

THIS IS A COURTESY COPY OF THE FLOOD HAZARD AREA CONTROL ACT, N.J.S.A. 58:16A-50 ET SEQ. THE OFFICIAL VERSION IS PUBLISHED IN THE NEW JERSEY STATUTES. IF THERE ARE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE STATUTE, THE OFFICIAL VERSION WILL GOVERN.

“Flood Hazard Area Control Act”

UPDATED THROUGH P.L. 2018, ch. 11 and JR 4 of 2018

58:16A-50. Short title; declaration of policy

a. This act shall be known and may be cited as the "Flood Hazard Area Control Act." b. It is in the interest of the safety, health, and general welfare of the people of the State that legislative action be taken to empower the Department of Environmental Protection to delineate and mark flood hazard areas, to authorize the Department of Environmental Protection to adopt land use regulations for the flood hazard area, to control stream encroachments, to coordinate effectively the development, dissemination, and use of information on floods and flood damages that may be available, to authorize the delegation of certain administrative and enforcement functions to county governing bodies and to integrate the flood control activities of the municipal, county, State and Federal Governments.

58:16A-51. Definitions

As used in this act, unless the context indicates another or different meaning or intent: (a) "Channel" means a watercourse with definite bed and banks which confine and conduct continuously or intermittently flowing water; (b) "Floodway" means the channel of a natural stream and portions of the flood hazard area adjoining the channel, which are reasonably required to carry and discharge the flood water or flood flow of any natural stream; (c) "Flood hazard area" means the floodway and the flood fringe area as determined by the department under section 3 hereof; (d) "Relative risk" means the varying degrees of hazard to life and property in a flood hazard area which are occasioned by differences in depth and velocity of flood waters covering and flowing over it; (e) "Flood fringe area" means that portion of the flood hazard area not delineated as the floodway; (f) "Department" means the Department of Environmental Protection. (g) "Person" means and shall include corporations, companies, associations, societies, firms, partnerships and joint stock companies as well as individuals, and shall also include all political subdivisions of this State or any agencies or instrumentalities thereof.

58:16A-52 Delineation of flood hazard areas.

3. a. The department shall study the nature and extent of the areas affected by flooding in the State. After public hearing upon notice, and pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the department shall adopt rules and regulations which delineate as flood hazard areas such areas as, in the judgment of the department, the improper development and use of which would constitute a threat to the safety, health, and general welfare from flooding. These delineations shall identify the various subportions of the flood hazard area

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for reasonable and proper use according to relative risk, including the delineation of floodways necessary to preserve the flood carrying capacity of natural streams. The department shall, within the limits of funds appropriated or otherwise made available therefor, update delineations of flood hazard areas as appropriate as provided in subsection b. of this section. The department shall update its delineations of flood hazard areas at least once every 15 years and shall prioritize the preparation of updates based upon flood risk. The department may, after public hearing upon notice and pursuant to the "Administrative Procedure Act," revoke, amend, alter, or modify such regulations if in its judgment the public interest so warrants.

b. (1) The department shall wherever practicable, make flood hazard area delineations at least as protective as the floodplain delineations approved by the Federal Emergency Management Agency for the National Flood Insurance Program. Immediately upon adoption of a floodplain delineation approved by the Federal Emergency Management Agency for the National Flood Insurance Program, the department shall include the federal floodplain delineation as the department's minimum flood hazard area delineation for that watercourse, provided that the department has determined that the federal floodplain delineation is sufficient to carry and discharge the flood flow of the watercourse and is at least as protective of the public safety, health, and general welfare as the department's delineation.

(2) Notwithstanding any other provision of law, or rule or regulation adopted pursuant thereto, to the contrary, a person shall apply for a permit or other approval or authorization issued by the department pursuant to the "Flood Hazard Area Control Act," P.L.1962, c.19 (C.58:16A-50 et seq.), for a site based upon a floodplain delineation at least as protective as one approved by the Federal Emergency Management Agency for the National Flood Insurance Program, provided that (a) the federal floodplain delineation is more recent than the department's delineation for the same watercourse, and (b) the department has determined that the federal floodplain delineation is sufficient to carry and discharge the flood flow of the watercourse and is at least as protective of the public safety, health, and general welfare as the department's delineation.

c. The department shall establish a procedure for reducing any delineated flood hazard area when a change has been made which increases the flood carrying capacity of the concerned stream at that location.

