

CHAPTER 13

FLOOD HAZARD AREA CONTROL ACT RULES

Authority

N.J.S.A. 12:5-3; 13:1D-1 et seq.; 13:1D-29 et seq., specifically 13:1D-33; 13:9A-1 et seq.; 13:19-1 et seq.; 13:20-1 et seq.; 58:10A-1 et seq.; 58:11A-1 et seq.; and 58:16A-50 et seq.

Source and Effective Date

R.2007 d.340, effective November 5, 2007.
See: 38 N.J.R. 3950(a), 39 N.J.R. 4573(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1b, Chapter 13, Flood Hazard Area Control Act Rules, expires on November 5, 2014. See: 43 N.J.R. 1203(a).

Chapter Historical Note

Chapter 13, Water Supply and Flood Plain Management, was adopted as new rules by R.1975 d.105, effective June 2, 1975. See: 6 N.J.R. 391(a), 7 N.J.R. 206(b).

Pursuant to Executive Order No. 66(1978), Chapter 13, Water Supply and Flood Plain Management, expired on July 19, 1983.

Subchapter 11, Delineated Floodways, was readopted as R.1983 d.321, effective July 21, 1983. See: 15 N.J.R. 839(a), 15 N.J.R. 1374(b).

Chapter 13, Flood Hazard Areas, was adopted as new rules by R.1984 d.201, effective May 21, 1984, and Subchapter 11, Delineated Floodways, was recodified as N.J.A.C. 7:13-7.1. See: 15 N.J.R. 2104(a), 16 N.J.R. 1201(a).

The Executive Order No. 66(1978) expiration date for Chapter 13, Flood Hazard Area Control, was extended by gubernatorial directive from May 4, 1989 to July 17, 1989. See: 21 N.J.R. 1481(a).

Pursuant to Executive Order No. 66(1978), Chapter 13, Flood Hazard Area Control, was readopted as R.1989 d.415, effective July 14, 1989. See: 21 N.J.R. 371(a), 21 N.J.R. 2350(a).

Pursuant to Executive Order No. 66(1978), Chapter 13, Flood Hazard Area Control, was readopted as R.1994 d.338, effective June 10, 1994. See: 26 N.J.R. 1036(a), 26 N.J.R. 2791(a).

Chapter 13, Flood Hazard Area Control, was repealed and Chapter 13, Flood Hazard Area Control, was adopted as new rules by R.1995 d.149. See: 26 N.J.R. 1009(a), 27 N.J.R. 1211(a).

The Executive Order No. 66(1978) expiration date for Chapter 13, Flood Hazard Area Control, was extended by gubernatorial directive from March 20, 2000 to December 31, 2000. See: 32 N.J.R. 1253(b).

The Executive Order No. 66(1978) expiration date for Chapter 13, Flood Hazard Area Control, was extended by gubernatorial directive from December 31, 2000 to June 30, 2001. See: 33 N.J.R. 553(c).

The Executive Order No. 66(1978) expiration date for Chapter 13, Flood Hazard Area Control, was extended by gubernatorial directive from June 30, 2001 to June 30, 2002. See 33 N.J.R. 2641(a).

In accordance with N.J.S.A. 52:14B-5.1d, Chapter 13, Flood Hazard Area Control, expiration date was extended by gubernatorial directive from June 30, 2002 to December 30, 2003. See: 34 N.J.R. 2802(c).

In accordance with N.J.S.A. 52:14B-5.1d, Chapter 13, Flood Hazard Area Control, expiration date was extended by gubernatorial directive from December 30, 2003 to June 30, 2005. See: 36 N.J.R. 886(a).

Chapter 13, Flood Hazard Area Control, was readopted as R.2006 d.44, effective December 23, 2005. See: 37 N.J.R. 2759(a), 38 N.J.R. 947(a).

Chapter 13, Flood Hazard Area Control, was repealed and Chapter 13, Flood Hazard Area Control Act Rules, was adopted as new rules by R.2007 d.340, effective November 5, 2007. See: Source and Effective Date.

Petition for Rulemaking. See: 42 N.J.R. 733(c), 1085(b).

