

**CHAPTER 38**  
**ROADSIDE, DRAINAGE, UNUSUAL, AND**  
**DISASTER MAINTENANCE**

**Authority**

N.J.S.A. 27:1A-5, 27:1A-6 and 27:7-1 et seq.

**Source and Effective Date**

R.1995 d.546, effective September 21, 1995.  
See: 27 N.J.R. 2880(b), 27 N.J.R. 3975(a).

**Executive Order No. 66(1978) Expiration Date**

Chapter 38, Roadside, Drainage, Unusual, and Disaster Maintenance, expires on September 21, 2000.

**Chapter Historical Note**

Chapter 38, Roadside and Drainage Maintenance, was adopted by the Commissioner of Transportation pursuant to authority delegated at N.J.S.A. 27:7, prior to September 1, 1969. Subchapter 3, Responsibility for Damage, and Subchapter 4, Obstructions to Maintenance Operations, were originally adopted as 16:39-1 and 16:39-2 by the Commissioner of Transportation pursuant to N.J.S.A. 27:7 and were filed and became effective prior to September 1, 1969. Subchapter 5, Spilled Cargo on State Highways, was originally adopted as 16:39-3 pursuant to N.J.S.A. 27:7-11 by R.1974 d.101, effective April 23, 1974. See: 6 N.J.R. 83(b), 6 N.J.R. 203(c). Subchapters 3, 4 and 5 were recodified from 16:39-1, 2 and 3, respectively, and the title of Chapter 38 was amended by an administrative change. See: 27 N.J.R. 4905(b).

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**SUBCHAPTER 5. (RESERVED)**

**SUBCHAPTER 1. RESPONSIBILITY FOR MAINTENANCE**

**16:38-1.1 Sidewalks and driveways**

(a) Definitions. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

“Driveway” means access route or connection to abutting property, either residential or business, including throat or apron.

“Sidewalk” means permanent, paved, pedestrian walkways, including ramps or steps.

(b) Maintenance policy. Maintenance of sidewalks or driveways within the right-of-way limits shall be the responsibility of the owner of the abutting property regardless of the conditions of original construction; however, in the absence of a conflicting ordinance or jurisdictional agreement, sidewalks within the right-of-way limits shall be accepted for maintenance by the Department of Transportation under the following conditions:

1. The sidewalk is a part of a State Highway structure or grade separation;
2. The sidewalk is not accessible to the owner of the abutting property due to control of access;
3. The Department of Transportation is the owner of the abutting property.

(c) Replacement policy. A sidewalk or driveway which is destroyed, substantially damaged, or caused to be regraded or relocated as a direct or indirect result of an operation of the Department of Transportation will, where necessary, be replaced by the Department of Transportation to the extent and within the limits of said destruction, substantial damage, or cause for regrading or relocation, regardless of ownership. Such replacement will be guaranteed by the Department of Transportation against defects of workmanship or material, up to a period of five years from completion of installation.

(d) Snow removal: Owners of the real property abutting a highway, road, street or thoroughfare under State jurisdiction shall be entirely responsible for the clearing of snow and ice from all abutting sidewalks and abutting driveway cuts, openings or aprons, whether or not they are located on public or private property. No costs incurred directly or indirectly by abutting property owners or their tenants, in snow or ice clearing, shall be reimbursed by the State or any public entity for any reason, including, but not limited to, where snow or ice has been placed upon such areas as a result of the State or State contractor’s snow or ice clearing operations.

Amended by R.1990 d.499, effective October 15, 1990.  
See: 22 N.J.R. 2246(a), 22 N.J.R. 3237(b).

Owners of property abutting a State highway responsible for snow removal.

Amended by R.1995 d.546, effective October 16, 1995.  
See: 27 N.J.R. 2880(b), 27 N.J.R. 3975(a).

**Case Notes**

Township was entitled to common-law snow removal immunity in action brought by pedestrian who slipped on accumulated ice concealed by snow while walking under train trestle, even though claim was based on failure to salt and sand area rather than on failure to remove snow. *Farias v. Township of Westfield*, 297 N.J.Super. 395, 688 A.2d 151 (A.D.1997).

**16:38-1.2 Trees**

Abutting property owners are responsible for damage done to sidewalks by root systems of trees located within designated sidewalk areas or adjacent thereto.

