

# SENATE CONCURRENT RESOLUTION No. 101

## STATE OF NEW JERSEY

INTRODUCED OCTOBER 24, 1996

By Senator SCOTT

1 **A CONCURRENT RESOLUTION** concerning legislative review of regulations  
2 pursuant to Article V, Section IV, paragraph 6 of the Constitution of the  
3 State of New Jersey and invalidating certain regulations of the Department  
4 of Environmental Protection.

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6 **BE IT RESOLVED** *by the Senate of the State of New Jersey (the General*  
7 *Assembly concurring):*

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9 1. Pursuant to Article V, Section IV, paragraph 6 of the Constitution of  
10 the State of New Jersey, the Legislature may review any rule or regulation of  
11 an administrative agency to determine if the rule or regulation is consistent with  
12 the intent of the Legislature.

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14 2. The "Spill Compensation and Control Act," P.L.1976, c.141 (C.58:10-  
15 23.11 et seq.) requires owners or operators of major facilities where  
16 hazardous substances are stored to prepare and submit to the Department of  
17 Environmental Protection discharge prevention, control, and countermeasure  
18 (DPCC) plans, one component of which is the preparation of drainage and  
19 land use maps and maps identifying environmentally sensitive areas. In  
20 regulations adopted in 1991 at N.J.A.C.7:1E-4.10(d) the Department of  
21 Environmental Protection required that such maps be submitted in paper form.  
22 In amendments to N.J.A.C.7:1E-4.10(d), proposed at 27 N.J.R.2337 and  
23 adopted at 28 N.J.R. 2858, the Department of Environmental Protection  
24 required that the maps be resubmitted in both paper and digital form, an  
25 additional requirement that is inconsistent with Legislative intent.

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27 3. By the passage of Senate Concurrent No. 15 of 1996, filed by the  
28 Secretary of State on May 31, 1996, the Legislature determined that the  
29 amendment to N.J.A.C.7:1E-4.10(d) proposed at 27 N.J.R.2337 requiring  
30 that DPCC maps be resubmitted in both paper and digital form was not  
31 consistent with Legislative intent. Senate Concurrent Resolution No. 15 of  
32 1996 further determined that, pursuant to Article V, Section IV, paragraph 6  
33 of the Constitution of the State of New Jersey, if the Commissioner of the  
34 Department of Environmental Protection did not amend or withdraw the  
35 regulation within 30 days of passage of Senate Concurrent Resolution No. 15,

1 the Legislature was authorized under the Constitution to invalidate the  
2 regulation in whole or in part.

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4 4. The Legislature finds that the 30 day period given to the Commissioner  
5 of Environmental Protection in Senate Concurrent Resolution No. 15 of 1996  
6 has expired and that the Commissioner of Environmental Protection has failed  
7 to withdraw the proposed regulation or to amend it in a manner that is  
8 consistent with the intent of the Legislature. The Legislature recognizes that in  
9 its adoption at 28 N.J.R.2858 of the amendment proposed at 27 N.J.R.2337  
10 to N.J.A.C.7:1E-4.10(d), the Department of Environmental Protection did  
11 provide in N.J.A.C.7:1E-4.6(d) that the digital mapping requirement shall be  
12 met "only when there is a change in the information required to be depicted."  
13 The Legislature finds that this adopted amendment remains inconsistent with  
14 the intent of the Legislature because N.J.A.C.7:1E-4.6(d) still requires that  
15 maps be submitted in both paper and digital form.

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17 5. The Legislature, by the passage of this Concurrent Resolution, is  
18 therefore exercising its Constitutional powers pursuant to Article V, Section  
19 IV, paragraph 6 of the Constitution of the State of New Jersey to invalidate,  
20 in part, the regulations of the Department of Environmental Protection that  
21 were adopted at 28 N.J.R.2858 and codified at N.J.A.C.7:1E-4.10(d). The  
22 regulations codified at N.J.A.C.7:1E-4.10(d) are invalidated to the extent  
23 they were amended by 28 N.J.R. 2858. Upon their invalidation pursuant to  
24 this Concurrent Resolution the regulations codified at N.J.A.C.7:1E-10(d)  
25 shall read as follows:

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27 (d) All maps required by N.J.A.C.7:1E-4.3(b)4, 5 and 6 shall be  
28 submitted in hard copy form, including two paper copies and, if mylar  
29 basemaps are used, two mylar copies. Such hard copies may be  
30 accompanied by a submission of the mapped information in digital form,  
31 at the option of the person required to submit the map.

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#### STATEMENT

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36 This concurrent resolution embodies the finding of the Legislature that the  
37 amendment to N.J.A.C.7:1E-4.10(d), proposed at 27 N.J.R.2337 and  
38 adopted at 28 N.J.R.2858, by the Department of Environmental Protection  
39 requiring that maps submitted as part of a DPCC plan pursuant to the "Spill  
40 Compensation and Control Act," P.L.1976, c.141 (C.58: 10-23.11 et seq.),  
41 be submitted in both paper and digital form is inconsistent with legislative  
42 intent.

43 In Senate Concurrent Resolution No. 15 of 1996, which was passed by

1 the Legislature and filed by the Secretary of State on May 31, 1996, the  
2 Legislature determined that this regulation, in its proposed form, was  
3 inconsistent with legislative intent. Under the Constitution the Department of  
4 Environmental Protection is given 30 days following the passage of such a  
5 resolution to withdraw or amend the regulation. The Department has not  
6 withdrawn the regulation, or amended it to adequately address the  
7 inconsistency with legislative intent, and the Legislature is by the resolution  
8 exercising its constitutional authority to invalidate in part the regulation. Upon  
9 passage of this Concurrent Resolution, the amendment to N.J.A.C. 7:1E-  
10 4.10(d) adopted at 28 N.J.R. 2858 will be invalidated and N.J.A.C. 7:1E-  
11 4.10 (d) will read exactly as it had before the amendment.

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16 Invalidates regulations of the DEP that require the submission of digital maps  
17 pursuant to the DPCC program.