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 1. GENERAL PROVISIONS

- 7:13-1.1 Purpose and scope
- 7:13-1.2 Definitions
- 7:13-1.3 Types of permits and approvals
- 7:13-1.4 Delegation of authority
- 7:13-1.5 Creation of a county water resources association
- 7:13-1.6 Liberal construction
- 7:13-1.7 Severability

SUBCHAPTER 2. EXTENT OF REGULATORY AUTHORITY

- 7:13-2.1 Permit requirement
- 7:13-2.2 Regulated waters
- 7:13-2.3 Regulated areas
- 7:13-2.4 Regulated activities

SUBCHAPTER 3. DETERMINING THE FLOOD HAZARD AREA AND FLOODWAY

- 7:13-3.1 General provisions for determining the flood hazard area and floodway along a regulated water
- 7:13-3.2 Selecting a method for determining the flood hazard area and floodway along a regulated water
- 7:13-3.3 Flood hazard area and floodway based on a Department delineation (Method 1)
- 7:13-3.4 Flood hazard area and floodway based on a FEMA flood insurance study (Methods 2 through 4)
- 7:13-3.5 Flood hazard area determined by approximation (Method 5)
- 7:13-3.6 Flood hazard area and floodway determined by calculation (Method 6)

SUBCHAPTER 4. DETERMINING THE RIPARIAN ZONE

- 7:13-4.1 The riparian zone

SUBCHAPTER 5. APPLICABILITY DETERMINATIONS

- 7:13-5.1 General provisions for applicability determinations

SUBCHAPTER 6. VERIFICATIONS

- 7:13-6.1 General provisions for verifications

SUBCHAPTER 7. PERMITS-BY-RULE

- 7:13-7.1 General provisions for permits-by-rule
- 7:13-7.2 Permits-by-rule

SUBCHAPTER 8. GENERAL PERMITS

- 7:13-8.1 Standards applicable to all general permits
- 7:13-8.2 General permit conditions
- 7:13-8.3 General permit 1 for channel cleaning under the Stream Cleaning Act
- 7:13-8.4 General permits 2A through 2G for agricultural activities designed by the NRCS
- 7:13-8.5 General permit 3 for bridge or culvert scour protection by a public entity
- 7:13-8.6 General permit 4 for stormwater maintenance by a public entity
- 7:13-8.7 General permit 5 for the relocation of a building to reduce flood damage
- 7:13-8.8 General permit 6 for the reconstruction of a damaged or destroyed residence

- 7:13-8.9 General permit 7 for residential construction in a tidal flood hazard area
- 7:13-8.10 General permit 8 for a utility line across or along a water with a drainage area of less than 50 acres
- 7:13-8.11 General permit 9 for a roadway or footbridge across a water with a drainage area of less than 50 acres
- 7:13-8.12 General permit 10 for a stormwater outfall along a water with a drainage area of less than 50 acres

SUBCHAPTER 9. INDIVIDUAL PERMITS

- 7:13-9.1 General provisions for individual permits
- 7:13-9.2 Application requirements for an individual permit
- 7:13-9.3 Application review procedures for a verification or individual permit
- 7:13-9.4 Duration of an individual permit
- 7:13-9.5 Individual permit conditions
- 7:13-9.6 Cases where a verification is required prior to obtaining an individual permit
- 7:13-9.7 Cases where an individual permit can be issued in an approximated flood hazard area
- 7:13-9.8 Hardship exception for an individual permit

SUBCHAPTER 10. INDIVIDUAL PERMIT REQUIREMENTS WITHIN VARIOUS REGULATED AREAS

- 7:13-10.1 Requirements for a regulated activity in a channel
- 7:13-10.2 Requirements for a regulated activity in a riparian zone
- 7:13-10.3 Requirements for a regulated activity in a floodway
- 7:13-10.4 Requirements for a regulated activity in a flood fringe
- 7:13-10.5 Requirements for a regulated activity in or along a water with fishery resources
- 7:13-10.6 Requirements for a regulated activity in a documented habitat for threatened or endangered species
- 7:13-10.7 Requirements for a regulated activity in an area with acid producing soils

