

**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 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).

### 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. OBSTRUCTIONS TO MAINTENANCE OPERATIONS

### 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.

“Shoulder area” means that portion of the highway, exclusive of and bordering the roadway, designed for emergency use but not ordinarily to be used for vehicular travel.

“Median” means that portion of a divided highway separating the traveled ways of traffic proceeding in opposite directions.

“Undeveloped sidewalk berm” means that area between the curb line or edge of the shoulder and right-of-way line normally used by pedestrians but not improved by the construction of a concrete or bituminous walkway.

Administrative change: Recodified from 16:39-2.1.  
See: 27 N.J.R. 4905(b).

### 16:38-4.2 Removal of unoccupied or disabled vehicles from State highways

(a) If an officer or employee of the Department of Transportation observes or receives notification of an unoccupied or disabled motor vehicle or other object of any nature which is standing wholly or partially upon the traveled portion of a State highway and constitutes a hazard to traffic or will hamper snow removal or interfere with other maintenance operations, he shall transmit such information to the local police department and request that they arrange to have the vehicle or object removed as soon as possible.

(b) If the request submitted to the police department does not result in the removal of the vehicle and the maintenance operations can be delayed no longer, the Department officer or employee may cause the removal of the vehicle utilizing Department of Transportation forces and equipment. The vehicle or object shall be moved to the nearest practicable shoulder area, median or undeveloped sidewalk berm so that the required work can be accomplished. The police shall then be notified that Department forces have performed the removal and their assistance is no longer required.

(c) The Department of Transportation shall maintain a permanent record for each vehicle or object removed, which shall indicate the name of the person ordering the removal, the date and time of day and the make and license number of the vehicle, or additional information sufficient to identify the object if other than a motor vehicle was removed.

(d) During a major snowstorm, innumerable unoccupied or disabled vehicles may obstruct the roadway so as to make the requirements indicated in subsection (a) of this Section impractical. Under such conditions, subsection (a) of this Section may be waived.

R.1971 d.156, effective August 31, 1972.

See: 3 N.J.R. 137(a), 3 N.J.R. 207(b).

Administrative change: Recodified from 16:39-2.2.

See: 27 N.J.R. 4905(b).

## SUBCHAPTER 5. SPILLED CARGO ON STATE HIGHWAYS

### 16:38-5.1 Removal of spilled cargo from State highways

(a) If maintenance supervisory personnel of the Department of Transportation are notified by the State or local police or by units within the Department, or if maintenance supervisory personnel are aware of spilled cargo on the roadway as a result of an accident or mishap, maintenance forces shall as soon as conditions permit, remove the material from the traveled roadway in the interest of preventing future accidents.

(b) The district superintendent, maintenance and operations of the Department of Transportation shall immediately notify the owner or carrier of the whereabouts of the cargo which had been spilled, except in those cases where the Department of Transportation has no responsibility for the cargo because of its being considered extremely dangerous. This notification relieves the Department of Transportation of any liability as by this action the Department has not disregarded the rights of the owner.

(c) Under no circumstances will the carrier or owner of the spilled cargo be billed for services rendered. However, the Department can be reimbursed for expenses incurred in repairing damage to State property.

Administrative change: Recodified from 16:39-3.1.

See: 27 N.J.R. 4905(b).

### 16:38-5.2 Conditions for storage of spilled cargo

(a) Material which is of a bulk nature may be stored off the traveled roadway providing there is sufficient space and it will not present a hazard to the public.

(b) When material cannot be stored adjacent to the roadway, it shall be taken to a Department of Transportation maintenance yard facility and covered with tarpaulin, if available.

(c) For material which is of a viscous nature the appropriate action shall be taken to make the roadway safe for travel.

Administrative change: Recodified from 16:39-3.2.

See: 27 N.J.R. 4905(b).

### 16:38-5.3 Responsibility for removal of cargo considered to be extremely dangerous

(a) For material that is considered to be extremely dangerous, personnel of the Department of Transportation are not allowed to touch it. The responsibility for notifying the proper authorities rests with the State or local police.

(b) Maintenance forces of the Department of Transportation shall cooperate with authorities and police to provide the type of safety precautions required to insure normal traffic flow until proper removal is affected.

Administrative change: Recodified from 16:39-3.3.

See: 27 N.J.R. 4905(b).

### 16:38-5.4 Refusal by carrier or owner to remove his property within 72 hours

(a) The district maintenance and operations, as deemed necessary, shall contact the section chief, legal services, requesting that he prepare for seeking a mandatory injunction should a carrier or owner refuse to remove his property within 72 hours.

(b) If a carrier or owner refuses to remove his property the Attorney General will seek a mandatory injunction to force the removal of objects that only the carrier or owner is equipped to relocate.

Administrative change: Recodified from 16:39-3.4.

See: 27 N.J.R. 4905(b).