58:16A-53. Markers

The department may conspicuously mark in the field (1) any flood hazard area delineated by the department, and (2) any other area the department may deem necessary to effectuate the purposes of this act. The department may erect markers on any property belonging to the State, or any agency or instrumentality thereof. Such markers may be erected on any county,

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municipal, or private property provided that such county, municipality, or owner shall have consented thereto. No person may remove, deface or otherwise disturb any marker erected under the provisions of this act.

58:16A-55. Land in designated floodway; rules, regulations and orders concerning development and use; waiver

(a) The department is authorized to adopt, amend and repeal rules and regulations and to issue orders concerning the development and use of land in any delineated floodway which shall be designed to preserve its flood carrying capacity and to minimize the threat to the public safety, health and general welfare. Such rules and regulations or orders may require the approval of the department for specified changes in the use of land within any such floodway. (b) Provision shall be made by the department for the waiver, according to definite criteria, of strict compliance with the rules and regulations, where necessary to alleviate hardship.

58:16A-55.1. Repair or rebuilding of lawful preexisting structure within flood hazard area

No rule or regulation adopted pursuant to section 4 or 7 of P.L.1972, c. 185 (C. 58:16A-55 or 58) shall prevent the repair or rebuilding within a flood hazard area of any lawful preexisting structure which was damaged by a flood or by any other means.

58:16A-55.2. Structure or alteration within area subject to inundation by 100 year design flood of nondelineated stream; approval; conditions

a. No structure or alteration within the area which would be inundated by the 100 year design flood of any nondelineated stream shall be made, rebuilt or renewed by any person without the approval of the department and without complying with such conditions as the department may prescribe for preserving such area and providing for the flow of water therein to safeguard the public against danger from the waters impounded or affected by such structure or alteration. No such approval by the department shall impair or affect any property rights otherwise existing which might be invaded by the construction or maintenance of any such structure or alteration. b. The department is authorized, pursuant to the "Administrative Procedure Act" P.L.1968, c. 410 (C. 52:14B-1 et seq.), to adopt, amend or repeal rules and regulations and to issue orders concerning the making, rebuilding or renewing of any structure or alteration and the development or use of land in the area which would be inundated by the 100 year design flood of any nondelineated stream, which rules and regulations shall be designed to preserve the flood carrying capacity of the stream to minimize the threat to the public safety, health and general welfare. Such rules and regulations shall include a provision which exempts, according to definite criteria, certain minor structures or alterations of a specific size or type from the provisions of subsection a. of this section.

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58:16A-55.3. Application for development under Municipal Land Use Law; approval by department

No application for development as defined in the "Municipal Land Use Law," P.L.1975, c. 291 (C. 40:55D-1 et seq.), for a structure within the area which would be inundated by the 100 year design flood of any nondelineated stream or for a change in land use within a delineated floodway or any State-administered and delineated flood fringe area when such change would require departmental approval, may be granted by any municipality to any person without application to and approval by the department as required pursuant to this act.

58:16A-55.4. County stormwater control and drainage plans; utilization on determinations of approval

Any county governing body may prepare a stormwater control and drainage plan for the county. Such plans shall be prepared after consultation and discussion with the Department of Environmental Protection and with adjacent counties and shall consider and evaluate the impact of any developments within the county or upstream from the county on the streams within the county and downstream from the county. Such plans may be financed in part from the "Emergency Flood Control Bond Act" (P.L.1978, c. 78). County stormwater control and drainage plans prepared as herein provided shall be utilized by the department in deciding to approve or disapprove any application submitted pursuant to this act.