SUBCHAPTER 11. INDIVIDUAL PERMIT REQUIREMENTS FOR VARIOUS REGULATED ACTIVITIES

- 7:13-11.1 Requirements that apply to all regulated activities
- 7:13-11.2 Requirements for stormwater management
- 7:13-11.3 Requirements for excavation, fill and grading activities
- 7:13-11.4 Requirements for a structure
- 7:13-11.5 Requirements for a building
- 7:13-11.6 Requirements for a railroad, roadway or parking area
- 7:13-11.7 Requirements for a bridge or culvert
- 7:13-11.8 Requirements for a footbridge
- 7:13-11.9 Requirements for a utility line
- 7:13-11.10 Requirements for a stormwater outfall structure
- 7:13-11.11 Requirements for a dam or a low dam
- 7:13-11.12 Requirements for a flood control project
- 7:13-11.13 Requirements for a retaining wall or bulkhead
- 7:13-11.14 Requirements for bank stabilization and channel restoration
- 7:13-11.15 Requirements for sediment and debris removal from a water
- 7:13-11.16 Requirements for the storage of unsecured material
- 7:13-11.17 Requirements for the placement, storage or processing of hazardous substances
- 7:13-11.18 Requirements for the placement, storage or processing of solid waste
- 7:13-11.19 Requirements for the removal of existing fill or an existing structure

SUBCHAPTER 12. EMERGENCY PERMITS

- 7:13-12.1 Requirements for issuing an emergency permit
- 7:13-12.2 Procedures after an emergency permit is issued

SUBCHAPTER 13. REVISION OF AN APPROVAL

- 7:13-13.1 Revision of a verification
- 7:13-13.2 Revision of a general permit

- 7:13-13.3 Revision of an individual permit
- 7:13-13.4 Revision of a Department delineation by application
- 7:13-13.5 Revision or suspension of a Department delineation by the Department

SUBCHAPTER 14. TRANSFER, SUSPENSION AND TERMINATION OF AN APPROVAL

- 7:13-14.1 Transfer of an approval
- 7:13-14.2 Suspension of an approval
- 7:13-14.3 Termination of an approval

SUBCHAPTER 15. APPLICATION REQUIREMENTS

- 7:13-15.1 General provisions
- 7:13-15.2 Pre-application conference
- 7:13-15.3 Application report
- 7:13-15.4 Engineering report
- 7:13-15.5 Environmental report

SUBCHAPTER 16. PUBLIC NOTICE OF APPLICATIONS

- 7:13-16.1 General requirements for public notice of applications
- 7:13-16.2 Public notice requirements for an application for a verification
- 7:13-16.3 Public notice requirements for an application for an individual permit
- 7:13-16.4 Documenting public notice of an application
- 7:13-16.5 Newspaper notice
- 7:13-16.6 Contents of public notice of an application

SUBCHAPTER 17. APPLICATION FEES

- 7:13-17.1 Application fees

SUBCHAPTER 18. REQUESTS FOR ADJUDICATORY HEARINGS

- 7:13-18.1 Requests for adjudicatory hearings

SUBCHAPTER 19. ENFORCEMENT

- 7:13-19.1 Penalties
- 7:13-19.2 Grace period applicability; procedures

APPENDIX 1

APPENDIX 2

SUBCHAPTER 1. GENERAL PROVISIONS

7:13-1.1 Purpose and scope

(a) This chapter sets forth requirements governing human disturbance to the land and vegetation in the following areas:

1. The flood hazard area of a regulated water, as described at N.J.A.C. 7:13-3; and
2. The riparian zone of a regulated water, as described at N.J.A.C. 7:13-4.

(b) This chapter implements the Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq.; and, in addition, relevant aspects of the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.; the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq.; the Highlands Water Protection and Planning Act, N.J.S.A. 13:20-1 et seq.; the Ninety-Day Construction Permits Law, N.J.S.A. 13:1D-29 et seq.; and N.J.S.A. 13:1D-1 et seq.

