

Stormwater Management Rule

Frequently Asked Questions

New Jersey's [Stormwater Management rules \(N. J. A. C. 7:8\)](#) are implemented by the New Jersey Department of Environmental Protection (Department) through the review of permits issued by the Division of Land Use Regulation (DLUR) (Flood Hazard, Freshwater Wetlands, CAFRA, Waterfront Development and Coastal Wetlands). The Stormwater Management rules (Stormwater rules or rules) are also implemented by local authorities through the Municipal Land Use Law (MLUL) and the Residential Site Improvement Standards (RSIS). Per the New Jersey Department of Community Affairs, the RSIS are applicable to any residential application that goes before a local board. Through the RSIS, the Stormwater rules are activated whenever a municipality requires the control of runoff from a site that is the subject of a site or subdivision application. Therefore, consistent with its duly adopted ordinances, a municipality may require compliance with the Stormwater rules through the RSIS whether or not a development is a "major development" as defined in the Stormwater rules. Please note that local implementation may differ, particularly with regard to their jurisdiction. Consequently, the municipal ordinances must be examined to determine development thresholds at which the Stormwater rules will apply. The rule clarification and interpretation offered herein are consistent with the current application of the Stormwater rules by the Department, and do not supersede local authority under the MLUL.

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Section 1.0 General

- 1.1 What are the new Stormwater Management Rules?
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- 1.3 What do the Stormwater Management rules require of new development?
- 1.4 Is all new development required to comply with the Stormwater Management Rules?
- 1.5 What are the jurisdictional thresholds for the Stormwater Management rules?
- 1.6 Do the rules apply to all lots that are one-acre or larger throughout the State?
- 1.7 How big is an acre?
- 1.8 At what point do the various standards in the Stormwater Management rules apply?
- 1.9 Do the Stormwater Management Rules establish a new regulatory program?
- 1.10 What is a "major development"?
- 1.11 An applicant has lawfully paved several acres of a site prior to February 2, 2004 and the applicant now wants to subdivide an undeveloped portion of the site and sell it to another developer who plans to construct a shopping center; does development on site prior to February 2, 2004 count toward the thresholds?
- 1.12 Do temporary projects need to meet the Stormwater Management rules?

1.1 What are the new Stormwater Management Rules?

Two sets of Stormwater rules were published in the February 2, 2004 issue of the New Jersey Register. Together the two sets of rules establish a comprehensive framework for addressing water quality impacts associated with existing and future stormwater discharges.

recommended for the depths of two feet or less.

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9.2 What is the difference between a bioretention basin and a bioretention swale?

A bioretention basin has a maximum depth of 12 inches for the stormwater quality design storm. A bioretention swale has a maximum depth of 18 inches, since the slope and the linear nature of the swale will result in low depths of ponding in portions of the basin. However, the average depth of ponding in the basin should be no greater than 12 inches.

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9.3 Can a BMP design not specifically shown in the BMP manual be submitted to the reviewing agency to demonstrate compliance with the 80% TSS reduction standard?

Any applicant has the option to submit an alternative BMP design to the review agency, with sufficient documentation to demonstrate the appropriate removal rates. If the project is the subject of a Division of Land Use Regulation permit, the use of a BMP that is not listed in the BMP manual must be identified in the permit application form. (Please note that this does not apply to manufactured treatment devices which are required to go through the certification and verification process as required under N.J.A.C. 7:8-5.7(c).) It is strongly recommended that at least two months prior to the submission of the project to Division of Land Use Regulation, the alternative design be submitted to the BMP Manual Technical Committee for evaluation at the following address:

Sandra Blick, Stormwater Implementation
New Jersey Department of Environmental Protection
Division of Watershed Management
P.O. Box 418
Trenton, NJ 08625-0418

If the Department is not the review agency, the review agency can approve the alternative design. However, a copy of any approved alternative removal rate or method of calculating removal rate must be submitted to the Department.

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9.4 Forebays are required for sand filters, constructed wetlands and wet ponds. Can a manufactured treatment device (MTD) take the place of a forebay?

An MTD with a removal rate of greater than 50% TSS can be utilized instead of a forebay in such a case. However, since the forebay is part of the requirement for a sand filter, a constructed wetland and a wet pond, the resulting removal rate is not a combination of the MTD removal rate and the non-MTD removal rate. Any use of an MTD instead of a forebay must address the scour potential and impacts on the BMP resulting from the MTD discharge.

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9.5 The BMP manual includes minimum design permeability rates for groundwater recharge and infiltration BMPs. Is there a maximum permeability rate?

