

SENATE COMMITTEE SUBSTITUTE FOR  
SENATE, No. 275

STATE OF NEW JERSEY

ADOPTED DECEMBER 16, 1996

Sponsored by Senators CARDINALE and McNAMARA

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

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

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

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

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

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

26 (3) the activities will not alter the natural streambanks;

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

31 (5) every effort will be made to perform work from only one  
32 streambank and that vegetation and canopy on the more southerly or

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.**

**Matter underlined thus is new matter.**

1 westerly banks will be preserved for stream shading; and

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

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

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

13 (1) the applicant shall provide a statement from the engineer that  
14 the subject stream floods and results or can result in property damage  
15 necessitating the proposed cleaning;

16 (2) the stream to be cleaned is not classified as pinelands waters  
17 or category one waters;

18 (3) the streambed is 15 feet or less in average width;

19 (4) the stream corridor to be cleaned is less than 500 feet in  
20 length;

21 (5) the stream is not in a municipality, as defined by the  
22 department, that is known to have federally or State listed threatened  
23 or endangered species associated with its wetlands. Regulated  
24 activities in these municipalities require coordination with federal  
25 agencies;

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

28 (7) the applicant shall submit surface color photographs of the  
29 areas of the stream to be cleaned and of the access points; and

30 (8) the applicant shall incorporate appropriate timing restrictions  
31 as required by the Department of Environmental Protection.

32 [b.] c. Upon receipt of a notice and certification submitted  
33 pursuant to this section, the department, or any other State agency  
34 requiring a stream cleaning permit or an application for the proposed  
35 stream cleaning, clearing or desnagging project, as the case may be,  
36 shall except as provided below, have [30] 15 days to notify the  
37 county or municipality, or designated agency thereof, if particular  
38 circumstances mandate that the stream cleaning not be done in this  
39 particular case. For those projects involving the removal of sediment,  
40 the department shall have 60 days prior to the commencement of  
41 activities to notify the county or municipality, or designated agency  
42 thereof, if particular circumstances mandate that the stream cleaning  
43 not be done in that particular case. If the department, or any other  
44 State agency requiring a stream cleaning permit or an application for  
45 the proposed stream cleaning, clearing or desnagging project, as the

1 case may be, makes such a determination, it shall provide the county  
2 or municipality, or designated agency thereof, with the technical  
3 reasons therefor. The department may not prohibit the removal of any  
4 garbage no matter how long it has been in the stream.

5 d. Upon completion of the project to clean a stream involving the  
6 removal of sediment within its jurisdiction, the county or municipality,  
7 or designated agency thereof, shall submit to the department a written  
8 notice that the project has been completed in accordance with the  
9 criteria outlined in subsection b. of this section. The notice shall  
10 contain a certification attested to by the county or municipal engineer  
11 or the local soil conservation district, provided that the certification is  
12 made by a licensed professional engineer. The engineer shall certify  
13 that all the criteria in subsection b. of this section have been adhered  
14 to.

15 e. As used in this section:

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

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

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

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

35 (4) Shellfish waters of exceptional resource value; or

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

39 "FW" means the general surface water classification applied to  
40 fresh waters.

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

45 "FW2" means the general surface water classification applied to

1 those fresh waters that are not designated as FW1 or pinelands waters.

2 "Trout maintenance waters" means waters designated by the  
3 department for the support of trout throughout the year.

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

7 [c.] f. Any person or governmental entity violating the provisions  
8 of this [act] section shall be subject to penalties imposed for violations  
9 of the "Flood Hazard Area Control Act," P.L.1962, c.19  
10 (C.58:16A-50 et seq.).  
11 (cf: P.L.1993, c.376, s.1)

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13 2. (New section) a. Any municipality may establish a plan for the  
14 size and location of flood control facilities, including detention basins,  
15 in conjunction with any other municipality and the Department of  
16 Environmental Protection in order to minimize flood damage, to  
17 reduce stormwater runoff from new or existing development, and to  
18 induce water recharge into the ground where practical.

19 b. Any municipality may establish a plan either alone or jointly  
20 with any other municipality and with the Department of Environmental  
21 Protection, to maintain the water level of any lake or reservoir within  
22 its borders at a level necessary to protect against flooding.

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24 3. (New section) Upon application by a municipality, the  
25 Department of Environmental Protection shall identify the natural  
26 streambed of any stream in the municipality that floods and which  
27 flooding results or can result in property damage and which will be  
28 subject to routine maintenance to control flooding. Any maps or data  
29 generated by the department shall be sent to the clerk of the  
30 municipality.

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32 4. This act shall take effect immediately.

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37 Provides for expedited permit procedures for certain stream cleaning  
38 activities and for other planning functions to prevent flooding.