(c) The purpose of this chapter is to minimize damage to life and property from flooding caused by development within fluvial and tidal flood hazard areas, to preserve the quality of surface waters, and to protect the wildlife and vegetation that exist within and depend upon such areas for sustenance and habitat.

1. Unless properly controlled, development within flood hazard areas increases the intensity and frequency of flooding by reducing flood storage, increasing stormwater runoff and obstructing the movement of floodwaters. Damage also occurs from fallen structures, unsecured materials and other debris carried by floodwaters. Furthermore, improperly built structures are subject to flood damage and threaten the health, safety and welfare of those who use them. Increased flooding results in increased risk of loss of life and property damage.

2. Healthy vegetation adjacent to surface waters is essential for maintaining bank stability and water quality. The indiscriminate disturbance of such vegetation destabilizes the banks of channels and other surface waters, which leads to increased erosion and sedimentation that exacerbates the intensity and frequency of flooding. The loss of vegetation adjacent to surface waters also reduces filtration of stormwater runoff and thus degrades the quality of these waters. Such impacts adversely affect the health and habitat of fish and wildlife that depend upon clean surface waters and therefore disrupt the ecological balance that is necessary for life. Humans are ultimately affected by this imbalance, since clean water is essential for all life.

(d) Except where authority has been delegated to a county governing body under N.J.A.C. 7:13-1.4, the Department shall be the agency that implements this chapter.

(e) Activities regulated under this chapter may also be subject to other Federal, State and/or local rules, plans and ordinances. Authorization to undertake a regulated activity under this chapter does not indicate that the activity also meets the requirements of any other rule, plan or ordinance. It is the applicant's responsibility to obtain all necessary approvals for a proposed project.

(f) Information and forms relating to this chapter can be obtained from:

Street address (for meetings and hand delivery of material):

State of New Jersey
 Department of Environmental Protection
 Division of Land Use Regulation
 501 East State Street
 Station Plaza 5, 2nd Floor
 Trenton, New Jersey 08609

Postal address:

State of New Jersey
 Department of Environmental Protection
 Division of Land Use Regulation

P.O. Box 439
 Trenton, New Jersey 08625-0439
 Telephone: (609) 292-0060
 Fax: (609) 777-3656
 Website: www.nj.gov/dep/landuse/

(g) USGS quad maps and Flood Hazard Area Technical Manuals can be obtained from the Department's Office of Maps and Publications at the address below. The Flood Hazard Area Technical Manual can also be downloaded from the website listed in (f) above.

State of New Jersey
 Department of Environmental Protection
 Office of Maps and Publications
 428 East State Street
 P.O. Box 438
 Trenton, New Jersey 08625-0438
 Telephone: (609) 777-1039
 Fax: (609) 292-3285

7:13-1.2 Definitions

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

"Acid producing soils" means soils that contain geologic deposits of iron sulfide minerals (pyrite or marcasite) which, when exposed to oxygen from the air or from surface waters, oxidize to produce sulfuric acid. Acid producing soils, upon excavation, generally have a pH of 4.0 or lower. After exposure to oxygen, these soils generally have a pH of 3.0 or lower. Information regarding the location of acid producing soils in New Jersey can be obtained from local Soil Conservation District offices.

"Actively farmed" means currently and continually in use for cultivation, grazing or other agricultural purposes, provided such activities are recognized as agricultural by the USDA. An area that lies fallow as part of a conventional rotational cycle that does not exceed five years is considered to be actively farmed. Farms that have been abandoned for more than five years are not actively farmed.

"Anadromous water" means a water that supports anadromous fish, as identified by the Department's Division of Fish and Wildlife. Anadromous fish travel between salt water and fresh water or upstream to spawn, and N.J.A.C. 7:13-10.5(b) indicates how to determine which waters support anadromous fishery resources.

"Applicability determination" is the Department's official statement of whether an activity requires permit under this chapter, as described at N.J.A.C. 7:13-5.1.

"Aquatic habitat enhancement device" means a device placed within and/or adjacent to a channel to enhance aquatic habitat, typically consisting of boulders, brush, deflectors, felled shoreline trees, low-flow channel structures, mud sills,

rubble reefs, spawning/nursery structures and/or tire structures.

