking lot. How do the Stormwater Management rules apply?

4.6 A site that straddles a drainage divide is being redeveloped and although there is a net decrease in impervious surface for the project as a whole, the impervious surface draining to one stream will increase slightly. How do the water quality standards apply?

### 4.1 Do the new rules apply to existing development?

The rules apply if there is proposed activity on the site that meets the definition of "major development".

[Return to Section 4.0](#) | [Return to Top](#)

#### 4.2 What is the required Total Suspended Solids (TSS) removal rate for redeveloped areas?

Redevelopment, defined for the purposes of this question, is a new impervious surface that replaces an equal area of existing impervious surface on a project site. For redevelopment of existing impervious surfaces, the required TSS removal rate is the greater of the TSS removal rate of the existing stormwater treatment system, or 50% TSS is required. For new impervious surfaces an 80% TSS removal rate applies. However, the water quality provisions of the Stormwater Management rules only apply if the impervious surface onsite increases by at least 0.25 of an acre (See Questions 4.3 through 4.6 below for examples). Please note that proposed new discharges within the 300-foot riparian zone established under the Flood Hazard Area Control Act Rules at N.J.A.C. 7:13-4.1(c)1 must obtain an individual permit under N.J.A.C. 7:13-1.1-2(j), in which the post-construction load of total suspended solids of new discharge must be reduced by 95 percent of the anticipated load from the developed site, expressed as an annual average, regardless of whether or not the site is redeveloped.

[Return to Section 4.0](#) | [Return to Top](#)

#### 4.3 Does milling and/or repaving an existing road or parking lot count as "disturbance" or "redevelopment"?

Milling and/or repaving do not count as disturbance or redevelopment and do not trigger the Stormwater Management rules, provided there are no changes to the existing stormwater drainage system. The reconstruction of these areas, however, does constitute disturbance and is discussed below.

[Return to Section 4.0](#) | [Return to Top](#)

#### 4.4 A 2-acre asphalt parking lot exists on a large site, which the applicant proposes to remove and reconstruct elsewhere on the site. The new parking lot will be the same size as the existing lot, so there will be no net increase in impervious surface. Do the Stormwater Management rules apply?

The Stormwater Management rules apply since there is 4 acres of proposed disturbance. However, the water quality provisions only apply if there is 0.25 of an acre of "new" impervious surface. If there is no reduction in water quality from the runoff, no additional water quality measures are required, provided that the existing pavement is removed, the surface is scarified 6" to 12" where there has been soil compaction and the area is restored to a natural vegetated condition in accordance with the "Standards for Soil Erosion and Sediment Control in New Jersey, Standard for Permanent Vegetative Cover for Soil Stabilization."

[Return to Section 4.0](#) | [Return to Top](#)

#### 4.5 An abandoned mall is proposed for redevelopment and approximately 3 acres of pavement will be removed and replaced by a new parking lot and buildings. In addition, 1 acre of new pavement will be added to expand the parking lot. How do the Stormwater Management rules apply?

Since more than 1 acre of land will be disturbed, the project is a "major development" and must therefore meet all standards of the Stormwater Management rules. An 80% TSS removal rate would apply to the new acre of pavement. For the existing 3 acres of pavement, if water quality is provided under existing conditions, the required TSS removal rate is the greater of the TSS removal rate of the existing stormwater treatment system, or 50% TSS. Runoff from rooftops does not need to be treated for TSS removal but should be deed restricted so that future development of the rooftop address the 80% TSS requirement (See [Section 7.0, Water Quality](#)).

[Return to Section 4.0](#) | [Return to Top](#)

#### 4.6 A site that straddles a drainage divide is being redeveloped and although there is a net decrease in impervious surface for the project as a whole, the impervious surface draining to one stream will increase slightly. How do the water quality standards apply?

Under N.J.A.C. 7:8-5.5(a), water quality control is only required if an additional 0.25 of an acre of impervious surface is proposed. Since there is a net decrease in impervious surface in this case, the water quality standards would not apply to this project unless more than 0.25 acres of impervious surface is proposed.

### Section 5.0 Nonstructural Strategies

5.1 The Stormwater Management rules at N.J.A.C. 7:8-5.3(c) requires that land used as a nonstructural stormwater measure be restricted from future disturbance. Is a deed restriction required, and if so, does the restriction have to be filed with the County Clerk's office before the Department can issue a permit?

5.2 What portions of a site must be deed restricted to comply with the requirement that all areas utilized for nonstructural strategies must be permanently restricted?

5.1 The Stormwater Management rules at N.J.A.C. 7:8-5.3(c) requires that land used as a nonstructural stormwater measure be restricted from future disturbance. Is a deed restriction required, and if so, does the restriction have to be filed with the County Clerk's office before the Department can issue a permit?

The rules provide that the Department can approve an "equivalent" restriction to ensure that the nonstructural stormwater measure is preserved. A deed restriction is not the only means of accomplishing this requirement.

[Return to Section 5.0](#) | [Return to Top](#)

#### 5.2 What portions of a site must be deed restricted to comply with the requirement that all areas utilized for nonstructural strategies must be permanently restricted?

Any area onsite that is utilized by the applicant to demonstrate compliance with the nonstructural strategies requirement must be restricted by deed or through other means. However, the particular restriction will vary depending on the design of the site and the stormwater calculations that are submitted. For example, in a residential development where 12% impervious is being proposed, but 15% impervious is assumed in the design computations to address nonstructural strategies, the restriction can indicate that future owners have the flexibility to increase the impervious cover up to 15% to incorporate future improvements, such as a deck or a pool. However, if an area is being utilized as a nonstructural Best Management Practice (BMP), such as a vegetative filter to reduce runoff and provide Total Suspended Solids (TSS) removal, that area must be restricted to provide the same function. All forested areas used for credit as a nonstructural strategy must be restricted to maintain the existing forest cover in perpetuity.