**16:38-1.3 Drainage**

Abutting property owners are responsible for maintaining drainage systems within the limits of their property and within the State right-of-way to their connection to the State system. If the State returns to this particular section of State right-of-way to accomplish drainage work, the State will then again assume the responsibility for maintaining drainage systems within this area up to the property lines of the property owner.

Amended by R.1995 d.546, effective October 16, 1995.  
See: 27 N.J.R. 2880(b), 27 N.J.R. 3975(a).

**16:38-1.4 Curbs**

Abutting property owners are responsible for maintaining curbs fronting their properties, except where curbs have been constructed for the sole purpose of controlling the flow of water. The State will maintain curb returns at street intersections within State right-of-way limits.

**16:38-1.5 Litter**

Abutting property owners shall be responsible for maintaining the area fronting their property from the curb to the sidewalk in a litter-free condition.

New Rule, R.1990 d.499, effective October 15, 1990.  
See: 22 N.J.R. 2246(a), 22 N.J.R. 3237(b).

**SUBCHAPTER 2. MAINTENANCE OF RIGHT-OF-WAY PRIOR TO CONSTRUCTION****16:38-2.1 Definition**

The following words and terms, when used in this Subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

“Advance right-of-way” means right-of-way parcels acquired or being acquired prior to the start of construction.

**16:38-2.2 Responsibility**

(a) The construction and maintenance unit shall maintain this advance right-of-way so that the appearance is not objectionable and perform such work as is necessary for the health and safety of the residents of the area.

(b) Right-of-way parcel maps shall not be sent to the construction and maintenance unit after construction has started, as the contractor is required to maintain right-of-way during construction.

Amended by R.1973 d.283, effective September 27, 1973.  
See: 5 N.J.R. 203(a), 5 N.J.R. 391(a).

**SUBCHAPTER 3. RESPONSIBILITY FOR DAMAGE****16:38-3.1 Utility failures**

Utility owners are responsible for any damage done to State property as a result of the failure of their utilities.

Administrative change: Recodified from 16:39-1.1.  
See: 27 N.J.R. 4905(b).

**SUBCHAPTER 4. REMOVAL OF VEHICLES, CARGO, AND OTHER OBJECTS****Authority**

N.J.S.A. 27:1A-5, 27:1A-6, 27:7-11, 27:7-21(a),  
27:7-21.9, 27:7-21.10 and 39:4-56.5.

**Source and Effective Date**

R.1996 d.424, effective September 3, 1996  
See: 28 N.J.R. 3067(a), 28 N.J.R. 4110(b).

**Subchapter Historical Note**

Subchapter 4, Obstructions to Maintenance Operations, was repealed, and a new Subchapter 4, Removal of Vehicles, Cargo, and Other Objects, was adopted by R.1996 d.424, effective September 3, 1996. See: Source and Effective Date.

**16:38-4.1 Definitions**

The following words and terms, when used in this subchapter, shall have the following meanings unless the context indicates otherwise.

“Highway” means the entire width between the boundary lines of every way maintained by the Department of Transportation when any part thereof is open to the use of the public for purposes of vehicular travel.

“Maintenance operations” means and includes, but is not limited to:

1. Laying out, opening, construction, improvement, repair and maintenance of highways and removal of obstructions and encroachments from adjoining sidewalks;
2. Building, repair and operation of bridges;

3. Building of culverts, walls and drains;
4. Placing and repair of road signs and monuments;
5. Lighting of highways;



6. Removal of obstructions to traffic and to the view; and

7. All other things and services necessary or convenient to maintain and preserve the functional integrity of the highway for the safe and efficient movement of people and goods.

“Object” means vehicle, cargo, or any other object of any nature.

“Owner” means the actual owner of the object, or a person or authorized agent of a company, proprietorship or corporation having legal right of possession of the object.

“Parking” means the standing or waiting on a highway of a vehicle not actually engaged in receiving or discharging passengers or merchandise, unless in obedience to traffic regulations or traffic signs or signals.

“Stopping or standing,” when referring to a vehicle, means any cessation of movement of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic control sign or signal.

“Traveled portion” means that portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder.