“Architect” means a professional architect who is licensed to practice in New Jersey.

“Bank” means the inclined side of a channel, an excavated or impounded area or a topographic depression, which confines and/or conducts water.

“Bed” means the floor of a channel over which water flows continuously or intermittently. Bed also means the floor of an excavated or impounded area or of a topographic depression that confines and/or conducts water.

“Building” means a structure with walls and a roof, which is designed, constructed and/or intended for storage, shelter or occupation. A building that is intended for regular human occupation is considered a habitable building.

“Category One water” means a water designated as such in the Department’s Surface Water Quality Standards at N.J.A.C. 7:9B.

“Central Passaic Basin” means the regulated area along the following waters:

1. Beaver Dam Brook, downstream of Jacksonville Road in Montville Township, Morris County;
2. Black Brook in Florham Park Borough, East Hanover Township and Hanover Township, Morris County;
3. Dead River, downstream of Liberty Corner Road in Bernards Township, Somerset County;
4. East Ditch, downstream of Jacksonville Road in Pequannock Township, Morris County;
5. Harrison Brook, downstream of Lake Road in Bernards Township, Somerset County;
6. Passaic River, between U.S. Route 202 in Bernards Township, Somerset County, and Harding Township, Morris County, and Beatties Dam in Little Falls Township, Passaic County;
7. Pequannock River, downstream of Paterson-Hamburg Turnpike in Riverdale Borough, Morris County, and Pompton Lakes Borough, Passaic County;
8. Pompton River;
9. Ramapo River, downstream of the Pompton Lake dam in Pompton Lakes Borough, Passaic County;
10. Rockaway River, downstream of the Boonton Reservoir dam in Boonton Town and Parsippany-Troy Hills Township, Morris County;
11. Wanaque River, downstream of Paterson-Hamburg Turnpike in Pompton Lakes Borough, Passaic County;

12. West Ditch, downstream of Jacksonville Road in Lincoln Park Borough, Morris County; and

13. Whippany River, downstream of State Route 10 in East Hanover and Hanover Townships, Morris County;

“Channel” means a linear topographic depression that continuously or intermittently confines and/or conducts surface water, not including transient erosional gullies and other ephemeral features that temporarily form after heavy rainfall. A channel can be naturally occurring or can be of human origin through excavation or construction. A channel includes both bed and banks.

“Channel modification” means the reconfiguration or reconstruction of all or part of a channel, such as by straightening, relocating, lining or excavating the channel, or by enclosing the channel within a structure such as a pipe or culvert. The removal of accumulated sediment and debris in accordance with N.J.A.C. 7:13-8.3, 8.4(c)2 or 11.15 is not a channel modification.

“Commissioner” means the Commissioner of the Department of Environmental Protection.

“Dam” means a structure defined as such in the Department’s Dam Safety Standards at N.J.A.C. 7:20.

“Department” means the New Jersey Department of Environmental Protection.

“Department delineation” means the flood profiles, flood elevations and/or detailed mapping of the flood hazard area and/or floodway, promulgated by the Department. Appendix 2 of this chapter, incorporated herein by reference, lists the Department delineated waters of New Jersey.

“Documented habitat for threatened or endangered species” means an area for which:

1. There is recorded evidence of past use by a threatened or endangered species of flora or fauna for breeding, resting or feeding. Evidence of past use by a species can include, but is not limited to, sightings of the species or of its sign (for example, skin, scat, shell, track, nest, herbarium records, etc.), as well as identification of its call; and
2. The Department makes the finding that the area remains suitable for use by the specific documented threatened or endangered species during the normal period(s) the species would use the habitat.

“Drainage area” means a geographic area within which water, sediments and dissolved materials drain to a particular receiving waterbody or to a particular point along a receiving waterbody.

“Drawing” means a graphic depiction of land, vegetation, water, structures, and other physical features on paper, such as a blueprint, construction plan, cross-section, topographic map, architectural rendering or other similar illustration,