All field permeability tests must utilize half the tested rate for the design of infiltration facilities to provide a safety factor. Furthermore, for any field tested rate of 20 inches per hour or greater, the maximum allowable design soil permeability rate shall be 10 inches per hour in order to ensure basin drawdown within 72 hours.

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Section 10.0 Impervious Surfaces

- 10.1 What is an impervious surface?
- 10.2 Does an existing impervious surface count toward the 0.25 of an acre threshold under any circumstance?
- 10.3 Is gravel considered impervious surface?
- 10.4 Is porous pavement considered pervious or impervious?
- 10.5 Are interlocking concrete pavers considered pervious or impervious?

10.1 What is an impervious surface?

An impervious surface is an area that has been covered by a layer of material that is highly resistant to infiltration by water. Impervious surfaces include concrete, asphalt, driveways, basketball courts, concrete patios, swimming pools and buildings.

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All of the following count as a “new” impervious surface for the purpose of the Stormwater Management rules:

- Any net increase of impervious surface onsite;
- Any change in an existing stormwater drainage system, which currently collects runoff from existing impervious surface, and the proposed change increases the capacity of the existing stormwater system (thereby potentially decreasing time of concentration, storage or water quality treatment of the existing runoff); and
- Any existing impervious surface, where the runoff is provided with existing water quality treatment, but which is proposed to be collected and discharged into a regulated area. Therefore, if existing vegetation provides water quality treatment for existing impervious surface runoff, water quality must be addressed if a project reduces or eliminates existing water quality protections. For example, runoff currently sheet-flows from a roadway onto adjacent lawns. As part of a municipal drainage improvement, a new storm sewer system will collect the runoff from the roadway and discharge it to a nearby stream. Even though there is no net increase in impervious surface, the newly collected runoff is “new” to the receiving stream. There will also be a loss of existing water quality treatment since runoff that currently sheet-flows through vegetation will now be directly discharged to the stream. As such the newly collected runoff must be treated to the existing Total Suspended Solid (TSS) removal rate, or to 50% TSS removal, whichever is greater.

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New gravel is not considered impervious under the Stormwater Management rules. However, if an applicant can demonstrate that under existing conditions on a previously developed site, the gravel material performs as an impervious surface, it may be considered impervious for the purposes of redevelopment. It is important to note that gravel may be considered impervious under other Department rules.

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Porous pavement is counted as impervious surface toward the threshold of jurisdiction for the applicability of the Stormwater Management rules and the applicability of the water quality standards. For instance, if 1 acre of porous pavement and 2 acres of standard pavement are proposed on a site, the total impervious surface onsite (for the purpose of determining applicability of the Stormwater Management rules) is 3 acres. However, while the water quality requirements do apply to runoff from porous pavement, the subsurface infiltration facility that is part of standard porous pavement construction will adequately address the water quality requirements of the rules, provided the subsurface infiltration facility is designed in accordance to the Stormwater Best Management Practices manual.

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Any pavers with a void area of 20% or less will be considered completely impervious for the purposes of the Stormwater Management rules. In pavers with greater than 20% void area, the applicant may count only the non-void area as impervious, provided the void areas are not grouted or made impermeable in any way.

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Section 11.0 Division of Land Use Regulation Review

Note: Revisions were proposed to the Freshwater Wetlands Protection Act Rules (N.J.A.C. 7:7A-1.1 et seq.) and published in the New Jersey Register on September 4, 2007 (Cite 39 NJR 3587 (a)). Those proposed revisions are not addressed in these FAQ's. See www.nj.gov/dep/landuse for information on these rules.

- 11.1 Does a complete application for a DLUR permit exempt a project from the Stormwater Management rules?
- 11.2 Under a Division of Land Use Regulation permit, what part of a project counts toward the 0.25 of an acre and 1 acre thresholds?
- 11.3 As noted above, once the 0.25 of an acre or 1 acre threshold is reached, jurisdiction is achieved for the Stormwater Management rules. However, do the rules apply then to the whole site or only to that portion of the site that lies within Division of Land Use Regulation jurisdiction?
- 11.4 A project needs a Freshwater Wetlands general permit 11 (GP11) to construct an outfall structure and does not need any other Division of Land Use Regulation (DLUR) permits. If the inflow area to a GP11 does not constitute a “major development”, but the project as a whole meets the definition of a “major development”, do the Stormwater Management rules apply to the project?
- 11.5 An applicant requests a Freshwater Wetlands transition area waiver - averaging plan to accommodate a proposed development. A stormwater discharge is proposed within the averaged transition area. The Freshwater Wetlands rules at N.J.A.C. 7:7A-6.2(b)3