58:16A-55.5. County water resources associations

Any county governing body may by ordinance or resolution as appropriate, create a county water resources association which may include the chief administrative officer of any county planning agency, county engineers office, county utilities authority, county health department, county mosquito commission, county soil conservation district, or county parks agency and any other public or private members. The county water resources association shall advise the county governing body, shall coordinate the flood control and water management programs for the county and shall have such powers as the county governing body may delegate to it concerning water management in the ordinance or resolution of creation.

58:16A-55.6. Delegation of power to approve or disapprove application to county governing body

The Department of Environmental Protection may delegate its power to approve or disapprove any application made to it pursuant to this act and its power to enforce any aspect of this act to a county governing body which agrees to accept such designation and in the department's judgment is capable of utilizing the rules, regulations and standards adopted by the department for the administration of this program. The department shall review this delegation

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at least biannually and may revoke such delegation for failure to properly administer such delegated powers. The county governing body may charge the same fees promulgated by the commissioner pursuant to P.L.1975, c. 232 (C. 13:1D-33), when such powers are delegated to it.

58:16A-55.7. Exemptions to requirement for permit to repair dam

2. The Commissioner of Environmental Protection shall not require a permit for the repair of any dam used for agricultural purposes within a special agricultural production area designated pursuant to N.J.A.C.7:50-5.14 in the pinelands area.

58:16A-55.8 Hazardous substances, placing, storing in certain flood plains, prohibited.

2. a. No person shall place or store, or cause to be placed or stored, any containers holding hazardous substances as defined in section 3 of P.L.1976, c.141 (C.58:10-23.11b) in a 100-year flood plain, as defined by the Commissioner of Environmental Protection in rules and regulations adopted pursuant to the provisions of the "Flood Hazard Area Control Act," P.L.1962, c.19 (C.58:16A-50 et seq.), unless:

(1) The facility at which any containers holding hazardous substances are to be placed or stored is in compliance with flood protection measures to prevent the release of hazardous substances due to flooding, as follows: (a) an approved engineering design of site-specific flood protection devices designed to prevent washout; or (b) an approved written plan of emergency procedures for removing the containers to safety or out of the facility before the facility is flooded; and

(2) Every container is visibly marked in a manner determined in rules and regulations adopted by the department pursuant to the "Administrative Procedure Act" with a label designed and affixed to ensure that the label shall remain visible and in place if there is a flood or other natural disaster stating the following:

Caution: Hazardous Contents

To be handled and opened only by authorized personnel

If found, please contact

The New Jersey Department of Environmental Protection

1-877-927-6337

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b. The labeling requirements of subsection a. of this section shall not apply to containers required to be labeled pursuant to other State or federal laws or containers labeled pursuant to the "Federal Insecticide, Fungicide, and Rodenticide Act," 7 U.S.C. s.136 et seq.

c. For the purposes of this section, "container" means a receptacle used to hold a liquid, solid, or gaseous substance, including, but not limited to, bottles, bags, barrels, boxes, cans, cylinders, drums, cartons, vessels, vats, and stationary or mobile storage tanks; except that "container" shall not include process containers, pipelines or underground storage tanks.

58:16A-56. Minimum standards for local rules and regulations

The department shall promulgate minimum standards for the adoption of local rules and regulations concerning the development and use of land in the flood fringe area designed to minimize the threat to the public safety, health and general welfare.

58:16A-57. Rules and regulations by affected municipality or other responsible entity for development and use of land in flood fringe area

Within 12 months after the delineation of any flood hazard area, and at least 12 months after the promulgation of standards by the department, the affected municipality or other responsible entity shall adopt rules and regulations concerning the development and use of land in the flood fringe area which at least conform to the standards promulgated by the department.

58:16A-58. Failure to adopt or enforce local rules and regulations; action by department

If any affected municipality or other responsible entity fails to adopt or fails to enforce rules and regulations concerning the development and use of land in the flood fringe area which at least conform to the standards promulgated by the department within the specified period, thereafter the department may adopt such rules and regulations which shall be applicable to the particular flood fringe area. Such rules and regulations may require application to and approval by the department for such development or use within any such flood fringe area.