[Return to Section 5.0](#) | [Return to Top](#)

### Section 6.0 Groundwater Recharge

6.1 How do we define "previously developed" when determining whether someone is exempt from the groundwater recharge requirements in an "urban redevelopment

- area", as defined in the rules?
- 6.2 Is groundwater recharge required when the underlying substrate is limestone (karst geology)?
- 6.3 Is groundwater recharge required in tidal areas? Some sites have very high groundwater tables and recharging water might exacerbate flooding onsite.
- 6.1 **How do we define "previously developed" when determining whether someone is exempt from the groundwater recharge requirements in an "urban redevelopment area", as defined in the rules?**  
Previously developed areas are those portions of a site covered by paved, gravel or dirt driveways, streets, roads and parking areas, gravel, pavement, buildings, impervious surfaces, lawns or structures. Areas that simply have been (or have once been) cleared of vegetation are not considered "previously developed" if woody vegetation has been reestablished. Only those portions of a site that have been previously developed are exempt from the groundwater recharge requirements.

[Return to Section 6.0](#) | [Return to Top](#)

**6.2 Is groundwater recharge required when the underlying substrate is limestone (karst geology)?**

If a portion of a site contains karst geology, the Department encourages the placement of any stormwater recharge facility outside of the karst areas. The groundwater recharge requirement is mandatory for all sites (with the exception of areas with high pollutant loading or runoff from source material). Project redesign to incorporate dispersed runoff instead of a structure for recharge or a reduction in scope may be necessary to ensure compliance with the rules in this area.

[Return to Section 6.0](#) | [Return to Top](#)

**6.3 Is groundwater recharge required in tidal areas? Some sites have very high groundwater tables and recharging water might exacerbate flooding onsite.**

Is groundwater recharge required in tidal areas? Some sites have very high groundwater tables and recharging water might exacerbate flooding onsite. The rules do not provide an exemption for groundwater recharge in tidal areas. It is unlikely that maintaining the existing level of groundwater recharge on a site would exacerbate flooding. Furthermore, in tidal areas there may be concern about saltwater intrusion as a result of the loss of groundwater recharge. Nevertheless, if meeting the groundwater recharge standards would create an adverse condition, the rules prohibit recharge. In addition, flexibility can be provided on a site-by-site basis through a Freshwater Wetlands Individual permit or through the Hardship exception provisions in the other DLUR permit programs. However, the applicant must demonstrate that groundwater recharge is not necessary to maintain baseflow to the aquifer as part of the application.

[Return to Section 6.0](#) | [Return to Top](#)

## Section 7.0 Water Quality

- 7.1 Can a freshwater wetland or a freshwater wetland transition area be used as a vegetated filter strip?
- 7.2 Will partial water quality credit be given for the use of open drainage collection systems (such as grassed swales) and umbrella roadway sections if the TSS requirements cannot be met by other means? If not, what is the incentive to incorporate such measures?
- 7.3 Where a developer proposes to use two or more Best Management Practices (BMPs) in series in order to provide water quality treatment for runoff from a proposed development, can more than one of the same kind of BMP be used in series, such as two detention basins or three of the same hydrodynamic manufactured treatment devices?
- 7.4 When an existing public roadway is bordered by a roadside ditch that is proposed to be filled and replaced with a storm sewer system (inlets and pipes), is the inflow drainage area from the existing roadway draining to the new storm sewer system (filled ditch) considered as a new impervious area for the major development and water quality requirements of the Stormwater Management rules?
- 7.5 Does runoff from roofs or lawns have to be treated for water quality?
- 7.6 The rules require runoff from impervious surface to be pre-treated prior to discharge to an infiltration system. Does this also apply to roof runoff?
- 7.7 In order to be used to meet the water quality standards of the rules, under N.J.A.C. 7:8-5.7(c), all Manufactured Treatment Devices (MTDs) must be certified by the Department. Does this mean that no such device is acceptable until it is field-tested?
- 7.8 An applicant received all necessary DLUR permits and local approvals for a major development prior to February 2, 2004. At the time of approval, no stormwater review was necessary to obtain the DLUR permit. No change to the project has occurred, which would require the applicant to resubmit to NJDEP or the local government and all approvals are still valid and have not expired. Since no stormwater review was performed, is this project grandfathered?

**7.1 Can a freshwater wetland or a freshwater wetland transition area be used as a vegetated filter strip?**

No. Water quality treatment must be provided outside these regulated areas.

[Return to Section 7.0](#) | [Return to Top](#)

**7.2 Will partial water quality credit be given for the use of open drainage collection systems (such as grassed swales) and umbrella roadway sections if the TSS requirements cannot be met by other means? If not, what is the incentive to incorporate such measures?**

The use of grassed swales and umbrella roadway drainage assists in addressing the requirements for nonstructural stormwater management strategies, which is mandatory for every project. If a stormwater BMP such as a grassed swale is not identified in N.J.A.C. 7:8-5.5(c), the design engineer has the option to provide documentation regarding the specific BMP. Alternative stormwater management measures, removal rates and methods of calculating removal rates may be used if the design engineer provides documentation demonstrating the capability of these alternative rates and methods to the review agency.

[Return to Section 7.0](#) | [Return to Top](#)

**7.3 Where a developer proposes to use two or more Best Management Practices (BMPs) in series in order to provide water quality treatment for runoff from a proposed development, can more than one of the same kind of BMP be used in series, such as two detention basins or three of the same hydrodynamic manufactured treatment devices?**

The Stormwater Management rules at N.J.A.C. 7:8-5.5(c) allow the use of multiple BMPs in series to provide water quality treatment. Since different BMPs utilize different mechanisms to remove suspended solids, combining different BMPs in series will generally provide better water quality treatment than using the same BMP more than once. For this reason, the Department discourages the use of the same kind of BMP in series.

