

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.2011 d.138, effective April 18, 2011.
See: 43 N.J.R. 271(a), 43 N.J.R. 1266(a).

Chapter Expiration Date

Chapter 38, Roadside, Drainage, Unusual and Disaster Maintenance, expires on April 18, 2018.

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Subchapter 4, Obstructions to Maintenance Operations, and Subchapter 5, Spilled Cargo on State Highways, were repealed and Subchapter 4, Removal of Vehicles, Cargo and Other Objects, was adopted as new rules by R.1996 d.424, effective September 3, 1996.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).

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 As a part of R.2006 d.55, Subchapter 2, Maintenance of Right-of-Way Prior to Construction, was repealed; Subchapter 3, Responsibility for Damage, was recodified as Subchapter 2; and Subchapter 4, Removal of Vehicles, Cargo, and Other Objects, was recodified as Subchapter 3, effective February 6, 2006. See: 37 N.J.R. 3269(a), 38 N.J.R. 1078(a).

Chapter 38, Roadside, Drainage, Unusual, and Disaster Maintenance, was readopted as R.2011 d.138, effective April 18, 2011. As a part of R.2011 d.138, Chapter 38, Roadside, Drainage, Unusual, and Disaster Maintenance, was renamed Roadside, Drainage, Unusual and Disaster Maintenance; Subchapter 1, Purpose and Scope, was adopted as new rules; former Subchapter 1, Responsibility for Maintenance, was recodified in part to Subchapter 2 and renamed Definitions; former Subchapter 1, Responsibility for Maintenance, was recodified in part to Subchapter 3 and renamed Responsibility for Maintenance; former Subchapter 2, Responsibility for Damage, was recodified to Subchapter 4 and renamed Responsibility for Damage by a Utility; and former Subchapter 3, Removal of Vehicles, Cargo, and Other Objects, was recodified as Subchapter 5 and renamed Removal of Vehicles, Cargo and Other Objects, effective May 16, 2011. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. PURPOSE AND SCOPE**16:38-1.1 Purpose**

This chapter establishes responsibilities for maintenance and damage related to the State right-of-way. It also provides policies for the removal of objects from highways.

16:38-1.2 Scope

This chapter is applicable to owners of property abutting a highway, road, street or thoroughfare under State jurisdiction.

SUBCHAPTER 2. DEFINITIONS**16:38-2.1 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.

“Highway” means the entire width between the boundary lines of the right-of-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 storm 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.

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

“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.

“Utility” or “utilities” 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 in this chapter is intended to reference both public and private utilities unless otherwise individually specified.

The following annotation applies to N.J.A.C. 16:38-2.1 prior to its repeal by R.2011 d.138:

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

The following annotations apply to N.J.A.C. 16:38-2.1 subsequent to its recodification from N.J.A.C. 16:38-1.1 by R.2011 d.138:

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.

Recodified from N.J.A.C. 16:38-1.1 and amended by R.2011 d.138, effective May 16, 2011.

See: 43 N.J.R. 271(a), 43 N.J.R. 1266(a).

Added definitions “Highway”, “Maintenance operations”, “Object”, “Owner”, “Parking”, “Stopping or standing”, “Traveled portion” and “Utility”. Former N.J.A.C. 16:38-2.1, “Utility” defined, repealed.

SUBCHAPTER 3. RESPONSIBILITY FOR MAINTENANCE

16:38-3.1 Policies

(a) Maintenance policies are as follows:

1. 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 will be maintained by the Department under any of the following conditions:

i. The sidewalk is a part of a State highway structure or grade separation;

ii. The sidewalk is not accessible to the owner of the abutting property due to Department control of access (such as right-of-way, noisewalls or chain link fence); or

iii. The Department is the owner of the abutting property.

(b) Replacement policies are as follows:

1. A sidewalk or driveway that is destroyed, substantially damaged 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 policies are as follows:

1. 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, will be reimbursed by the State or any public entity for any reason, including, but not limited to, circumstances where