

**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**

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 38, Roadside, Drainage, Unusual, and Disaster Maintenance, expires on July 8, 2011. See: 43 N.J.R. 271(a).

**Chapter Historical Note**

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

Chapter 38, Roadside and Drainage Maintenance, was renamed Roadside, Drainage, Unusual, and Disaster Maintenance; and 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Subchapter 4, Obstructions to Maintenance Operations, and Subchapter 5, Spilled Cargo on State Highways, were repealed and Subchapter 4, Removal of Vehicles, Cargo and Other Objects, was adopted as new rules by R.1996 d.424, effective September 3, 1996.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 as R.2006 d.55, effective January 9, 2006. As a part of R.2006 d.55, Subchapter 2, Maintenance of Right-of-Way Prior to Construction, was repealed, and Subchapter 3, Responsibility for Damage, was recodified as Subchapter 2, Responsibility for Damage; and Subchapter 4, Removal of Vehicles, Cargo, and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, effective February 6, 2006. See: Source and Effective Date. See, also, section annotations.

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**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, circum-

stances 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).

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

#### 16:38-3.1 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 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. Lay out, excavation, opening, construction, improvement, repair and maintenance of highways and removal of obstructions and encroachments from adjoining sidewalks and right-of-way limits;
2. Building, repair and operation of bridges;
3. Building culverts, walls and drains;
4. Installation and repair of road signs and monuments;
5. Lighting of highways;
6. Removal of obstructions to traffic and to safe sight distances; and
7. All other activities 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 tangible thing.

“Owner” means the 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, to comply with the directions of a police officer or a traffic control sign or signal, or due to a medical or mechanical emergency.

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

Amended by R.2000 d.366, effective September 5, 2000.  
See: 32 N.J.R. 2012(a), 32 N.J.R. 3330(b).

In “Stopping or standing,” added “; or in the event of medical or mechanical emergency” at the end.

Recodified from N.J.A.C. 16:38-4.1 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 definitions “Highway,” “Maintenance operations,” “Object,” “Owner” and “Stopping or standing”; former N.J.A.C. 16:38-3.1, Utility failures, recodified as N.J.A.C. 16:38-2.2.

#### 16:38-3.2 Removal of objects from highway

(a) The Commissioner of Transportation or any officer or employee of the Department 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 may direct the removal of objects from a highway to another place on or off the highway by Department employees, or by private contractors 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 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 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 receives notification of the object on the highway, unless the owner 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, except as otherwise provided for in N.J.S.A. 39:4-56.5.

(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 a hazard, the Department 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 cause the vehicle's removal.

(g) In the event the owner is not present at the location of the object, the Department shall attempt to notify the owner as soon as practicable after the Department receives notification 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 should attempt to cooperate with the owner 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 employees or by private contractors at the request of the Department, the Department shall, as soon as practicable, provide the municipal, county, and State police, with 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 provide the owner with information as to how the object may be retrieved.

(j) If an object is removed by the police at the request of the Department, the Department shall, as soon as practicable, attempt to notify the owner 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 pay the contractor the cost of removal and storage prior to retrieval of the object.

(l) If an object is removed by Department employees and stored on the Department's property, the owner shall pay the State the cost of removal and storage. The Department may require that the cost be paid prior to retrieval.

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

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

In (e), added " , except as otherwise provided for in N.J.S.A. 39:4-56.5, Abandonment of motor vehicle" at the end.

Recodified from N.J.A.C. 16:38-4.2 and amended by R.2006 d.55, effective February 6, 2006.

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

Rewrote the section.

### **16:38-3.3 Removal of hazardous substances regulated by the Department of Environmental Protection**

Notwithstanding N.J.A.C. 16:38-3.2, the Department shall handle hazardous substances set forth in N.J.A.C. 7:1E, Appendix A, in accordance with Department of Environmental Protection regulations.

Recodified from N.J.A.C. 16:38-4.3 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 N.J.A.C. reference 16:38-4.2 as 16:38-3.2; deleted "of Transportation" following "Department."