[Return to Section 7.0](#) | [Return to Top](#)

#### 7.4

**When an existing public roadway is bordered by a roadside ditch that is proposed to be filled and replaced with a storm sewer system (inlets and pipes), is the inflow drainage area from the existing roadway draining to the new storm sewer system (filled ditch) considered as a new impervious area for the major development and water quality requirements of the Stormwater Management rules?**

It depends on the condition of the ditch being replaced. If the existing ditch is generally devoid of vegetation, due to persistent erosion or previous lawful lining or armoring, the ditch does not currently provide any significant water quality treatment. Replacing such a ditch with a stormwater system would likely not degrade the quality of the runoff from the roadway. Therefore, the area draining to the ditch would not be considered as new impervious area under the definition of major development and for the water quality requirements of the rule.

However, if the ditch is stable and contains vegetation, a certain level of water quality treatment is provided to the roadway runoff. In this case, the inflow area would be considered additional impervious area and runoff from the roadway must be treated. In addition, if existing culverts along the ditch create significant impoundments for the water quality design storm, a level of water quality treatment is provided, and the applicant must provide treatment equivalent to the existing TSS removal rate or 50% TSS removal, whichever is greater. Furthermore, if the capacity of the existing stormwater conveyance is increased by the new storm sewer system, and either the 0.25-acre impervious threshold or the 1-acre disturbance threshold is exceeded, the runoff quantity standards at N.J.A.C. 7:8-5.4(a)3 would apply.

[Return to Section 7.0](#) | [Return to Top](#)

#### 7.5

**Does runoff from roofs or lawns have to be treated for water quality?**

Clean roof runoff and runoff from lawns, walkways, patios or decks do not have to be treated for TSS removal. However, these projects must be restricted so that any future change in land use will not result in increased pollutant loads from these impervious areas. If such changes should occur, the applicant must provide the water quality treatment required for that new use.

However, nutrients are required to be reduced to the maximum extent feasible. For example, in areas where birds tend to congregate on rooftops and contribute to the nutrient loads, measures to manage birds and prevent additional nutrient loads should be addressed. For lawn areas, measures to prevent additional nutrient loads into waters, such as changes in the type and application of fertilizer, pet waste stations and goose management measures should also be addressed.

[Return to Section 7.0](#) | [Return to Top](#)

#### 7.6

**The rules require runoff from impervious surface to be pre-treated prior to discharge to an infiltration system. Does this also apply to roof runoff?**

Discharge of clean roof runoff into a system that provides infiltration is considered a drywell discharge, which does not require pre-treatment. Note that certain types of discharges, such as an industrial development that would have an air discharge or other situations where contaminants could deposit on the roof, cannot be discharged to a drywell. Additional details are included in Chapter 9.4 of New Jersey's Stormwater BMP Manual.

[Return to Section 7.0](#) | [Return to Top](#)

#### 7.7

**In order to be used to meet the water quality standards of the rules, under N.J.A.C. 7:8-5.7(c), all Manufactured Treatment Devices (MTDs) must be certified by the Department. Does this mean that no such device is acceptable until it is field-tested?**

No. A certification is a letter issued by the Department with associated removal rates and conditions. Devices that are used to address TSS removal must have a certification letter. Devices are not required to be field-tested before being used to address the TSS requirements, unless the certification letter includes that specific condition. However, it should be noted that in cases of hardship, NJDEP could allow the use of MTDs that have not received the Department certification, only if the applicant demonstrates that both generic BMPs and certified MTDs cannot be utilized for the project in accordance with N.J.A.C. 7:8-5.7(b).

[Return to Section 7.0](#) | [Return to Top](#)

#### 7.8

**If an existing building were changed to an impervious parking area, and no changes are proposed to the existing stormwater drainage system onsite, does this constitute an increase in impervious surface onsite?**

No. However, if other proposed revisions to the site result in a reduction of the existing water quality being provided for the site, or result in an increase in peak flows and/or volume of runoff, then the requirements of the Stormwater Rules may apply. Please refer to [Section 4.0, Redevelopment](#) for more information.

[Return to Section 7.0](#) | [Return to Top](#)

### Section 8.0 Category One Waters

Note: In addition to regulation under the Stormwater Management rules, activities within 300 feet of a Category One (C1) water may be regulated under the Flood Hazard Area Control Act (FHACA) rules, which are not addressed in these FAQs. See [www.nj.gov/dep/landuse](http://www.nj.gov/dep/landuse) for information on the FHACA rules.

8.1 Is there still a Special Water Resource Protection Area?

8.2 Are there buffer requirements for streams that are not designated as Category One?

8.3 Does the Department have to approve all major development in a 300-foot riparian zone along Category One waters?

#### 8.1

**Is there still a Special Water Resource Protection Area?**

Effective on June 20, 2016, the Flood Hazard Area Control Act Rules at N.J.A.C. 7:13-4.1(c)1 establish 300-foot riparian zones along Category One waters, as designated in the Surface Water Quality Standards at N.J.A.C. 7:9B, and certain upstream tributaries to Category One waters. A person shall not undertake a major development that is located within or discharges into a 300-foot riparian zone without prior authorization from the Department under the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13.



The Special Water Resource Protection Area (SWRPA) defined and regulated under the prior Stormwater Management rules at N.J.A.C. 7:8-5.5(h) will be now addressed and regulated under the Flood Hazard Area Control Act Rules. Therefore, the term "Special Water Resource Protection Area" has been removed from the Stormwater Management rules, N.J.A.C. 7:8. See [www.nj.gov/dep/landuse](http://www.nj.gov/dep/landuse) for information on the FHACA rules. Please contact Division of Land Use Regulation with any specific questions regarding riparian zones.