58:16A-59. Adoption of rules and regulations by department; requirements

No rule or regulation adopted by the department pursuant to sections four or seven of this act shall become effective until after notice and public hearing before the department as required by the Administrative Procedures Act (C. 52:14-1 et seq.).

58:16A-60. Inapplicability of rules and regulations to lands regulated by Wetlands Act of 1970

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Any rules and regulations adopted pursuant to this act shall not apply to the extent that lands affected thereby are regulated pursuant to "the Wetlands Act of 1970" (P.L.1970, c. 272) (C. 13:9A-1 et seq.).

58:16A-60.1 Zero net fill requirement in flood hazard areas, certain.

43. Notwithstanding the provisions of the "Flood Hazard Area Control Act," P.L.1962, c.19 (C.58:16A-50 et seq.), or any rule or regulation adopted pursuant thereto, to the contrary, the Department of Environmental Protection, pursuant to section 34 of P.L.2004, c.120 (C.13:20-32), shall establish a zero net fill requirement within any flood hazard area located in the Highlands preservation area as defined in section 3 of P.L.2004, c.120 (C.13:20-3).

58:16A-61. Establishment of full value of lands for assessment

Local assessors shall consider the impact of rules or regulations issued pursuant to this act in establishing full value of lands designated as floodways or as flood fringe areas.

58:16A-62. Local rules and regulations more restrictive than state standards; authorization

Any municipal or other entity vested with authority to adopt rules and regulations concerning the development and use of land may adopt requirements more restrictive than those contained in the rules and regulations adopted by the department for the floodway and than those contained in the minimum standards promulgated by the department.

58:16A-63 Violations of act; remedies.

12. a. Whenever, on the basis of available information, the commissioner finds that a person is in violation of any provision of the "Flood Hazard Area Control Act," P.L.1962, c.19 (C.58:16A-50 et seq.), P.L.1972, c.185, P.L.1977, c.385 or P.L.1979, c.359, or any rule or regulation adopted, or permit or order issued pursuant thereto, the commissioner may:

(1) Issue an administrative enforcement order requiring any such person to comply in accordance with subsection b. of this section;

(2) Bring a civil action in accordance with subsection c. of this section;

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(3) Levy a civil administrative penalty in accordance with subsection d. of this section;

(4) Bring an action for a civil penalty in accordance with subsection e. of this section; or

(5) Petition the Attorney General to bring a criminal action in accordance with subsection f. of this section.

Recourse to any of the remedies available under this section shall not preclude recourse to any of the other remedies.

b. Whenever, on the basis of available information, the commissioner finds that a person is in violation of any provision of P.L.1962, c.19, P.L.1972, c.185, P.L.1977, c.385 or P.L.1979, c.359, or any rule or regulation adopted, or permit or order issued pursuant thereto, the commissioner may issue an administrative enforcement order: (1) specifying the provision or provisions of P.L.1962, c.19, P.L.1972, c.185, P.L.1977, c.385 or P.L.1979, c.359, or any rule or regulation adopted, or permit or order issued pursuant thereto, of which the person is in violation; (2) citing the action which constituted the violation; (3) requiring compliance with the provision or provisions violated; (4) requiring the restoration of the area which is the site of the violation; and (5) providing notice to the person of the right to a hearing on the matters contained in the administrative enforcement order.

c. The commissioner is authorized to institute a civil action in Superior Court for appropriate relief from any violation of the provisions of P.L.1962, c.19, P.L.1972, c.185, P.L.1977, c.385 or P.L.1979, c.359, or any rule or regulation adopted, or permit or order issued pursuant thereto. Such relief may include, singly or in combination:

(1) A temporary or permanent injunction;

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(2)Recovery of reasonable costs of any investigation, inspection, or monitoring survey which led to the discovery of the violation, and for the reasonable costs of preparing and bringing a civil action commenced under this subsection;

(3)Recovery of reasonable costs incurred by the State in removing, correcting, or terminating the adverse effects resulting from any violation of the provisions of P.L.1962, c.19, P.L.1972, c.185, P.L.1977, c.385 or P.L.1979, c.359, or any rule or regulation adopted, or permit or order issued pursuant thereto, for which a civil action has been commenced and brought under this subsection;

