



## State of New Jersey

### DEPARTMENT OF ENVIRONMENTAL PROTECTION

CHRIS CHRISTIE  
*Governor*

KIM GUADAGNO  
*Lt. Governor*

BOB MARTIN  
*Commissioner*

#### ADMINISTRATIVE ORDER NO. 2016-06

WHEREAS, N.J.S.A. 13:1D-1 et seq., and specifically N.J.S.A. 13:1D-9, authorizes the Commissioner of the New Jersey Department of Environmental Protection (NJDEP) to formulate, implement, and enforce policies for the protection of the environment; and

WHEREAS, on February 2, 2004, NJDEP adopted Stormwater Management rules at N.J.A.C. 7:8 to help protect and restore water resources in New Jersey through the management of stormwater and minimization of nonpoint source pollution; and

WHEREAS, the New Jersey Surface Water Quality Standards, N.J.A.C. 7:9B, define Category One waters as those designated for protection from measurable changes in water quality based on exceptional ecological significance, exceptional recreational significance, exceptional water supply significance or exceptional fisheries resource(s) to protect their aesthetic value and ecological integrity; and

WHEREAS, prior to June 20, 2016, the Stormwater Management rules at N.J.A.C. 7:8-5.5(h) imposed a Special Water Resource Protection Area (SWRPA) adjacent to all Category One waters and their upstream tributaries located within the same HUC-14 watershed where depicted on USGS Quadrangle Maps or in the County Soil Surveys, as a best management practice to reduce pollutant loading from major developments within Category One waters and their tributaries; and

WHEREAS, former N.J.A.C. 7:8-5.5(h) defined the SWRPA as a 300-foot area on each side of the waterway, and prohibited most disturbance of vegetation in the inner 150 feet of the SWRPA, and allowed limited disturbance in the outer 150 feet; and

WHEREAS, on November 5, 2007, NJDEP promulgated new Flood Hazard Area Control Act (FHACA) rules, N.J.A.C. 7:13, which rules also protected 300-foot areas on each side of Category One waterways as riparian zones, in a manner similar to those subject to the SWRPA requirements; and

WHEREAS, although former N.J.A.C. 7:8-5.5(h) limited or prohibited most disturbance within the 300-foot SWRPA, disturbances to this area were allowed under NJDEP land use permitting rules including the FHACA rules in limited circumstances; and

WHEREAS, on June 20, 2016, NJDEP adopted amendments, repeals and new rules to the FHACA rules, Coastal Zone Management (CZM) rules, N.J.A.C. 7:7, and the Stormwater Management rules, N.J.A.C. 7:8 (June 20, 2016 rulemaking); and

WHEREAS, among other things, the June 20, 2016 rulemaking repealed and replaced reference to the SWRPA at N.J.A.C. 7:8-5.5(h) with reference to N.J.A.C. 7:13-4.1(c)1 and the riparian zone requirements in the FHACA rules; and

WHEREAS, the intent of these particular amendments was to consolidate the requirements of the SWRPA with the riparian zone standards of the FHACA rules while maintaining equivalent protections; and

WHEREAS, due to concerns raised during the public comment period related to protections afforded to the riparian zone associated with Category One waters under the FHACA rules, NJDEP proposed further amendments and a new rule to the FHACA rules on June 20, 2016 at 48 N.J.R. 1014(a); and

WHEREAS, N.J.A.C. 7:13-11.2(d) as proposed to be amended enhances protections for the inner 150 feet of the 300-foot Category One riparian zone because NJDEP recognizes that the inner 150-foot portion of a 300-foot riparian zone is particularly important for maintaining water quality, ecological health, and fisheries resources associated with Category One waters; and

WHEREAS, N.J.A.C. 7:13-13.4(b) as proposed to be amended strengthens riparian zone mitigation requirements and ensures that appropriate mitigation for any riparian zone functions and values that could be lost as a result of permitted disturbance along Category One waters is provided; and

WHEREAS, until these proposed amendments take effect, the 300-foot Category One riparian zone, including the inner 150-foot portion thereof, must be protected to the maximum extent allowable under the FHACA rules; and

WHEREAS, N.J.A.C. 7:13-10.3(b) provides that NJDEP may establish conditions in a specific individual permit on a case-by-case basis, and, as indicated in the adopted rules, in cases where a proposed regulated activity involves disturbance to a Category One water or its riparian zone, the Department may impose additional conditions to ensure that the water quality of the regulated water is protected; and

WHEREAS, N.J.A.C. 7:13-11.2(b)1, 2 and 3 provide that NJDEP shall issue an individual permit for any regulated activity or project that results in riparian zone vegetation disturbance only if: (1) the basic purpose of the regulated activity or project cannot be

accomplished onsite without disturbance to riparian zone vegetation; (2) such disturbance is minimized through methods including situating the regulated activity or project as far from any regulated water as feasible, and limiting construction to actively disturbed areas and/or areas wherein the benefits or functions of a riparian zone are considerably deteriorated and impaired as a result of previous development; and (3) mitigation is provided as required; and

