

Frequently Asked Questions Regarding Compliance with the New Jersey Stormwater Management Regulations

Question: If the applicant/developer received a permit from the New Jersey Department of Environmental Protection, does the municipality still have to review the plans to determine if they are in compliance with the stormwater management regulations.

Answer: Yes, the approval of a developer's stormwater management plans lies **solely** with the municipality. Municipalities are required under their Municipal Stormwater General Permit to enforce statewide basic requirements for post-construction stormwater management in new development and redevelopment.

Question: Can we change the definition of "Major Development" to require smaller development projects to comply with the stormwater management regulations?

Answer: The regulations currently define "Major Development" as *"any 'development' that provides for ultimately disturbing one or more acres of land or increasing impervious surface by one-quarter acre or more."* New Jersey is a home-rule state so the municipality can make regulations more stringent than required by NJDEP but not less stringent. For example, one acre of land disturbance can be decreased to one-quarter of an acre, and the threshold for increasing impervious surfaces can be reduced to 1,000 square feet. Each municipality must determine what makes sense for them. If there are numerous knock-down and rebuilds, going to a smaller land disturbance could make sense.

Question: If a development does not meet the definition of "Major Development," can we still require them to do stormwater management without changing the definition of "Major Development?"

Answer: Yes, you could create another development category called "Minor Development" and require this type of development to meet some lesser level of stormwater management than "Major Development." An example would be to have all minor development manage stormwater runoff volume from all impervious surfaces for the water quality storm (1.25 inches of rain over two-hours).

Question: Do all major development projects have to maintain groundwater charge?

Answer: No, groundwater recharge requirements do not apply to some linear projects like underground utilities or to projects in "urban redevelopment areas" or to projects where stormwater runoff is coming from highly polluted areas.

Question: If the site currently does not recharge groundwater, does the major development have to include a groundwater recharge stormwater management component?

Answer: No, if the existing groundwater recharge on the site is zero. The applicant/developer must demonstrate through hydrologic and hydraulic analysis that the site and its stormwater management measures maintain 100 percent of the average annual pre-construction groundwater recharge volume for the site.

Question: Do all stormwater management practices have to be designed in accordance to the New Jersey Stormwater Best Management Practices (BMPs) Manual?

Answer: Yes, Table 2 of the stormwater management regulations (N.J.A.C. 7:8) presents the presumed removal rates for certain BMPs designed in accordance with the New Jersey Stormwater Best Management Practices Manual. Therefore, if the applicant/developer is required to meet these removal rates, the BMP must be designed in accordance to the Manual.

Question: Does a municipality have the ability to waive a stormwater management requirement?

Answer: Yes, a municipality may grant a variance or exemption from the design and performance standards for stormwater management measures set forth in its approved municipal stormwater management plan and stormwater control ordinance(s), ***provided the municipal plan includes a mitigation plan*** and the municipality submits a written report to the county review agency and the Department describing the variance or exemption and the required mitigation.

Question: Do all major development projects have to incorporate nonstructural management strategies?

Answer: Yes, unless the applicant contends that it is not feasible for engineering, environmental, or safety reasons in which case, the applicant shall identify the strategy and provide a basis for the contention.

Question: Does the land used for nonstructural management strategies have to be deed restricted?

Answer: Yes. The area shall be dedicated to a government agency, subjected to a conservation restriction filed with the appropriate County Clerk's office, or subject to NJDEP approved or equivalent restriction that ensures that measure is maintained in perpetuity.

Question: Can the maintenance of a stormwater facility be assigned to the property owner of an individual property in a residential development or project?

Answer: No, unless the property owner owns or leases the entire residential development or project.

Question: Is the municipality required to keep the maintenance plans for all stormwater facilities contained within a major development?

Answer: Yes, for stormwater facilities approved by a municipality. The municipality shall make copies of these maintenance plans available to NJDEP upon request.