

**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.2006 d.55, effective January 9, 2006.  
See: 37 N.J.R. 3269(a), 38 N.J.R. 1078(a).

**Chapter Expiration Date**

Chapter 38, Roadside, Drainage, Unusual, and Disaster Maintenance, expires on January 9, 2011.

**Chapter Historical Note**

Chapter 38, Roadside and Drainage Maintenance, was adopted and became effective prior to September 1, 1969.

Subchapter 3, Responsibility for Damage, Subchapter 4, Obstructions to Maintenance Operations, and Subchapter 5, Spilled Cargo on State Highways, were recodified from N.J.A.C. 16:39-1, 2 and 3 by administrative change. See: 27 N.J.R. 4905(b).

Subchapter 4, Obstructions to Maintenance Operations, and Subchapter 5, Spilled Cargo on State Highways, were repealed and Subchapter 4, Removal of Vehicles, Cargo and Other Objects, was adopted as new rules by R.1996 d.424, effective September 3, 1996. See: 28 N.J.R. 3067(a), 28 N.J.R. 4110(b).

Pursuant to Executive Order No. 66(1978), Chapter 38, Roadside, Drainage, Unusual, and Disaster Maintenance, was readopted as R.2000 d.366, effective August 10, 2000. See: 32 N.J.R. 2012(a), 32 N.J.R. 3330(b). See, also, section annotations.

Chapter 38, Roadside, Drainage, Unusual, and Disaster Maintenance, was readopted by R.2006 d.55, effective January 9, 2006. Subchapter 2, Maintenance of Right-of-Way Prior to Construction, was repealed, and Subchapter 3, Responsibility for Damage, was recodified as Subchapter 2, Responsibility for Damage; and Subchapter 4, Removal of Vehicles, Cargo, and Other Objects, was recodified as Subchapter 3, Removal of Vehicles, Cargo, and Other Objects by R.2006 d.55 effective February 6, 2006. See: Source and Effective Date. See, also, section annotations.

**CHAPTER TABLE OF CONTENTS****SUBCHAPTER 1. RESPONSIBILITY FOR MAINTENANCE**

- 16:38-1.1 Definitions
- 16:38-1.2 Policies
- 16:38-1.3 Trees
- 16:38-1.4 Drainage
- 16:38-1.5 Curbs
- 16:38-1.6 Litter

**SUBCHAPTER 2. RESPONSIBILITY FOR DAMAGE**

- 16:38-2.1 "Utility" defined
- 16:38-2.2 Utility failures

**SUBCHAPTER 3. REMOVAL OF VEHICLES, CARGO, AND OTHER OBJECTS**

- 16:38-3.1 Definitions
- 16:38-3.2 Removal of objects from highway
- 16:38-3.3 Removal of hazardous substances regulated by the Department of Environmental Protection

**SUBCHAPTER 1. RESPONSIBILITY FOR MAINTENANCE****16:38-1.1 Definitions**

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

"Department" means the New Jersey Department of Transportation.

"Driveway" means an 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.

Amended by R.2006 d.55, effective February 6, 2006.  
See: 37 N.J.R. 3269(a), 38 N.J.R. 1078(a).

Section was "Sidewalks and driveways"; rewrote the section.

**16:38-1.2 Policies**

(a) 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. In the absence of a conflicting ordinance or jurisdictional agreements, sidewalks within the right-of-way limits shall be maintained by the Department under any of 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 (such as, noisewalls, chain link fence or "No-Access" line); or
3. The Department of Transportation is the owner of the abutting property.

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

(c) Snow removal policy. Owners of the 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 snow or ice clearing costs incurred directly or indirectly by abutting property owners or

their tenants, shall be reimbursed by the State or any public entity for any reason, including, but not limited to, circumstances 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).

Amended by R.2000 d.366, effective September 5, 2000.

See: 32 N.J.R. 2012(a), 32 N.J.R. 3330(b).

Recodified from N.J.A.C. 16:38-1.1(b) through (d) and amended by R.2006 d.55, effective February 6, 2006.

See: 37 N.J.R. 3269(a), 38 N.J.R. 1078(a).

Rewrote the section; former N.J.A.C. 16:38-1.2, Trees, recodified as N.J.A.C. 16:38-1.3.

#### 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).

#### 16:38-1.3 Trees

Abutting property owners are responsible for damage done to sidewalks by root systems of trees located within sidewalk areas or adjacent thereto. Removal or trimming of the tree, including roots, must be authorized by the Department and by the local Shade Tree Commission within the municipality, if applicable.

Recodified from N.J.A.C. 16:38-1.2 and amended by R.2006 d.55, effective February 6, 2006.

See: 37 N.J.R. 3269(a), 38 N.J.R.1078(a).

Deleted "designated" and added the last sentence; former N.J.A.C. 16:38-1.3, Drainage, recodified as N.J.A.C. 16:38-1.4.

#### 16:38-1.4 Drainage

Abutting property owners are responsible for maintaining drainage systems within the limits of their property and within the State right-of-way limits to their connection to the State system, unless a drainage easement exists. If the State returns to this particular section of State right-of-way limits to conduct drainage work, other than inspection, general maintenance, or in-kind repair, the State will again assume the responsibility for maintaining drainage systems within this area up to the property lines of the abutting property owner. Upon completion of the drainage work, the responsibility shall revert to the abutting property owners.

Amended by R.1995 d.546, effective October 16, 1995.

See: 27 N.J.R. 2880(b), 27 N.J.R. 3975(a).

Recodified from N.J.A.C. 16:38-1.3 and amended by R.2006 d.55, effective February 6, 2006.

See: 37 N.J.R. 3269(a), 38 N.J.R. 1078(a).

Rewrote the section; former N.J.A.C. 16:38-1.4, Curbs, recodified as N.J.A.C. 16:38-1.5.

#### 16:38-1.5 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.

Recodified from N.J.A.C. 16:38-1.4 by R.2006 d.55, effective February 6, 2006.

See: 37 N.J.R. 3269(a), 38 N.J.R. 1078(a).

Former N.J.A.C. 16:38-1.5, Litter, recodified as N.J.A.C. 16:38-1.6.

#### 16:38-1.6 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).

Recodified from N.J.A.C. 16:38-1.5 by R.2006 d.55, effective February 6, 2006.

See: 37 N.J.R. 3269(a), 38 N.J.R. 1078(a).

### SUBCHAPTER 2. RESPONSIBILITY FOR DAMAGE

#### 16:38-2.1 "Utility" defined

"Utility" means a privately, publicly, or cooperatively owned line, facility or system for producing, transmitting, or distributing communications, cable television, power, electricity, light, heat, gas, oil, crude products, water, steam, waste, storm water not connected with highway drainage, or any other similar commodity, including any fire or police signal system or street lighting system, which directly or indirectly serves the public. The term utility shall also mean the utility company inclusive of any wholly owned or controlled subsidiary. The term "utility" or "utilities" when used herein is intended to reference both public and private utilities unless otherwise individually specified.

New Rule, R.2006 d.55, effective February 6, 2006.

See: 37 N.J.R. 3269(a), 38 N.J.R. 1078(a).

#### 16:38-2.2 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).

Recodified from N.J.A.C. 16:38-3.1 by R.2006 d.55, effective February 6, 2006.

See: 37 N.J.R. 3269(a), 38 N.J.R. 1078(a).