Return to Section 8.0 | Return to Top

### 8.2 Are there buffer requirements for streams that are not designated as Category One?

The Stormwater Management rules do not require a buffer for waters, but other rules may. For example, the Flood Hazard Area Control Act Rules, the Rules on Coastal Zone Management and the Pinelands Comprehensive Management Plan, to name a few, all require buffers on Category One waters and other waters. In addition, some municipalities may require buffers along or near certain waterbodies. Please refer to [Section 11.0, Division of Land Use Regulation Review and Section 12.0, Stormwater Review by Municipalities](#) for more information.

Return to Section 8.0 | Return to Top

### 8.3 Does the Department have to approve all major development in a 300-foot riparian zone along Category One waters?

Yes, the Flood Hazard Area Control Act Rules at N.J.A.C. 7:13-4.1(c)1 establish 300-foot riparian zones along Category One waters, as designated in the Surface Water Quality Standards at N.J.A.C. 7:9B, and certain upstream tributaries to Category One waters. A person shall not undertake a major development that is located within or discharges into a 300-foot riparian zone without prior authorization from the Department under N.J.A.C. 7:13. For more information, please visit the Division of Land Use Regulation's website at <http://www.nj.gov/dep/landuse>.

Return to Section 8.0 | Return to Top

## Section 9.0 New Jersey Stormwater BMP Manual

- 9.1 If an infiltration basin is designed properly, can it be used to meet the runoff quantity, water quality and groundwater recharge standards all at the same time?
- 9.2 What is the difference between a bioretention basin and a bioretention swale?
- 9.3 Can a BMP design not specifically shown in the BMP manual be submitted to the reviewing agency to demonstrate compliance with the 80% TSS reduction standard?
- 9.4 Forebays are required for sand filters, constructed wetlands and wet ponds. Can a manufactured treatment device (MTD) take the place of a forebay?
- 9.5 The BMP manual includes minimum design permeability rates for groundwater recharge and infiltration BMPs. Is there a maximum permeability rate?

### 9.1 If an infiltration basin is designed properly, can it be used to meet the runoff quantity, water quality and groundwater recharge standards all at the same time?

Yes, but only if the requirement in the Stormwater Management rules at N.J.A.C. 7:8-5.3 for the maximization of nonstructural stormwater management strategies have first been met. Note that the Stormwater BMP manual states that the use of an infiltration basin is only recommended for the depths of two feet or less.

Return to Section 9.0 | Return to Top

### 9.2 What is the difference between a bioretention basin and a bioretention swale?

A bioretention basin has a maximum depth of 12 inches for the stormwater quality design storm. A bioretention swale has a maximum depth of 18 inches, since the slope and the linear nature of the swale will result in low depths of ponding in portions of the basin. However, the average depth of ponding in the basin should be no greater than 12 inches.

Return to Section 9.0 | Return to Top

### 9.3 Can a BMP design not specifically shown in the BMP manual be submitted to the reviewing agency to demonstrate compliance with the 80% TSS reduction standard?

Any applicant has the option to submit an alternative BMP design to the review agency, with sufficient documentation to demonstrate the appropriate removal rates. If the project is the subject of a Division of Land Use Regulation permit, the use of a BMP that is not listed in the BMP manual must be identified in the permit application form. (Please note that this does not apply to manufactured treatment devices which are required to go through the certification and verification process as required under N.J.A.C. 7:8-5.7(c).) The alternative design along with the required documentation must be submitted for evaluation to the address shown below. In order to avoid delaying the review of the Land Use Regulation permit, it is strongly recommended that this submission be made at least two months prior to the submission of the project to the Division of Land Use Regulation.

Division of Water Quality  
Bureau of Nonpoint Pollution Control  
PO Box 420, Mail Code 401-02B  
401 E. State St., 3rd Floor  
Trenton, NJ 08625-0420

Tel. (609)292-0407  
Tel. (609)633-7021  
Fax (609)984-2147

If the Department is not the review agency, the review agency can approve the alternative design. However, a copy of any approved alternative removal rate or method of calculating removal rate must be submitted to the Department.

Return to Section 9.0 | Return to Top

### 9.4 Forebays are required for sand filters, constructed wetlands and wet ponds. Can a manufactured treatment device (MTD) take the place of a forebay?

An MTD with a removal rate of greater than 50% TSS can be utilized instead of a forebay in such a case. However, since the forebay is part of the requirement for a sand filter, a constructed wetland and a wet pond, the resulting removal rate is not a combination of the MTD removal rate and the non-MTD removal rate. Any use of an MTD instead of a forebay must address the scour potential and impacts on the BMP resulting from the MTD discharge.

Return to Section 9.0 | Return to Top

### 9.5 The BMP manual includes minimum design permeability rates for groundwater recharge and infiltration BMPs. Is there a maximum permeability rate?

All field permeability tests must utilize half the tested rate for the design of infiltration facilities to provide a safety factor. Furthermore, for any field tested rate of 2.0 inches

per hour or greater, the maximum allowable design soil permeability rate shall be 10 inches per hour in order to ensure basin drawdown within 72 hours.

[Return to Section 9.0](#) | [Return to Top](#)

## Section 10.0 Impervious Surfaces

- 10.1 What is an impervious surface?  
 10.2 Does an existing impervious surface count toward the 0.25 of an acre threshold under any circumstance?  
 10.3 Is gravel considered impervious surface?  
 10.4 Is porous pavement considered pervious or impervious?  
 10.5 Are interlocking concrete pavers considered pervious or impervious?

### 10.1 What is an impervious surface?

An impervious surface is an area that has been covered by a layer of material that is highly resistant to infiltration by water. Impervious surfaces include concrete, asphalt, driveways, basketball courts, concrete patios, swimming pools and buildings.