(4)Recovery of compensatory damages for any loss or destruction of natural resources, including but not limited to, wildlife, fish, aquatic life, habitat, plants, or historic or archeological resources, and for any other actual damages caused by a violation of the provisions of P.L.1962, c.19, P.L.1972, c.185, P.L.1977, c.385 or P.L.1979, c.359, or any rule or regulation adopted, or permit or order issued pursuant thereto for which a civil action has been commenced and brought under this subsection. Assessments under this subsection shall be paid to the State Treasurer;

(5)An order requiring the violator restore the site of the violation to the maximum extent practicable and feasible or, in the event that restoration of the site of the violation is not practicable or feasible, provide for off-site restoration alternatives as approved by the department.

d.The commissioner is authorized to assess a civil administrative penalty of not more than \$25,000 for each violation of the provisions of P.L.1962, c.19, P.L.1972, c.185, P.L.1977, c.385 or P.L.1979, c.359, or any rule or regulation adopted, or permit or order issued pursuant thereto, and each day during which each violation continues shall constitute an additional, separate and distinct offense. Any amount assessed under this subsection shall fall within a range established by regulation by the commissioner for violations of similar type, seriousness, duration, and conduct; provided, however, that prior to the adoption of the regulation, the commissioner may, on a case-by-case basis, assess civil administrative penalties up to a maximum of \$25,000 per day for each violation, utilizing the criteria set forth herein. In addition to any administrative penalty assessed under this subsection, and notwithstanding the \$25,000 maximum penalty set forth above, the commissioner may assess any economic benefits from the violation gained by the violator. Prior to assessment of a penalty under this subsection, the property owner or person

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committing the violation shall be notified by certified mail or personal service that the penalty is being assessed. The notice shall include a reference to the section of the statute, regulation, order or permit condition violated; recite the facts alleged to constitute a violation; state the basis for the amount of the civil penalties to be assessed; and affirm the rights of the alleged violator to a hearing. The ordered party shall have 35 calendar days from receipt of the notice within which to deliver to the commissioner a written request for a hearing. After the hearing and upon finding that a violation has occurred, the commissioner may issue a final administrative enforcement order after assessing the amount of the fine specified in the notice. If no hearing is requested, the notice shall become a final administrative enforcement order after the expiration of the 35-day period. Payment of the assessment is due when a final administrative enforcement order is issued or the notice becomes a final administrative enforcement order. The authority to levy a civil administrative order is in addition to all other enforcement provisions in P.L.1962, c.19, P.L.1972, c.185, P.L.1977, c.385 or P.L.1979, c.359, or any rule or regulation adopted, or permit or order issued pursuant thereto, and the payment of any assessment shall not be deemed to affect the availability of any other enforcement provisions in connection with the violation for which the assessment is levied. The department may compromise any civil administrative penalty assessed under this section in an amount and with conditions the department determines appropriate. A civil administrative penalty assessed, including a portion thereof required to be paid pursuant to a payment schedule approved by the department, which is not paid within 90 days of the date that payment of the penalty is due, shall be subject to an interest charge on the amount of the penalty, or portion thereof, which shall accrue as of the date payment is due. If the penalty is contested, no additional interest charge shall accrue on the amount of the penalty until after the date on which a final order is issued. Interest charges assessed and collectible pursuant to this subsection shall be based on the rate of interest on judgments provided in the New Jersey Rules of Court.

e. A person who violates any provision of P.L.1962, c.19, P.L.1972, c.185, P.L.1977, c.385 or P.L.1979, c.359, or any rule or regulation adopted, or permit or order issued pursuant thereto, or an administrative order issued pursuant to subsection b. of this section, or a court order issued pursuant to subsection c. of this section, or who fails to pay a civil administrative penalty in full pursuant to subsection d. of this section, or who fails to make a payment pursuant to a penalty payment schedule entered into with the department, or who knowingly makes any false or misleading statement on any application, record, report, or other document required to be submitted to the department, shall be subject, upon order of a court, to a civil penalty not to exceed \$25,000 per day of the violation, and each day during which the violation continues shall constitute an additional, separate, and distinct offense. Any civil penalty imposed pursuant to this subsection may be collected with costs in a summary proceeding pursuant to the "Penalty

