

CHAPTER 286

AN ACT concerning the prevention of flooding, amending P.L.1993, c.376, and supplementing Title 58 of the Revised Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Section 1 of P.L.1993, c.376 (C.58:16A-67) is amended to read as follows:

C.58:16A-67 Written notice of intent to undertake a project to clean, clear, desnag stream; definitions.

1. a. The provisions of any other law, or any rule or regulation adopted pursuant thereto, to the contrary notwithstanding, a county or municipality, or designated agency thereof, before undertaking any project to clean, clear, or desnag a stream within its jurisdiction, shall submit to the Department of Environmental Protection or to any State agency requiring a stream cleaning permit or an application for the proposed stream cleaning, clearing, or desnagging project, a written notice of intent to undertake a project to clean, clear, or desnag a stream and a certification attested to by the county or municipal engineer or the local soil conservation district, provided that the certification is made by a licensed professional engineer. The engineer shall certify that:

(1) the project is being undertaken solely for the purpose of stream cleaning, clearing, or desnagging;

(2) the removal of any material will not extend below the natural stream bed;

(3) the activities will not alter the natural stream banks;

(4) the activities will consist of the removal only of accumulated sediments, debris, and garbage from a stream with a natural stream bed or the removal of any accumulated material from a stream previously channelized with concrete or similar artificial material;

(5) every effort will be made to perform work from only one stream bank and that vegetation and canopy on the more southerly or westerly banks will be preserved for stream shading; and

(6) the activities are necessary and in the public interest.

The notice shall also include a description of the nature of the project, a description, including a photograph, of the reach of the stream in which the activity is to take place, and an identification of the regulatory water quality classification of the stream in which the activity is to take place. The reach of the stream may be provided by the submission of a photostatic copy of the United States Geological Survey topographic quadrangle.

b. For any project that includes sediment removal, in addition to the conditions enumerated in subsection a. of this section, the following conditions must be met:

(1) the applicant shall provide a statement from the engineer that the stream floods and that such flooding results or can result in property damage necessitating the proposed cleaning, clearing, or desnagging;

(2) the stream to be cleaned, cleared, or desnagged is not classified as pinelands waters or category one waters;

(3) the stream bed is 15 feet or less in average width;

(4) the stream corridor to be cleaned, cleared, or desnagged is less than 500 feet in length;

(5) the stream is not in a municipality, as defined by the department, that is known to have federally or State listed threatened or endangered species associated with its wetlands. Regulated activities in these municipalities shall be coordinated with federal agencies;

(6) the applicant shall provide a certification by the engineer that the material to be removed is not beyond the natural stream bed;

(7) the applicant shall submit surface color photographs of the areas of the stream to be cleaned, cleared, or desnagged and of the access points; and

(8) the applicant shall incorporate appropriate timing restrictions as required by the department.

c. Upon receipt of a notice and certification submitted pursuant to this section, the department, or any other State agency requiring a stream cleaning permit or an application for the proposed stream cleaning, clearing, or desnagging project, as the case may be, shall, except as provided otherwise in this subsection, have 15 days to notify the applicant if particular circumstances mandate that the stream cleaning, clearing, or desnagging not be done in this particular case. For a project involving the removal of sediment, the department shall have 60

days prior to the commencement of activities to notify the applicant if particular circumstances mandate that the stream cleaning, clearing, or desnagging not be done in that particular case. If the department, or any other State agency requiring a stream cleaning permit or an application for the proposed stream cleaning, clearing, or desnagging project, as the case may be, makes such a determination, it shall provide the applicant with the technical reasons therefor. For the purposes of this subsection, if the department's technical reasons therefor are based upon the inability to determine the natural stream bed, the department shall, at the request of the applicant, assist in identifying the natural stream bed. The department may not prohibit the removal of any garbage no matter how long it has been in the stream, nor shall the department require extensive mapping or other engineering services which involve significant expense to the municipality.

d. Upon completion of the project to clean, clear, or desnag a stream involving the removal of sediment within its jurisdiction, the applicant shall submit to the department a written notice that the project has been completed in accordance with the conditions outlined in subsection b. of this section. The notice shall contain a certification attested to by the county or municipal engineer or the local soil conservation district, provided that the certification is made by a licensed professional engineer. The engineer shall certify that all the conditions in subsection b. of this section have been adhered to.