[Return to Section 10.0](#) | [Return to Top](#)

### 10.2 Does an existing impervious surface count toward the 0.25 of an acre threshold under any circumstance?

All of the following count as a "new" impervious surface for the purpose of the Stormwater Management rules:

- Any net increase of impervious surface onsite;
- Any change in an existing stormwater drainage system, which currently collects runoff from existing impervious surface, and the proposed change increases the capacity of the existing stormwater system (thereby potentially decreasing time of concentration, storage or water quality treatment of the existing runoff); and
- Any existing impervious surface, where the runoff is provided with existing water quality treatment, but which is proposed to be collected and discharged into a regulated area. Therefore, if existing vegetation provides water quality treatment for existing impervious surface runoff, water quality must be addressed if a project reduces or eliminates existing water quality protections. For example, runoff currently sheet-flows from a roadway onto adjacent lawns. As part of a municipal drainage improvement, a new storm sewer system will collect the runoff from the roadway and discharge it to a nearby stream. Even though there is no net increase in impervious surface, the newly collected runoff is "new" to the receiving stream. There will also be a loss of existing water quality treatment since runoff that currently sheet-flows through vegetation will now be directly discharged to the stream. As such the newly collected runoff must be treated to the existing Total Suspended Solid (TSS) removal rate, or to 50% TSS removal, whichever is greater.

[Return to Section 10.0](#) | [Return to Top](#)

### 10.3 Is gravel considered impervious surface?

New gravel is not considered impervious under the Stormwater Management rules. However, if an applicant can demonstrate that under existing conditions on a previously developed site, the gravel material performs as an impervious surface, it may be considered impervious for the purposes of redevelopment. It is important to note that gravel may be considered impervious under other Department rules.

[Return to Section 10.0](#) | [Return to Top](#)

### 10.4 Is porous pavement considered pervious or impervious?

Porous pavement is counted as impervious surface toward the threshold of jurisdiction for the applicability of the Stormwater Management rules and the applicability of the water quality standards. For instance, if 1 acre of porous pavement and 2 acres of standard pavement are proposed on a site, the total impervious surface onsite (for the purpose of determining applicability of the Stormwater Management rules) is 3 acres. However, while the water quality requirements do apply to runoff from porous pavement, the subsurface infiltration facility that is part of standard porous pavement construction will adequately address the water quality requirements of the rules, provided the subsurface infiltration facility is designed in accordance to the Stormwater Best Management Practices manual.

[Return to Section 10.0](#) | [Return to Top](#)

### 10.5 Are interlocking concrete pavers considered pervious or impervious?

Any pavers with a void area of 20% or less will be considered completely impervious for the purposes of the Stormwater Management rules. In pavers with greater than 20% void area, the applicant may count only the non-void area as impervious, provided the void areas are not grouted or made impermeable in any way.

[Return to Section 10.0](#) | [Return to Top](#)

## Section 11.0 Division of Land Use Regulation Review

Note: Revisions were proposed to the Freshwater Wetlands Protection Act Rules (N.J.A.C. 7:7A-1.1 et seq.) and published in the New Jersey Register on September 4, 2007 (Cite 39 NJR 3587 (a)). Those proposed revisions are not addressed in these FAQ's. See [www.nj.gov/dep/landuse](http://www.nj.gov/dep/landuse) for information on these rules.

- 11.1 Does a complete application for a DLUR permit exempt a project from the Stormwater Management rules?  
 11.2 Under a Division of Land Use Regulation permit, what part of a project counts toward the 0.25 of an acre and 1 acre thresholds?  
 11.3 As noted above, once the 0.25 of an acre or 1 acre threshold is reached, jurisdiction is achieved for the Stormwater Management rules. However, do the rules apply then to the whole site or only to that portion of the site that lies within Division of Land Use Regulation jurisdiction?  
 11.4 A project needs a Freshwater Wetlands general permit 11 (GP11) to construct an outfall structure and does not need any other Division of Land Use Regulation (DLUR) permits. If the inflow area to a GP11 does not constitute a "major development", but the project as a whole meets the definition of a "major development", do the Stormwater Management rules apply to the project?  
 11.5 An applicant requests a Freshwater Wetlands transition area waiver - averaging plan to accommodate a proposed development. A stormwater discharge is proposed within the averaged transition area. The Freshwater Wetlands rules at N.J.A.C. 7:7A-6.2(b)3 prohibit situations where "unfiltered or untreated stormwater (discharging) into wetlands will be placed within (an) existing, pre-activity transition area." How would the Stormwater Management rules apply in such a case?  
 11.6 For projects that are exempt from transition areas under the Freshwater Wetlands Rules, what areas of disturbance count toward the thresholds?

- 11.7** An applicant requests a Freshwater Wetlands Letter of Interpretation (LOI). No construction is proposed at this time. Do the Stormwater Management rules apply?
- 11.8** An applicant requests a Flood Hazard Area Control Act Verification to delineate a flood plain and establish the Riparian zone. The verification indicates that all construction lies outside the flood hazard area and the Riparian Zone. Do the Stormwater Management rules apply?
- 11.9** The Freshwater Wetlands rules appear to indicate that the Stormwater Management rules only apply to general permits. Do they also apply to projects or activities requiring transition areas waivers and individual permits that exceed the jurisdictional thresholds above?
- 11.10** An applicant paves 0.2 of an acre of a site under a Division of Land Use Regulation (DLUR) permit. There is no other disturbance onsite and so the project is not subject to the Stormwater Management rules. Next year the same applicant paves another 0.2 of an acre of that site under another DLUR permit, thus exceeding the 0.25 of an acre threshold for "major development". Since all work occurs after February 2, 2004, will the entire 0.4 of an acre of pavement be subject to the rules? Or will runoff from the second phase be required to meet the design and performance standards?
- 11.11** A proposed stream-cleaning project will disturb over 1 acre of land. Do the Stormwater Management rules apply?
- 11.12** A proposed bank stabilization project will result in 0.25 acres of new impervious surface. How do the Stormwater Management rules apply in such a case?
- 11.13** An applicant received a Freshwater Wetlands general permit 11 (GP11) and all necessary local approvals for a stormwater discharge prior to February 2, 2004. However, the applicant still needs a Flood Hazard Area Control Act permit for the proposed discharge. Since the Freshwater Wetlands rules prior to February 2, 2004 required only a water quality review for the GP11, is the discharge grandfathered from the entire Stormwater Management rule or only the water quality standards?
- 11.14** An applicant received a Freshwater Wetlands general permit 11 (GP11) several years ago, which expires next week. The applicant has requested an extension. No other Division of Land Use Regulation permits are required for the project. Can the Department extend the GP11?
- 11.15** What if, in the case above, the applicant also obtained a Flood Hazard Area Control Act (FHACA) permit for the same project in 2005? Since the FHACA permit is valid for five years, the project would therefore be grandfathered until 2010. Would the Division of Land Use Regulation (DLUR) then extend the GP11 without requiring a change in the design to meet the Stormwater Management rules?
- 11.16** What if an adjacent water body is proposed and adopted as a new Category One (C1) water under the Surface Water Quality Standards (N.J.A.C. 7:9B)? Which projects are grandfathered?

