

## Proposed Amendments to Surface Water Quality Standards: Category One (C1) Waterways

- On March 4, 2019, the DEP proposed amendments to the Surface Water Quality Standards, N.J.A.C. 7:9B, to upgrade 749 river miles to Category One (C1) antidegradation designation based on exceptional ecological significance and exceptional fisheries resource.
- The Surface Water Quality Standards (SWQS) establish the designated uses to be achieved for individual waterbodies and specify the water quality criteria necessary to achieve those uses.
- Designated uses include public potable water supply (after conventional treatment); recreation; fish consumption; shellfish harvesting; maintenance, migration, and propagation of fish; agricultural and industrial water supplies; and any other reasonable uses.
- Category One designations are designed to protect high quality waters from degradation.
- Category One waters are protected from any “*measurable change*” to existing water quality because of their exceptional ecological significance, exceptional recreational significance, exceptional water supply significance, or their significance as an exceptional fisheries resource.
- Waterbodies proposed for Category One protection based on Exceptional Ecological Significance have documented occurrences and verified habitat of endangered and threatened species and/or exceptional aquatic communities. This includes species such as the Bog Turtle and a variety of freshwater mussels. Exceptional aquatic communities are demonstrated by factors including: water quality chemical data, visual assessments of habitat, unimpaired macroinvertebrate communities and low impervious surface. The 2019 [Category One rule proposal](https://www.nj.gov/dep/rules/proposals/20190304a.pdf) (<https://www.nj.gov/dep/rules/proposals/20190304a.pdf>) discusses how each waterbody proposed for a Category One upgrade is determined.
- While expansions of existing discharges and new discharges may occur in these waters, they are strictly limited to ensure ‘no measurable change’ in their high-water quality. These important water bodies are also protected with strict land use requirements within the “riparian zone” that extend 300 feet from both sides of these waters, since these areas have been shown to provide substantial protections of water quality.

### Potential Impacts of riparian zones under the Flood Hazard Area Control Act rules:

- The Flood Hazard Area Control Act (FHACA) Rules establish 50, 150, and 300-foot riparian zones immediately surrounding surface waters throughout the State and set forth stringent standards intended to protect and enhance existing near-stream vegetation in these areas.
- The FHACA Rules additionally require applicants to demonstrate that activities within 150 feet of a surface water with a 300-foot riparian zone are unavoidable, minimized, and in the public interest. [N.J.A.C. 7:13-11.2(d)].
- Under the FHACA, Category One waters, including all upstream tributaries within the same sub-watershed area (as designated in the rules), possess a 300-foot riparian zone.
- In waters newly classified as Freshwater 2-Trout Production (FW2-TP) based on Exceptional Fisheries Resource(s), the riparian zone will be 150 feet along these waters and all upstream tributaries regardless of watershed boundaries.
- Therefore, property owners (including municipalities and other public entities) are likely to be impacted if they are planning to develop or redevelop within the new 300-foot riparian zones surrounding the proposed Category One waters and their upstream tributaries.

- However, the FHACA Rules automatically permit certain activities within riparian zones without prior written authorization from NJDEP, provided those activities meet specific limitations. Examples of these activities include normal property maintenance (such as mowing, pruning, and selective tree removal), repair and limited replacement of existing structures, and minor new construction within an existing lawn, garden, or farmed area (such as fences, sheds, and building additions that meet certain standards).
- Projects that do not fit into these categories, such as constructing new roads, buildings, and utilities, generally require an individual permit from NJDEP. The FHACA Rules limit the area of riparian zone vegetation that applicants can clear, cut, or remove for activities that are permitted in riparian zones.
- Three classes of activities are allowed in riparian zones under a FHACA individual permit: infrastructure projects (such as roads, railroads, trails, and utilities), projects that provide recognized environmental or public benefits (such as stream restoration projects, site remediation activities, landfill closures, and flood control projects), and activities associated with a single-family home or duplex.
- Under a FHACA individual permit, additional justification is required for activities proposed within the inner half of the riparian zone (within 150 feet of Category One waters and upstream tributaries), including a demonstration that the proposed work is in the public interest.
- Mitigation is required under a FHACA individual permit for any loss of vegetated areas within a 300-foot riparian zone. There are certain exceptions for trails, utility lines, and activities associated with a private residence, provided the activities fall below specified limits.
- Mitigation can be accomplished through: creation (creating new riparian zones by removing previously piped waterways); restoration (removing structures or pavement and planting trees); enhancement (supplementing existing vegetation with planted trees); and preservation (placing large areas of forested riparian zone under a conservation easement).
- New private developments (buildings, parking areas, etc.) in a riparian zone would generally require a hardship exception. Under this process, NJDEP can provide relief from one or more requirements of the rules where a property owner or public entity demonstrates that, among other things, "Due to an extraordinary situation of the applicant or site condition, compliance with this chapter would result in an exceptional and/or undue hardship for the applicant and/or would adversely impact public health, safety, and welfare." (See N.J.A.C. 7:13-15.1(c)1).
- The FHACA rules do allow the construction of one new single-family home or duplex, which provides some reasonable use of the land.
- The Stormwater Management rules at N.J.A.C. 7:8-5.5(h) and (i) require that a major development located within (or discharging into) these riparian zones must meet the stringent riparian zone standards of the Flood Hazard Area Control Act Rules. Any activity within a riparian zone or flood hazard area requires a flood hazard area approval pursuant to the Flood Hazard Area Control Act Rules.