#### 16:38-4.2 Removal of objects from highway

(a) The Commissioner of Transportation or any officer or employee of the Department of Transportation may cause the removal of objects from a highway to another place on or off the highway in accordance with this subchapter.

(b) The Commissioner of Transportation or any officer or employee of the Department of Transportation may direct the removal by Department of Transportation forces, or by private forces under contract with the State, or may authorize the State, county or municipal police to cause the removal.

(c) If an object is standing wholly or partially on the traveled portion of a highway, the object may be removed immediately.

(d) If no portion of the object is standing on the traveled portion of the highway, but its location obstructs travel or view, obstructs an ongoing maintenance operation on the highway, compromises the functional integrity of the highway, or in and of itself creates a hazard to the public, the object may be removed immediately. This subsection does not apply to vehicles legally parking, stopping or standing.

(e) If no portion of the object is standing on the traveled portion of the highway and its location does not obstruct travel or view or an ongoing maintenance operation on the highway, and does not otherwise compromise the functional

integrity of the highway or in and of itself create a hazard to the public, the object may only be removed after the expiration of a four hour period from the time the Department of Transportation receives notification of the presence of the object on the highway, unless the owner of the object consents to earlier removal. This section shall not be applied to vehicles legally parking, stopping or standing. In the event a vehicle is parking beyond the legal time limit for the location, the vehicle may be removed after the expiration of a four hour period beyond the limit.

(f) If a vehicle is legally parking, stopping or standing off of the traveled portion of the highway where not prohibited or restricted by statute or regulation, but the vehicle appears to be abandoned or otherwise poses an unusual hazard, the Department of Transportation shall contact the State, county and municipal police, and ask the police authority with primary patrol responsibility over the highway to cause the removal of the vehicle. If the police authority with primary patrol responsibility declines to remove the vehicle, the Department may affix a notice on the vehicle advising that if the vehicle is not removed by a specified time, the Department will cause the vehicle’s removal. If the vehicle has not been removed by the time specified in the notice, the Department may ask the police authority with primary patrol responsibility to cause its removal, or the Department may itself cause the vehicle’s removal.

(g) In the event the owner of the object is not present at the location of the object, the Department of Transportation shall attempt to notify the owner as soon as practicable after it receives notification of the presence of the object on the highway and, if possible, prior to removal of the object. In no event, however, shall the immediate removal of an object authorized by (c) or (d) above be delayed pending the Department’s attempt to notify the owner.

(h) The Department of Transportation should attempt to cooperate with the owner of the object whenever possible regarding removal of the object. In no event, however, shall the immediate removal of an object authorized by (c) or (d) above be delayed pending the Department’s attempt to cooperate with the owner.

(i) Once an object has been removed by Department of Transportation forces or by private forces at the request of the Department, the Department shall, as soon as practicable, notify the municipal, county, and State police, and shall apprise them of a description of the object, the location from which it was removed, and the location to which it was taken. The Department shall then attempt to notify the owner as soon as practicable of the location to which the object was taken, and shall provide the owner information as to how the object may be retrieved.

(j) If an object is removed by the police at the request of the Department of Transportation, the Department shall, as soon as practicable, attempt to notify the owner of the

object of the telephone number and location of the police station with information regarding retrieval of the object.

(k) If an object is removed and stored by a private contractor, the owner shall be responsible to pay the contractor the cost of removal and storage prior to retrieval of the object.

(l) If an object is removed by Department of Transportation forces and stored on the Department's property, the owner of the object shall be responsible to pay the State the cost of removal and storage. The Department of Transportation, in its discretion, may require that such cost be paid prior to retrieval of the object, or may allow the owner to pay such cost subsequently.

**16:38-4.3 Removal of hazardous substances regulated by the Department of Environmental Protection**

Notwithstanding N.J.A.C. 16:38-4.2, the Department of Transportation shall handle hazardous substances set forth in N.J.A.C. 7:1E, Appendix A, in accordance with Department of Environmental Protection regulations.

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**SUBCHAPTER 5. (RESERVED)**

**Subchapter Historical Note**

Subchapter 5, Spilled Cargo on State Highways, was repealed by R.1996 d.424, effective September 3, 1996. See: 28 N.J.R. 3067(a), 28 N.J.R. 4110(b).