**11.1 Does a complete application for a DLUR permit exempt a project from the Stormwater Management rules?**

No. A completed application is not sufficient to qualify for exemption from, or satisfy the requirements of, these rules. It is during the review of the DLUR permit application that the Department will determine if the requirements of these rules have been met. If they have not, the permit will be denied.

Return to Section 11.0 | Return to Top

**11.2 Under a Division of Land Use Regulation permit, what part of a project counts toward the 0.25 of an acre and 1 acre thresholds?**

For Flood Hazard Area Control Act, CAFRA and Waterfront Development permits, all proposed impervious surface and development onsite counts toward the thresholds.

For Freshwater Wetlands Permits and Transition Area Waivers, other than a point discharge (outfall structure), calculate the total proposed impervious surface and disturbance actually within freshwater wetlands, transition areas and open waters. If disturbance within these areas exceed either threshold, then the Stormwater Management rules apply to the entire site.

For a point discharge: if a stormwater outfall is proposed within freshwater wetlands, transition areas or open water (regardless of the type of Freshwater Wetlands permit applied for: individual permit, general permit or transition area waiver applied for), all impervious surfaces and disturbed areas draining to the proposed discharge count toward the thresholds.

Return to Section 11.0 | Return to Top

**11.3 As noted above, once the 0.25 of an acre or 1 acre threshold is reached, jurisdiction is achieved for the Stormwater Management rules. However, do the rules apply then to the whole site or only to that portion of the site that lies within Division of Land Use Regulation jurisdiction?**

Once jurisdiction is achieved for a project, the Stormwater Management rules apply to the entire project (whether within or outside an area regulated by the Department).

Return to Section 11.0 | Return to Top

**11.4 A project needs a Freshwater Wetlands general permit 11 (GP11) to construct an outfall structure and does not need any other Division of Land Use Regulation (DLUR) permits. If the inflow area to a GP11 does not constitute a "major development", but the project as a whole meets the definition of a "major development", do the Stormwater Management rules apply to the project?**

No. Because the only DLUR permit needed is a Freshwater Wetland permit, only development within the area that drains to the GP11 is considered when determining jurisdiction. Therefore, if the area draining to the discharge point does not exceed the threshold for "major development", then DLUR will not apply the Stormwater Management rules to the project. However, if there are several discharge points for a proposed project within regulated areas, the cumulative drainage areas to all regulated discharge points shall be used in determining whether the definition of major development is met.

Return to Section 11.0 | Return to Top

**11.5 An applicant requests a Freshwater Wetlands transition area waiver - averaging plan to accommodate a proposed development. A stormwater discharge is proposed within the averaged transition area. The Freshwater Wetlands rules at N.J.A.C. 7:7A-6.2(b)3 prohibit situations where "unfiltered or untreated stormwater (discharging) into wetlands will be placed within (an) existing, pre-activity transition area." How would the Stormwater Management rules apply in such a case?**

Any discharge point into a freshwater wetlands, transition area or open water may trigger the Stormwater Management rules regardless of the authorization sought for the discharge, including discharge into the pre-activity transition area. All proposed activities in the entire inflow area to the discharge point count toward jurisdiction. However, if neither the 0.25 of an acre or 1 acre threshold were exceeded as a result of the proposed activities in the inflow area, then the Stormwater Management rules would not apply. In such a case, the proposed activity would be understood to have a *de minimus* impact on the transition areas, and the prohibition at N.J.A.C. 7:7A-6.2(b)3 does not apply.

[Return to Section 11.0](#) | [Return to Top](#)

**11.6 For projects that are exempt from transition areas under the Freshwater Wetlands Rules, what areas of disturbance count toward the thresholds?**

If there is no regulated transition area onsite, only the freshwater wetlands and open water disturbance would count toward the threshold, unless the disturbance includes a discharge point, in which case the proposed activities in the cumulative drainage areas to all regulated discharge points shall be used to determine whether the definition of major development is met.

[Return to Section 11.0](#) | [Return to Top](#)

**11.7 An applicant requests a Freshwater Wetlands Letter of Interpretation (LOI). No construction is proposed at this time. Do the Stormwater Management rules apply?**

No. An LOI approves a wetlands boundary and does not approve construction activities. Since no construction is proposed at this time, the project does not meet the definition of major development. Should the applicant eventually propose construction onsite requiring a Division of Land Use Regulation permit, the project would be evaluated upon submittal to the Department to determine if it is a "major development".

[Return to Section 11.0](#) | [Return to Top](#)

**11.8 An applicant requests a Flood Hazard Area Control Act Verification to delineate a flood plain and establish the Riparian zone. The verification indicates that all construction lies outside the flood hazard area and the Riparian Zone. Do the Stormwater Management rules apply?**

Not for the purposes of obtaining a Verification. Establishing the limit of the flood plain and riparian zone simply sets a jurisdictional boundary similar to setting a wetlands boundary under an LOI. Should the applicant eventually propose construction onsite requiring a Division of Land Use Regulation permit, the project would be evaluated upon submittal to the Department to determine if it is a "major development".

