



URGENT

NJBA Members:

On Wednesday, May 25 at a small industry stakeholder meeting, the Department of Environmental Protection (DEP) announced it would be taking the dramatic step of deviating from its previously reported rulemaking timeline and would be adopting a portion of the Protecting Against Climate Threats (PACT) rules under its emergency rulemaking powers in June.

As we have noted over the past couple of years, the PACT rules will have a drastic impact on development in NJ, impacting everything from the Coastal Flood Hazard, Fluvial Flood Hazard, Wetlands, Coastal and Stormwater Rules.

The portion of the PACT rules being adopted on an emergency basis include changes to the Fluvial Flood Hazard Area (FHA) rules and the Stormwater Rules.

Crucially, Emergency Rules in NJ are effective the day that they are filed with the Office of Administrative Law. DEP has indicated this will occur in mid-June.

Emergency rules are effective for up to 120 days but can be extended. DEP expects to propose the full PACT rules in Q3. In other words, these new rules are expected to be in effect in approximately two-three weeks.

Changes to Fluvial FHA Rules

Under the Fluvial FHA Rules, the Design Flood Elevation (DFE) will be changed to include an additional 2 feet of flood elevation. Applicants utilizing their own flood projections will be required to use year 2100 rainfall data for calculating an alternative DFE. If your project is not currently in a floodplain, it is crucial you determine if you may be impacted by the additional 2 feet of flood elevation.

The rule will also ensure that permits and authorization under FHA rules meet minimum NFIP standards and relevant sections of the UCC.

Changes to Stormwater Rules

Under the Stormwater Rules, stormwater designs will be required to manage runoff for both today's storms and future storms utilizing year 2100 county based rainfall projections, which are up to 50% higher than current totals (link to DEP rainfall projections: <https://njprojectedprecipitationchanges.com>).

Municipalities will have one year to update municipal stormwater ordinances however, the stormwater rules will be immediately effective under the Residential Site Improvement Standards. (RSIS has a 6 month delay to any technical change becoming effective, DEP acknowledged they are examining this legal technicality.)

Grandfathering

FHA Rules: You will not have to comply with the new FHA standard if:

- 1 - the activity is part of a project with a valid FHA permit, or
- 2 - the activity is part of a project that needs an FHA permit and a complete application was submitted to DEP prior to the emergency rule filling, or
- 3 - the activity is part of a project that did not need an FHA permit prior to the rule filling where: (a) the project received all federal, state and local approvals and (b) construction commenced prior to the rule filling.

Stormwater Rules: You will not have to comply with the new rules if:

- 1 - the project needs an FHA, Coastal Zone Management, Freshwater Wetlands or Highlands approval and a complete application was submitted prior to the emergency rule filling, or
- 2 - the project does not need DEP approval and has received local approvals pursuant to the MLUL prior to the emergency rule filling.

Next Steps & Additional Information

NJBA is exploring all options regarding its response to this emergency rule.

We will make available a copy of DEP's presentation as soon as possible.

Finally, we will be holding several information sessions open to all members and will notify you of dates and times as soon as we have them scheduled.

In the interim, please do not hesitate to contact NJBA COO Grant Lucking at grant@njba.org or 732-939-3246 with immediate questions.

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