WHEREAS, N.J.A.C. 7:13-22.2(c)5 provides that a permittee shall take all reasonable steps to prevent, minimize, or correct any adverse impact on the environment resulting from activities conducted pursuant to the permit, or from noncompliance with the permit; and

WHEREAS, N.J.A.C. 7:13-13.2(a) requires that riparian zone mitigation shall fully compensate for any ecological loss; and

WHEREAS, implementation of best management practices that include restricting disturbance within the 300-foot riparian zone for Category One waters, and minimization and mitigation of disturbances, satisfy the applicable water quality requirements of the Federal Clean Water Act, 33 U.S.C. 1251 to 1387, specifically 33 U.S.C. 1342(p), and the State Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., which require the reduction of pollutants in stormwater discharges to the maximum extent practicable;

WHEREAS, in implementing the recently adopted FHACA rules during the time period prior to when the proposed amendments pertaining to the inner 150 feet of the 300-foot riparian zone are adopted, it is necessary to provide additional guidance to Department staff regarding how to apply N.J.A.C. 7:13-10.3(b), 11.2(b)1, 2 and 3, 13.2(a) and 22.2(c)5 to ensure that 300-foot Category One riparian zones, including the inner 150-foot portion of the 300-foot Category One riparian zone, remain protected and that mitigation fully compensates for any ecological loss;

WHEREAS, nothing in the June 20, 2016 rulemaking, the proposed amendments and new rule to the FHACA rules on June 20, 2016, or this Administrative Order is intended to relax the protections afforded to Category One waters; and

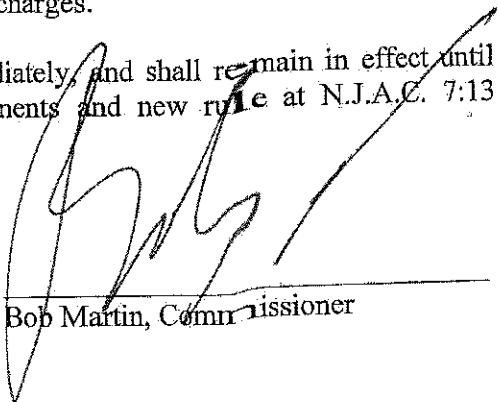
WHEREAS, compliance with the FHACA rules, as further supported by the findings in 1 (a) and (b), below, the collective purpose of which is to, among other things, protect the water quality functions of riparian zones associated with Category One waters, shall be deemed to represent implementation of best management practices and compliance with all applicable water quality standards and requirements.

NOW THEREFORE, I, Bob Martin, Commissioner, pursuant to the authority vested in me by NJDEP's enabling legislation, N.J.S.A. 13:1D-1 et seq., and by the Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq., the Stormwater Management Act, N.J.S.A. 40:55D-93 through 99, the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq. and the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., hereby direct that:

1. Effective immediately, in the application of N.J.A.C. 7:13-10.3(b), 11.2(b)1, 2 and 3 and 22.2(c)5, NJDEP staff shall consider proposed criteria at N.J.A.C. 7:13-11.2(d) when evaluating an individual permit application under the FHACA rules for regulated activities within the inner 150 feet of the 300-foot riparian zone, and, in order to issue the permit, shall conclude that:
  - a. There is no practicable alternative to the regulated activity that would have less adverse impact on the regulated areas and which would not significantly compromise other environmental resources;
  - b. The regulated activity results in the minimum feasible alteration or impairment of the riparian or aquatic ecosystem;
  - c. The regulated activity complies with the applicable water quality standards and requirements; and
  - d. The regulated activity is in the public interest, including consideration of the following:
    - i. The practicability of using reasonable alternative locations and methods to accomplish the purpose of the proposed regulated activity;
    - ii. The functions and values provided by the riparian zone proposed to be impacted; and
    - iii. The probable individual and cumulative impacts of the regulated activity on public health, safety, and welfare, and the environment.
  
2. Effective immediately, in the application of N.J.A.C. 7:13-10.3 (b), 11.2(b)1, 2 and 3, 13.2(a) and 22.2(c)5, NJDEP staff shall consider the proposed criteria at N.J.A.C. 7:13-13.4(b), and, as a condition of an individual permit, impose appropriate mitigation requirements to ensure the continued protection of water quality, ecological health and fisheries resources associated with Category One waters.
  
3. Nothing in this Administrative Order shall be construed to amend or revise the applicability of surface water quality standards or requirements, including requirements associated with stormwater discharges.

This Administrative Order shall take effect immediately, and shall remain in effect until superseded or repealed, or the proposed amendments and new rule at N.J.A.C. 7:13 described above become effective.

Dated: 7/22/2016

  
 Bob Martin, Commissioner