

# New Jersey DEP Adopts Green Infrastructure Stormwater Management Standards

April 16, 2020

On March 2, 2020, New Jersey DEP adopted a set of expansive amendments to its Stormwater Management Rules. The Rules, codified at N.J.A.C. 7:8, prescribe the standards for the rate, volume and quality of stormwater runoff discharge from a development project under DEP's jurisdiction. They also apply to any residential development project that is subject to the Residential Site Improvement Standards, regardless of whether those projects are under DEP jurisdiction or not.

The Rules previously required, with respect to water quality, that projects incorporate "non-structural management strategies to the maximum extent practicable". Those Rules were regarded as difficult to interpret by the regulated community and as largely unsuccessful by DEP.

Stormwater management strategies tend to evolve over time, and the past several years have seen a trend toward "green infrastructure" techniques. These techniques, which emphasize replicating the natural hydrologic cycle by managing stormwater at or near the location where it falls to the ground, have been adopted in numerous jurisdictions around the Country. They have now been adopted in New Jersey. The following are some of the more significant components of the newly adopted Rules:

- The standards will apply to any project involving more than one acre of disturbance or a creation of more than 0.25 acres of new "motor vehicle surface". This is a departure from the prior Rules, which applied to the creation of more than 0.25 acres of any impervious surface (excluding roof tops), regardless of whether they were trafficked by motor vehicles. Sidewalks, for example, are no longer included in the impervious cover calculation.
- The Rules have an effective date of March 2, 2020 but an operative date of March 2, 2021. The stated goal is to allow the regulated community to become familiar with the standards and to allow DEP a period of time in which to update its stormwater Best Management Practices (BMP) Manual. Project designers are nevertheless cautioned to consider meeting the new standards if there is an expectation that required approvals cannot be obtained prior to March 2, 2021.
- "Green infrastructure" is defined as meaning a stormwater management measure that manages stormwater close to its source by treating runoff through infiltration into subsoil, through filtration by vegetation or soil, and/or by storing stormwater runoff for reuse.
- The Rules identify the following specific green infrastructure BMPs:
  - Cisterns
  - Drywells
  - Grass Swales
  - Green Roofs

- Manufactured Treatment Devices
  - Pervious paving
  - Infiltration basins
  - Sand filters
  - Vegetative filter strips
  - Constructed wetlands
  - Wet ponds
  - Blue roofs
  - Subsurface gravel wetlands
- The newly adopted Rules continue to have relatively straightforward tables listing the design and numerical performance standards for stormwater quality and stormwater quantity, quality and recharge. What has changed is the design standards.
  - The Rules place greater emphasis on the use of groundwater recharge as a technique for reducing the volume of stormwater runoff and improving stormwater quality in those locations where it is feasible to do so.
  - The design and performance standards for erosion control continue to be those established under the Soil Erosion and Sediment Control Act.
  - The use of manufactured treatment devices (MTDs) will continue to be permissible in urban redevelopment areas and other locations at which there is insufficient room to accommodate green infrastructure.
  - The Rules emphasize the creation of small-scale green infrastructure systems with limited drainage areas, the goal being to mimic and maintain natural drainage patterns to the extent that is possible.
  - Stormwater controls are now required for projects where the principle flooding influence is tidal, unless the design engineer demonstrates that there will be no adverse flooding impacts. This is a departure from the prior Rules.
  - The Rules require the recording of deed notices for all green infrastructure components. This is a requirement of the existing rules, and will likely continue to be a significant practical challenge going forward.

The Stormwater Rules continue to be design and performance standards, and not siting standards. In other words, they are not used to determine where new development occurs, but only how it is to be constructed. They are going to significantly influence the manner in which new development is designed and constructed throughout the State. They are highly technical, so clients and colleagues should be working with the engineering community to fully understand them. We will, of course, be happy to assist you as well.

If you have questions feel free to contact Amie C. Kalac at (609) 279-0900 or via email at [AKalac@cullenllp.com](mailto:AKalac@cullenllp.com) or Neil Yoskin at (609) 279-0900 or via email at [NYoskin@cullenllp.com](mailto:NYoskin@cullenllp.com).

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## Practices

- Environmental

## Attorneys

- Amie C. Kalac
- Neil Yoskin