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Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). In addition to any penalties, costs or interest charges, the court may assess against the violator the amount of economic benefit accruing to the violator from the violation. The Superior Court shall have jurisdiction to enforce the provisions of the "Penalty Enforcement Law of 1999" in connection with this act.

f.A person who purposely, knowingly or recklessly violates any provision of P.L.1962, c.19, P.L.1972, c.185, P.L.1977, c.385 or P.L.1979, c.359, or any rule or regulation adopted, or permit or order issued pursuant thereto, shall be guilty, upon conviction, of a crime of the third degree and shall, notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, be subject to a fine of not less than \$5,000 nor more than \$50,000 per day of violation, or by imprisonment, or both. A person who purposely, knowingly, or recklessly makes a false statement, representation, or certification in any application, record, or other document filed or required to be maintained under any provision of P.L.1962, c.19, P.L.1972, c.185, P.L.1977, c.385 or P.L.1979, c.359, or any rule or regulation adopted, or permit or order issued pursuant thereto, or who falsifies, tampers with or purposely, knowingly, or recklessly renders inaccurate, any monitoring device or method required to be maintained pursuant to P.L.1962, c.19, P.L.1972, c.185, P.L.1977, c.385 or P.L.1979, c.359, or any rule or regulation adopted, or permit or order issued pursuant thereto, shall be guilty, upon conviction, of a crime of the third degree and shall, notwithstanding the provisions of subsection b. of N.J.S.2C:43-3, be subject to a fine of not more than \$50,000 per day of violation, or by imprisonment, or both.

g.In addition to the penalties prescribed in this section, the commissioner may record a notice for a violation of any provision of P.L.1962, c.19, P.L.1972, c.185, P.L.1977, c.385 or P.L.1979, c.359, or any rule or regulation adopted, or permit or order issued pursuant thereto, which shall be recorded on the deed of the property wherein the violation occurred, on order of the commissioner, by the clerk or register of deeds and mortgages of the county wherein the affected property is located and shall remain attached thereto until such time as the violation has been remedied and the commissioner orders the notice of violation removed. Any fees or other charges that are assessed by either the clerk or register of deeds and mortgages of the county wherein the affected property is located or the department for the recording of the notice of violation on the deed required pursuant to this subsection shall be paid by the owner of the affected property or person committing the violation. The commissioner shall immediately order the notice removed once the violation is remedied or upon conditions set forth by the commissioner.

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h. Each applicant or permittee shall provide, upon the request of the department, any information the department requires to determine compliance with the provisions of P.L.1962, c.19, P.L.1972, c.185, P.L.1977, c.385 or P.L.1979, c.359, or any rule or regulation adopted, or permit or order issued pursuant thereto.

58:16A-64. Liberal construction

This act shall be liberally construed to effectuate the purpose and intent thereof.

58:16A-65. Effect of act on powers, duties and functions on state department of environmental protection

The powers, duties and functions vested in the State Department of Environmental Protection under the provisions of this act shall not be construed to limit in any manner the functions, powers and duties vested in the State Department of Environmental Protection under any other provisions of the law.

58:16A-66. Severability

If any provision of this act or the application thereof to any person or circumstances is held invalid, the remainder of the act and the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

58:16A-67. Written notice of intent to undertake a project to clean, clear, desnag stream; definitions.

