

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

**Authority**

N.J.S.A. 27:1A-5, 27:1A-6 and 27:7-21 et seq.

**Source and Effective Date**

R.2000 d.366, effective August 10, 2000.  
See: 32 N.J.R. 2012(a), 32 N.J.R. 3330(b).

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

Chapter 38, Roadside, Drainage, Unusual, and Disaster Maintenance, expires on August 10, 2005.

**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Subchapter 4, Obstructions to Maintenance Operations, and Subchapter 5, Spilled Cargo on State Highways, were repealed and Subchapter 4, Removal of Vehicles, Cargo and Other Objects, was adopted as new rules by R.1996 d.424, effective September 3, 1996.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: Source and Effective Date. See, also, section annotations.

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**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. In the absence of a conflicting ordinance or jurisdictional agreements, 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).

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

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

#### 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

#### 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;