[Return to Section 11.0](#) | [Return to Top](#)

**11.9 The Freshwater Wetlands rules appear to indicate that the Stormwater Management rules only apply to general permits. Do they also apply to projects or activities requiring transition areas waivers and individual permits that exceed the jurisdictional thresholds above?**

Yes. The Stormwater Management rules apply to any activity authorized under N.J.A.C. 7:27A that exceeds the jurisdictional thresholds.

[Return to Section 11.0](#) | [Return to Top](#)

**11.10 An applicant paves 0.2 of an acre of a site under a Division of Land Use Regulation (DLUR) permit. There is no other disturbance onsite and so the project is not subject to the Stormwater Management rules. Next year the same applicant paves another 0.2 of an acre of that site under another DLUR permit, thus exceeding the 0.25 of an acre threshold for "major development". Since all work occurs after February 2, 2004, will the entire 0.4 of an acre of pavement be subject to the rules? Or will runoff from the second phase be required to meet the design and performance standards?**

Any activity proposed onsite after February 2, 2004, counts when determining jurisdiction under the Stormwater Management rules. Under Phase 1, as described above, the project did not meet the definition of "major development" and so the rules did not apply. However, under Phase 2, the total amount of disturbance occurring after February 2, 2004, exceeds the jurisdictional limits. As such, all construction under Phase 2 must meet the new standards. Since Phase 1 is already approved, the Department will not force the applicant to retrofit the project to meet the Stormwater Management rules for the Phase 1.

[Return to Section 11.0](#) | [Return to Top](#)

**11.11 A proposed stream-cleaning project will disturb over 1 acre of land. Do the Stormwater Management rules apply?**

It was not the intent of the Stormwater Management rules to capture these types of projects. Although more than 1 acre of land is disturbed, the Department will not require stream-cleaning projects to meet the Stormwater Management rules since this type of project will not significantly affect groundwater recharge, runoff quantity or water quality.

[Return to Section 11.0](#) | [Return to Top](#)

**11.12 A proposed bank stabilization project will result in 0.25 acres of new impervious surface. How do the Stormwater Management rules apply in such a case?**

As with [Question 11.11](#) above regarding stream-cleaning projects, bank stabilization projects will not significantly affect groundwater recharge, runoff quantity or water quality. In fact, bank stabilization often reduces erosion and promotes healthy riparian corridors, thus improving water quality. As such, the Department will not require bank stabilization projects to meet the Stormwater Management rules.

[Return to Section 11.0](#) | [Return to Top](#)

**11.13 An applicant received a Freshwater Wetlands general permit 11 (GP11) and all necessary local approvals for a stormwater discharge prior to February 2, 2004. However, the applicant still needs a Flood Hazard Area Control Act permit for the proposed discharge. Since the Freshwater Wetlands rules prior to February 2, 2004 required only a water quality review for the GP11, is the discharge grandfathered from the entire Stormwater Management rule or only the water quality standards?**

The area of the project that drains into the GP11 discharge is grandfathered from all new requirements of the Stormwater Management rules. However, if any portion of the project needs a Flood Hazard Area Control Act permit and the overall project meets the definition of major development, any portion of the project not covered by the GP11 will be subject to the Stormwater Management rules.

[Return to Section 11.0](#) | [Return to Top](#)

**11.14 An applicant received a Freshwater Wetlands general permit 11 (GP11) several years ago, which expires next week. The applicant has requested an extension. No other Division of Land Use Regulation permits are required for the project. Can the Department extend the GP11?**

DLUR cannot extend the GP11 because the rules governing the GP11 have changed by virtue of the adoption of the new Stormwater Management rules. Therefore, once the GP11 expires, the project is no longer grandfathered. If the applicant wishes to receive a new GP11, the project must be redesigned to meet the standards of the Stormwater Management rules.

[Return to Section 11.0](#) | [Return to Top](#)

**11.15 What if, in the case above, the applicant also obtained a Flood Hazard Area Control Act (FHACA) permit for the same project in 2005? Since the FHACA**

**permit is valid for five years, the project would therefore be grandfathered until 2010. Would the Division of Land Use Regulation (DLUR) then extend the GP11 without requiring a change in the design to meet the Stormwater Management rules?**

Since, in this case, the project is grandfathered until 2010, DLUR would extend the GP11 so that it would expire along with the FHACA permit (thus the extension to the GP11 would be for less than five years). However, if the project requires local approval or if such local approvals expire prior to 2010, and the project meets the definition of "major development", the project may be subject to the Stormwater Management rules through that local approval process.

[Return to Section 11.0](#) | [Return to Top](#)

#### **11.16 What if an adjacent water body is proposed and adopted as a new Category One (C1) water under the Surface Water Quality Standards (N.J.A.C. 7:9B)? Which projects are grandfathered?**

The rules that implement buffers around C1 waters are the Stormwater Management rule (N.J.A.C. 7:8) and the Flood Hazard Area Control Act rule (N.J.A.C. 7:13). Projects are grandfathered as follows when a stream is upgraded to C1:

Pending and previously approved projects: If the project has a valid Division of Land Use Regulation (DLUR) permit or an application deemed complete by the Department prior to the effective date of a C1 designation, it is not subject to the requirements made applicable by the new designation.

Projects needing more than one DLUR permit: If the project has a valid DLUR permit (i.e. Flood Hazard) prior to the effective date of a C1 designation and requires another DLUR permit (i.e. Freshwater Wetlands), the review of the other permit will be exempt from requirements made applicable by the C1 designation, including those in the Stormwater Management rules, provided that the previously approved valid permit included a stormwater management review consistent with the Stormwater Management rules effective February 2, 2004 and any subsequent amendments.