1. a. The provisions of any other law, or any rule or regulation adopted pursuant thereto, to the contrary notwithstanding, a county or municipality, or designated agency thereof, before undertaking any project to clean, clear, or desnag a stream within its jurisdiction, shall submit to the Department of Environmental Protection or to any State agency requiring a stream cleaning permit or an application for the proposed stream cleaning, clearing, or desnagging project, a written notice of intent to undertake a project to clean, clear, or desnag a stream and a certification attested to by the county or municipal engineer or the local soil conservation district, provided that the certification is made by a licensed professional engineer. The engineer shall certify that:

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- (1) the project is being undertaken solely for the purpose of stream cleaning, clearing, or desnagging;
- (2) the removal of any material will not extend below the natural stream bed;
- (3) the activities will not alter the natural stream banks;
- (4) the activities will consist of the removal only of accumulated sediments, debris, and garbage from a stream with a natural stream bed or the removal of any accumulated material from a stream previously channelized with concrete or similar artificial material;
- (5) every effort will be made to perform work from only one stream bank and that vegetation and canopy on the more southerly or westerly banks will be preserved for stream shading; and
- (6) the activities are necessary and in the public interest.

The notice shall also include a description of the nature of the project, a description, including a photograph, of the reach of the stream in which the activity is to take place, and an identification of the regulatory water quality classification of the stream in which the activity is to take place. The reach of the stream may be provided by the submission of a photostatic copy of the United States Geological Survey topographic quadrangle.

b. For any project that includes sediment removal, in addition to the conditions enumerated in subsection a. of this section, the following conditions must be met:

- (1) (Deleted by amendment, P.L.2015, c.210)
- (2) the stream to be cleaned, cleared, or desnagged is not classified as pinelands waters or category one waters;
- (3) the stream bed is 30 feet or less in average width;
- (4) the stream corridor to be cleaned, cleared, or desnagged is:
 - (a) in the case of a project undertaken by a municipality, or a designated agency thereof, located wholly within the jurisdictional boundaries of that municipality; or
 - (b) in the case of a project undertaken by a county, or a designated agency thereof, (i)

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located wholly within the jurisdictional boundaries of one municipality, or (ii) less than 500 feet in length if located within more than one municipality;

(5) the stream is not in a municipality, as defined by the department, that is known to have federally or State listed threatened or endangered species associated with its wetlands. Regulated activities in these municipalities shall be coordinated with federal agencies;

(6) the applicant shall provide a certification by the engineer that the material to be removed is not beyond the natural stream bed;

(7) the applicant shall submit surface color photographs of the areas of the stream to be cleaned, cleared, or desnagged and of the access points; and

(8) the applicant shall incorporate appropriate timing restrictions as required by the department.

c. Upon receipt of a notice and certification submitted pursuant to this section, the department, or any other State agency requiring a stream cleaning permit or an application for the proposed stream cleaning, clearing, or desnagging project, as the case may be, shall, except as provided otherwise in this subsection, have 15 days to notify the applicant if particular circumstances mandate that the stream cleaning, clearing, or desnagging not be done in this particular case. For a project involving the removal of sediment, the department shall have 60 days prior to the commencement of activities to notify the applicant if particular circumstances mandate that the stream cleaning, clearing, or desnagging not be done in that particular case. If the department, or any other State agency requiring a stream cleaning permit or an application for the proposed stream cleaning, clearing, or desnagging project, as the case may be, makes such a determination, it shall provide the applicant with the technical reasons therefor. For the purposes of this subsection, if the department's technical reasons therefor are based upon the inability to determine the natural stream bed, the department shall, at the request of the applicant, assist in identifying the natural stream bed. The department may not prohibit the removal of any garbage no matter how long it has been in the stream, nor shall the department require extensive mapping or other engineering services which involve significant expense to the municipality.

d. Upon completion of the project to clean, clear, or desnag a stream involving the removal of sediment within its jurisdiction, the applicant shall submit to the department a written notice that the project has been completed in accordance with the conditions outlined in subsection b. of this section. The notice shall contain a certification attested to by the county or municipal engineer or the local soil conservation district, provided that the certification is made by a licensed professional engineer. The engineer shall certify that all the conditions in

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subsection b. of this section have been adhered to.

e. As used in this section:

"Applicant" means a county or municipality, or designated agency thereof;

"Category one waters" means, for the purposes of sediment removal, those waters designated by the Department of Environmental Protection, for purposes of implementing the antidegradation policies of the "Water Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.), for protection from measurable changes in water quality characteristics because of their clarity, color, scenic setting, other characteristics of aesthetic value, exceptional ecological significance, exceptional recreational significance, exceptional water supply significance, or exceptional fisheries resources. These waters may include, but are not limited to:

