



NEW JERSEY FUTURE COMMENTS ON POTENTIAL AMENDMENTS TO STORMWATER MANAGEMENT RULE FROM JULY 30, 2020 STAKEHOLDER MEETING

New Jersey Future submits the following comments on the New Jersey Department of Environmental Protection’s (NJDEP or Department) proposed potential amendments to the state’s Stormwater Management Rules (N.J.A.C. 7:8), reviewed at the July 30, 2020 NJDEP stakeholder meeting.

Background

Founded in 1987, New Jersey Future is a nonprofit, nonpartisan organization that promotes sensible growth, redevelopment, and infrastructure investments to foster vibrant cities and towns, protect natural lands and waterways, enhance transportation choices, provide access to safe, affordable and aging-friendly neighborhoods, and fuel a strong economy. Prerequisite to these broad goals are strong and resilient communities that have clean water and are not burdened by localized flooding.

We support clear and predictable state-level rules that facilitate responsible and affordable development in those communities and promote sustainable infrastructure solutions that deliver multiple benefits. Improving and clarifying the state’s Stormwater Management Rules (N.J.A.C. 7:8) is critical to ensuring that new development and redevelopment projects will achieve these goals.

As extreme weather and the frequency of day-to-day rain events are on the rise due to climate change, the state’s Stormwater Management Rules (Rules) are an essential regulatory tool for reducing flooding, runoff pollution, and pressure on aging grey infrastructure. The March 2020 publication of the amended stormwater rules—that now require green infrastructure be used to meet the rules’ three performance standards (groundwater recharge, water quality, and water quantity)—was an important step forward. The green infrastructure requirement slows and reduces runoff, and adds multiple environmental, societal, and economic benefits while providing an objective standard that creates predictability. We also applaud the Department’s action to advance additional amendments to further address climate change and strengthen the Rules’ underlying performance standards.

Comments on proposed potential amendments from the July 30, 2020 stakeholder meeting:

New Jersey Future supports the following potential amendments *without revision*:

- Dam Maintenance Exemption
- Removal of Rational/Modified Rational Method
- Removal of 2.5” Orifice Limitation
- Unified Definition of Major Development
- TSS removal for Redeveloped Motor Vehicle Surface

We support the following potential amendments but offer recommendations for NJDEP to provide guidance and clarity to municipalities and design professionals and to maximize the benefits of proposed additional requirements.

- Climate Change in Municipal and Regional Stormwater Management Plans
- On-site Retention
- Climate Change and Rainfall Totals

Specifically, we offer the following comments:

- **Climate Change in Municipal and Regional Stormwater Management Plans.** Resilience planning is an important tool towards reducing the negative effects of climate change. Municipal and regional stormwater management plans can identify areas and infrastructure vulnerable to climate change and propose actions to mitigate those vulnerabilities. But some communities may not have the capacity and/or expertise to develop resiliency actions even though the effects of climate change require immediate action.

We recommend NJDEP provide sample language and recommended resilience actions that communities might include in their municipal and regional stormwater management plans by publishing model stormwater management plans with detailed guidance. Since municipalities are required to revise their stormwater ordinance to be consistent with the new stormwater rule amendments by March 3, 2021, the Department should provide guidance on incorporating climate change in stormwater management plans as soon as possible. Some municipalities may opt to save on costs by updating their stormwater ordinance and stormwater management plans at the same time. New Jersey Future appreciates the opportunity to review draft guidance, with other stakeholders, before final guidance is published. We ask the Department to establish and make known a timeframe for the release of this guidance.

- **On-Site Retention.** We fully endorse a volume management requirement in the form of on-site retention of the water quality design storm. On-site retention, through the use of green infrastructure, will provide wide ranging benefits for cleaning and recharging groundwater and preventing flooding associated with frequent, small storms. For sites that cannot achieve on-site retention, the option of a slow release of the water quality design storm will still benefit water quality, flooding, and surcharging. We encourage the Department to consider two factors:

- a. **Clear definition of technical impracticability of on-site retention:** The Department must clearly define the circumstances that permit an applicant to slowly release the runoff from the water quality design storm instead of retaining the runoff on-site. We recommend the Department use language from the “Variance from the design and performance standards for stormwater

management measures” section of the Rules (N.J.A.C. 7:8-4.6) to require applicants to prove that on-site retention through infiltration is not feasible due to engineering, environmental, or safety reasons *for individual drainage areas* where infiltration is impracticable, and not for the entire site (unless the applicant provides analysis that infiltration is impracticable for each drainage area within the site). We recommend the Department also define the duration of “slow release” and consider how size of the BMP may impact the duration.