Projects that did not need a Flood Hazard Area Control Act (FHACA) permit prior to a new C1 designation, but are now located within the C1 buffer:

- Projects with municipal approval, issued prior to the effective date of the C1 designation, that enables commencement of construction will not require a FHACA permit.
- Projects that did not need a municipal approval and began construction before the effective date of the C1 designation as evidenced by: the foundation for at least one building or structure; all of the subsurface improvements for a roadway; or the installation of all of the bedding materials for a utility line, will not require a FHACA permit.

In all cases, if the project changes such that a new permit application is required, the designation in effect at the time of the new application will apply.

[Return to Section 11.0](#) | [Return to Top](#)

### **Section 12.0 Stormwater Review by Municipalities**

**12.1** What should a municipality do with projects currently before the local planning board?

**12.2** What is the trigger for the municipal review under the Stormwater Management rules?

**12.3** Can a municipal ordinance change the trigger for the implementation of the Stormwater Management rules?

**12.4** If a municipality is reviewing the stormwater management criteria under the Residential Site Improvement Standards (RSIS), and the municipal engineer allows a

de minimis exception under RSIS, is the project required to provide mitigation?

**12.5** Can a municipality establish any stormwater management criteria, including quality, for residential projects below the threshold of major development if they are neither a site plan or subdivision?

#### **12.1 What should a municipality do with projects currently before the local planning board?**

The Stormwater Management rules do not affect the jurisdiction or requirements of municipal planning boards under the Municipal Land Use Law. Planning Boards should continue to exercise their authority under the Municipal Land Use Law, reviewing projects for compliance with their existing stormwater control ordinances. Municipalities should be reviewing residential development for compliance with the Stormwater Management rules under the Residential Site Improvement Standards. Once revised municipal stormwater control ordinances are effective, the municipality must utilize the stormwater ordinance.

[Return to Section 12.0](#) | [Return to Top](#)

**12.2** What is the trigger for the municipal review under the Stormwater Management rules?

Pursuant to the federal mandate, municipalities must review projects that disturb one acre or more. However, certain municipalities have incorporated the requirement for the municipal review utilizing smaller thresholds. The applicant should always verify the trigger for incorporating the requirements of the stormwater management rules with each municipality.

[Return to Section 12.0](#) | [Return to Top](#)

#### **12.3 Can a municipal ordinance change the trigger for the implementation of the Stormwater Management rules?**

Municipal ordinances can be amended to be more stringent than the requirements of the Stormwater Management rules, but not to be more lax. The Residential Site Improvement Standards (RSIS) allow municipalities to require stormwater runoff controls for development falling below major development to address groundwater recharge and stormwater runoff quantity, but not for water quality as provided in the RSIS at N.J.A.C. 5:21-7.1.

[Return to Section 12.0](#) | [Return to Top](#)

**12.4 If a municipality is reviewing the stormwater management criteria under the Residential Site Improvement Standards (RSIS), and the municipal engineer allows a de minimis exception under RSIS, is the project required to provide mitigation?**

The applicant is required to provide mitigation, unless the project has received a waiver for the performance standard from the Department. For those situations, the necessity to provide mitigation based on the stormwater management requirements are at the discretion of the municipality.

[Return to Section 12.0](#) | [Return to Top](#)

**12.5 Can a municipality establish any stormwater management criteria, including quality, for residential projects below the threshold of major development if they are neither a site plan or subdivision?**  
Yes.

## Section 13.0 Stormwater Review in Pinelands Areas

- 13.1 Do the Stormwater Management rules supersede the stormwater management criteria of the Pinelands Comprehensive Management Plan (CMP)?
- 13.2 The July 19, 2006 Model Stormwater Control Ordinance for Pinelands Area Municipalities includes language that indicates an applicant can use alternative calculation methods to the Natural Resource Conservation Service (NRCS) methodology to calculate runoff rates and volumes. When are these alternative methods applicable?

### 13.1 Do the Stormwater Management rules supersede the stormwater management criteria of the Pinelands Comprehensive Management Plan (CMP)?

The Stormwater Management rules do not supersede the Pinelands CMP. Therefore, both sets of requirements must be addressed, where applicable. However, the Pinelands CMP has been revised to be in compliance with the requirements of the Stormwater Management rules. In addition, the Stormwater Control Ordinance for Pinelands Municipalities has been provided for adoption by Pinelands municipalities to ensure compliance with both regulations


[Return to Section 13.0](#) | [Return to Top](#)

### 13.2 The July 19, 2006 Model Stormwater Control Ordinance for Pinelands Area Municipalities includes language that indicates an applicant can use alternative calculation methods to the Natural Resource Conservation Service (NRCS) methodology to calculate runoff rates and volumes. When are these alternative methods applicable?

Both the Pinelands Comprehensive Management Plan and the Model Ordinance require the use of the USDA-NRCS Runoff Equation, Runoff Curve Numbers, and Dimensionless Unit Hydrograph. The reference to the use of alternative methods is provided to recognize that the adoption of a regional stormwater management plan may result in alternative computational methods, and may supersede this standard if adopted. However, unless a regional stormwater management plan has been adopted by the Department, certified by the Pinelands Commission, and specifically revises the computational methods, alternative computational methods may not be utilized to comply with this requirement.

[Return to Section 13.0](#) | [Return to Top](#)

---

[Contact DEP](#) | [Privacy Notice](#) | [Legal Statement & Disclaimers](#) | [Accessibility Statement](#) 

Department: NJDEP Home | About DEP | Index by Topic | Programs/Units | DEP Online  
Statewide: NJ Home | Services A to Z | Departments/Agencies | FAQs

Copyright © State of New Jersey, 1996-2018

Last Updated: October 19, 2016