(1) Waters originating wholly within federal, interstate, State, county, or municipal parks, forests, fish and wildlife lands, and other special holdings that have not been designated by the department as FW1;

(2) Waters classified by the department as FW2 trout production waters and their tributaries;

(3) Surface waters classified by the department as FW2 trout maintenance waters or FW2 nontrot waters that are not more than 750 feet upstream of waters classified by the department as FW2 trout production waters;

(4) Shellfish waters of exceptional resource value; or

(5) Other waters and their tributaries that flow through, or border, federal, State, county or municipal parks, forest, fish and wildlife lands, and other special holdings;

"Department" means the Department of Environmental Protection;

"FW" means the general surface water classification applied to fresh waters;

"FW1" means those fresh waters that originate in and are wholly within federal or State parks, forests, fish and wildlife lands, and other special holdings, that are to be maintained in their natural state of quality and not subjected to any man-made wastewater discharges;

"FW2" means the general surface water classification applied to those fresh waters that are

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not designated as FW1 or pinelands waters;

"Trout maintenance waters" means waters designated by the department for the support of trout throughout the year; and

"Trout production waters" means waters designated by the department for use by trout for spawning or nursery purposes during their first summer.

f. Any person or governmental entity violating the provisions of this section shall be subject to penalties imposed for violations of the "Flood Hazard Area Control Act," P.L.1962, c.19 (C.58:16A-50 et seq.).

g. Nothing in this section shall be construed to prohibit the department from requiring a county or municipality, or designated agency thereof, to obtain a permit pursuant to the "Flood Hazard Area Control Act," P.L.1962, c.19 (C.58:16A-50 et seq.) for a proposed stream cleaning, clearing, or desnagging project involving any activity that does not adhere to the conditions and requirements set forth in subsections a. and b. of this section.

L.1993, c.376, s.1; amended 1997, c.286, s.1; 2015, c.210.

58:16A-68. Municipal plan for flood control facilities

2. a. Any municipality, either alone or jointly with any other municipality, may establish a plan, with the approval of the Department of Environmental Protection, for the size and location of flood control facilities, including detention basins, in order to minimize flood damage, to reduce stormwater runoff from new or existing development, or to induce water recharge into the ground where practical. Notwithstanding any provision of this subsection to the contrary, for new development the standards adopted pursuant to P.L.1993, c.32 (C.40:55D-40.1 et seq.) shall be applicable. This subsection shall apply only to municipally-owned flood control facilities, including detention basins, constructed on public property.

b. Any municipality, either alone or jointly with any other municipality, may establish a plan, with the approval of the Department of Environmental Protection, to maintain the water level of any lake or reservoir within its borders at a level necessary to provide an equivalent surface water safe yield established by the department for any affected water supply system and protection against flooding. Any such plan shall (1) comply with the provisions of R.S.23:5-29, P.L.1981, c.262 (C.58:1A-1 et seq.), and R.S.58:4-1 et seq., (2) include a calculation of the quantity of storage necessary to achieve a given level of flood control protection, (3) consider the environmental impact upon aquatic resources and fish spawning, the impact upon recreational use, and the financial impact upon all users of the lake or reservoir, and (4) consider any other

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criteria deemed necessary by the department. The department shall hold a public hearing prior to approval of a plan to seek input on the plan from any municipality that borders the lake or reservoir, or borders a river, stream or brook that feeds into or flows from that lake or reservoir. The department shall issue its decision on the plan in writing and transmit a copy thereof to each affected municipality and water supply purveyor prior to the effective date of the decision. No plan that jeopardizes safe yield and the provision of adequate water supply or reduces current safe yield levels of any lake or reservoir shall be approved by the department. No plan within the area of jurisdiction of the New Jersey Water Supply Authority may be established without the approval of the authority.

c. Nothing in this section shall be construed to supersede any other State law that applies to the construction of flood control facilities or the regulation of water levels in lakes or reservoirs.