#### Potential impacts – Water Quality Management Planning

- Most (approximately 94%) of the 300-foot riparian zones corresponding to the proposed new C1 waters are already located outside of the eligible sewer service based on the GIS coverage of adopted Statewide Sewer Service Area for New Jersey. The remaining land currently within the sewer service area may be restricted for other reasons or become ineligible for sewer service when the sewer service area mapping for that area is updated under a wastewater management plan (WMP) or WMP component required under the Water Quality Management Planning rules, N.J.A.C. 7:15.

### Potential impacts to new and existing point source dischargers:

- An existing NJPDES permittee with a discharge to a proposed Category One stream segment is not required to upgrade their treatment because of this rule proposal. Their NJPDES permit effluent limitations and permitted flow limit remain in effect and unchanged. However, if a NJPDES permittee with a discharge to a proposed Category One stream segment requests an increase to their permitted flow rate it would require a modification to the NJPDES permit to include alternate limits to satisfy the “no measurable change” criteria.
- Generally, this is accomplished by “holding the load” on the discharger’s effluent quality. In practice, the pollutant loading remains unchanged; however, because of the increased flow, the resulting concentration of permitted pollutants is reduced. Facilities proposing an increased discharge flow rate may have to provide a higher level of pollutant removal to maintain the existing high-water quality. This can be accomplished by building additional treatment units, expanding existing treatment units, or changing to an alternate treatment technology. There may also be annual operating costs associated with the increased use of treatment chemicals, increased electrical use, and increased sludge handling and disposal.
- Applicants proposing a new point source discharge will have to demonstrate compliance with the “no measurable change” requirement of the antidegradation policies. This may pose economic and engineering challenges. There has been some recent, limited interest in developing new sewage treatment plants for discharges to streams or waterways to accommodate properties that are currently discharging wastewater to failing septic systems.

### Where to find information related to the proposed Category One Upgrades:

- The Department has provided interactive maps and instructions at <https://www.nj.gov/dep/workgroups/swqs.html>. These maps are layered and provide close-ups of stream segments by water region, ultimately culminating in detailed PDF maps showing specific locations containing proposed Category One waters.
- The proposed stream segments are also identified in the 2019 Category One rule proposal in tables by water regions (see pages 25-32, 94-104, and 121-125). Streams are listed in alphabetical order under water regions (e.g. Atlantic, Lower Delaware, Upper Raritan, Wallkill etc.) on pages 132-135.

### Additional Information - Fact sheets:

- [Surface Water Quality Standards Fact Sheet](https://www.state.nj.us/dep/wms/bears/docs/swqsfactsheet1.pdf)  
(<https://www.state.nj.us/dep/wms/bears/docs/swqsfactsheet1.pdf>)
- [NJ SWQS Antidegradation Designations Fact Sheet](https://www.state.nj.us/dep/wms/bears/docs/swqsfactsheet2-antideg.pdf)  
(<https://www.state.nj.us/dep/wms/bears/docs/swqsfactsheet2-antideg.pdf>)