- b. Applicability of the on-site retention requirement for roadway projects that meet the definition of major development.** We do not recommend that NJDEP expand current linear development waivers to include a waiver for the on-site retention requirement. The on-site retention requirement should apply to all major development projects, including new roadways. The negative impacts of runoff from impervious cover and the benefits of retaining runoff on-site is well documented. While many commercial, residential, or mixed-use developments have non-impervious surfaces built into the site, most roadways are inherently 100% impervious. Therefore, every opportunity to mitigate runoff from new roadways should be ensured through an on-site retention requirement. Precedent for such a requirement can be found in [Chapter 102.8\(g\)](#) of the Pennsylvania Code, which requires:

“...analysis demonstrating that the PCSM BMPs [Post-Construction Stormwater Management Best Management Practices] will meet the volume reduction and water quality requirements specified in an applicable Department approved and current Act 167 stormwater management watershed plan; or manage the net change for storms up to and including the 2-year/24-hour storm event when compared to preconstruction runoff volume and water quality....except for repair, reconstruction or restoration of roadways or rail lines.”

New roadway construction is not excluded from Pennsylvania’s volume management requirement.

- **Climate Change and Rainfall Totals.** We believe stormwater management designs should function for the rainfall events of today and the future due to climate change. To this end, it is imperative that the Department update, and keep updated, its data source for the 2, 10, and 100-year storm events so that said storms incorporate climate change trends and impacts. We are encouraged by the Department’s consideration to make this a requirement for the rule’s stormwater runoff quantity standard and its efforts to adopt a statewide tool and report to establish responsible projection methodology and results.

We acknowledge that the Department’s potential requirement to design for “today” and the “future” may be confusing as two sets of models are required. We suggest the Department provide maximum clarity for this in a revised set of FAQs for the Stormwater Management Rules.

Additional recommendations

The aforementioned potential amendments to N.J.A.C. 7:8 do not address two of New Jersey Future's top priorities. We encourage NJDEP to include the following two potential amendments, which have been discussed in previous stakeholder meetings, in a future rule proposal and stakeholdering effort:

1. **Major Development:** Revise the definition of major development to include smaller sites and less disturbance than the current "1-acre of disturbance or 1/4 acre of new impervious cover" standard. New Jersey Future recommends 1-acre of disturbance be reduced to 1/2-acre and 1/4-acre of new impervious cover be reduced to 5,000 square feet. Smaller building sites and smaller lots are more common in urban areas where (a) most growth occurs and (b) stormwater runoff tends to cause the most serious problems related to pollution and flooding. The current major development definition would exempt a significant percentage of redevelopment projects, and thus would not capture excellent opportunities to improve overall outcomes.
2. **Redevelopment:** Require that redevelopment projects meeting the definition of major development comply with all stormwater management requirements. If redevelopment projects are exempt, huge opportunities to improve conditions in the built environment are lost—especially in cities, where improvements are most beneficial. With today's high-performing green infrastructure techniques designed for urban areas, there is no need to exempt redevelopment. That said, the rules need to be mindful of special circumstances on contaminated sites and provide a predictable route to compliance that achieves water quality goals and other intended beneficial outcomes without discouraging redevelopment. Consistent with broad environmental and state planning goals, stormwater rules should encourage, not impede, redevelopment that helps cities and towns become healthier, more vibrant, and livable places.

We also look forward to forthcoming proposals from the following subgroups: *Nonstructural Stormwater Techniques, Improving Maintenance, TMDLs and Impairments, and Nutrient Standards*.

New Jersey Future thanks the NJDEP for facilitating an effective and inclusive process to further amend the Stormwater Management Rules to better protect our state's waterways, communities, and infrastructure—an important continuation of NJDEP's amendments earlier this year. We look forward to working with the NJDEP and fellow stakeholders to continue to improve the rules through future amendments.

Please do not hesitate to contact Kandyce Perry, Director, Green Infrastructure at New Jersey Future (kperry@NJFuture.org) with follow-up questions or for further information.