e. As used in this section:

"Applicant" means a county or municipality, or designated agency thereof;

"Category one waters" means, for the purposes of sediment removal, those waters designated by the Department of Environmental Protection, for purposes of implementing the antidegradation policies of the "Water Pollution Control Act," P.L.1977, c.74 (C.58:10A-1 et seq.), for protection from measurable changes in water quality characteristics because of their clarity, color, scenic setting, other characteristics of aesthetic value, exceptional ecological significance, exceptional recreational significance, exceptional water supply significance, or exceptional fisheries resources. These waters may include, but are not limited to:

(1) Waters originating wholly within federal, interstate, State, county, or municipal parks, forests, fish and wildlife lands, and other special holdings that have not been designated by the department as FW1;

(2) Waters classified by the department as FW2 trout production waters and their tributaries;

(3) Surface waters classified by the department as FW2 trout maintenance waters or FW2 nontrout waters that are not more than 750 feet upstream of waters classified by the department as FW2 trout production waters;

(4) Shellfish waters of exceptional resource value; or

(5) Other waters and their tributaries that flow through, or border, federal, State, county or municipal parks, forest, fish and wildlife lands, and other special holdings;

"Department" means the Department of Environmental Protection;

"FW" means the general surface water classification applied to fresh waters;

"FW1" means those fresh waters that originate in and are wholly within federal or State parks, forests, fish and wildlife lands, and other special holdings, that are to be maintained in their natural state of quality and not subjected to any man-made wastewater discharges;

"FW2" means the general surface water classification applied to those fresh waters that are not designated as FW1 or pinelands waters;

"Trout maintenance waters" means waters designated by the department for the support of trout throughout the year; and

"Trout production waters" means waters designated by the department for use by trout for spawning or nursery purposes during their first summer.

f. Any person or governmental entity violating the provisions of this section shall be subject to penalties imposed for violations of the "Flood Hazard Area Control Act," P.L.1962, c.19 (C.58:16A-50 et seq.).

C.58:16A-68 Municipal plan for flood control facilities.

2. a. Any municipality, either alone or jointly with any other municipality, may establish a

plan, with the approval of the Department of Environmental Protection, for the size and location of flood control facilities, including detention basins, in order to minimize flood damage, to reduce stormwater runoff from new or existing development, or to induce water recharge into the ground where practical. Notwithstanding any provision of this subsection to the contrary, for new development the standards adopted pursuant to P.L.1993, c.32 (C.40:55D-40.1 et seq.) shall be applicable. This subsection shall apply only to municipally-owned flood control facilities, including detention basins, constructed on public property.

b. Any municipality, either alone or jointly with any other municipality, may establish a plan, with the approval of the Department of Environmental Protection, to maintain the water level of any lake or reservoir within its borders at a level necessary to provide an equivalent surface water safe yield established by the department for any affected water supply system and protection against flooding. Any such plan shall (1) comply with the provisions of R.S.23:5-29, P.L.1981, c.262 (C.58:1A-1 et seq.), and R.S.58:4-1 et seq., (2) include a calculation of the quantity of storage necessary to achieve a given level of flood control protection, (3) consider the environmental impact upon aquatic resources and fish spawning, the impact upon recreational use, and the financial impact upon all users of the lake or reservoir, and (4) consider any other criteria deemed necessary by the department. The department shall hold a public hearing prior to approval of a plan to seek input on the plan from any municipality that borders the lake or reservoir, or borders a river, stream or brook that feeds into or flows from that lake or reservoir. The department shall issue its decision on the plan in writing and transmit a copy thereof to each affected municipality and water supply purveyor prior to the effective date of the decision. No plan that jeopardizes safe yield and the provision of adequate water supply or reduces current safe yield levels of any lake or reservoir shall be approved by the department. No plan within the area of jurisdiction of the New Jersey Water Supply Authority may be established without the approval of the authority.

c. Nothing in this section shall be construed to supersede any other State law that applies to the construction of flood control facilities or the regulation of water levels in lakes or reservoirs.

3. This act shall take effect immediately.

Approved January 8, 1998.