



## State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION  
P.O. BOX 402  
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TRENTON, NJ 08625-0402

CHRIS CHRISTIE  
*Governor*

KIM GUADAGNO  
*Lt. Governor*

BOB MARTIN  
*Commissioner*

### ADMINISTRATIVE ORDER NO.2012-09

WHEREAS, by Executive Order No. 73, dated August 25, 2011, Governor Christie declared a State of Emergency due to the impact of Hurricane Irene, which impacted the State as a tropical storm; and

WHEREAS, Executive Order No. 73 remains in effect; and

WHEREAS, Executive Order No. 73 authorizes and empowers me to waive, suspend or modify any existing rule where its enforcement is detrimental to the public welfare during the pendency of the State of Emergency in accordance with N.J.S.A. App. A:9-45; and

WHEREAS, widespread damage to public infrastructure that occurred as a result of Hurricane Irene and subsequent flooding caused a detriment and burden to the public health, safety and welfare; and

WHEREAS, State, County and Municipal agencies acted on an emergent basis and continue to take measures necessary to repair or replace public infrastructure due to damage resulting from Hurricane Irene and subsequent flooding, activities that now require Departmental action demonstrating regulatory compliance; and

WHEREAS, action by the Department is necessary to alleviate the administrative burdens placed on State, County and Municipal agencies for those activities that have been completed or are currently being conducted to ensure protection of the public health, safety and welfare;

WHEREAS, I determined that requiring already overburdened State, County and Municipal agencies to comply with the Department's permitting requirements for measures necessary to repair or replace public infrastructure damaged as a result of Hurricane Irene or subsequent flooding would be detrimental to the public health, safety and welfare;

WHEREAS, Governor Christie has given his prior approval for the activities described herein in consultation with the State Director of Emergency Management as required by paragraph 6 of Executive Order 73; and

NOW THEREFORE, and with the approval of the Governor, I hereby conditionally waive the Department's permitting requirements, specifically those contained in the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13 et seq., and Freshwater Wetlands Protection Act Rules, N.J.A.C. 7:7A et

seq., as applied to the following authorized activities that have been completed or are currently being conducted by State, County and Municipal agencies necessary to repair or replace public infrastructure damaged as a result of Hurricane Irene or subsequent flooding:

1. The in-kind replacement and/or repair of legally existing public infrastructure damaged by Hurricane Irene or subsequent flooding. In-kind replacement shall consist solely of the replacement or repair of legally existing public infrastructure that does not exceed the pre-existing footprint of such structure, maintains the same hydraulic opening and flow characteristics of the regulated water, and does not adversely impact any previous flow conditions or environmental resources, or obstruct flow in the channel or floodway. Public infrastructure shall include the following: public roadways, railroads, culverts, bridges, utility lines, outfall structures, stormwater management basins, bulkheads and other similar shoreline stabilization structures; and
2. The repair of scouring caused by Hurricane Irene or subsequent flooding, provided it is directly adjacent to a legally existing bridge, culvert, or public roadway. Repair of scouring may include the placement of rip-rap and other stabilization materials to replace material that has eroded away, provided the activity does not exceed the pre-existing footprint, maintains the same hydraulic opening and flow characteristics of the regulated water, and does not adversely impact any previous flow conditions or environmental resources, or obstruct flow in the channel or floodway.

To qualify under this Administrative Order for the conditional waiver of permitting requirements for authorized activities, the State, County, or Municipal agency shall:

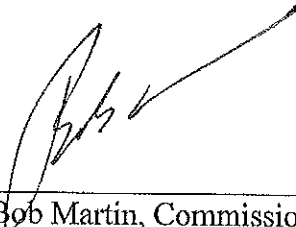
1. Within ninety (90) days of the effective date of this Administrative Order, submit to the Department a comprehensive inventory of damage resulting from Hurricane Irene or subsequent flooding and the authorized activities, as defined herein, that have been completed or are currently being conducted to repair the damage. The comprehensive inventory shall include:
  - a. The location of each authorized activity, stated as the State plane coordinates, street address and Block and Lot (if applicable); photographs of the site of the authorized activity; and a certification by a representative authorized on behalf of the State, County or Municipal agency that the damage occurred as a result of Hurricane Irene or subsequent flooding and that the activity meets the criterion of this Administrative Order; and
  - b. A certification by a professional engineer, licensed to practice in New Jersey, on behalf of the State, County, or Municipal agency, that the authorized activities described in the comprehensive inventory consist solely of the in-kind replacement or repair of legally existing public infrastructure or the repair of scouring, as those terms are defined herein, and that those activities have not or will not exceed the pre-existing footprint of such structure, have maintained or will maintain the same hydraulic opening and flow characteristics of the regulated water, and have not or will not adversely impact any previous flow conditions or environmental resources, or obstruct flow in the channel or

floodway and meet, to the greatest extent practicable, the requirements of the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13 et seq., and Freshwater Wetlands Protection Act Rules, N.J.A.C. 7:7A et seq.


2. Upon the Department's receipt of the comprehensive inventory and certifications required in 1 above, the Department will review and provide written authorization of those eligible damages and authorized activities, and for those eligible damages and authorized activities, the permitting requirements of the Flood Hazard Area Control Act Rules, N.J.A.C. 7:13 et seq., and Freshwater Wetlands Protection Act Rules, N.J.A.C. 7:7A et seq., shall be deemed waived and, pursuant to this Administrative Order, the State, County, and/or Municipal agency is considered to be in compliance with said Rules.
3. Within sixty (60) days of the completion of all of the activities authorized by the Department in accordance with 2 above, the State, County or Municipal agency shall provide the following, certified by a representative authorized on behalf of the State, County or Municipal agency, to the Department:
  - a. A Final comprehensive inventory of authorized activities undertaken; and
  - b. A Final report for the authorized activities undertaken with:
    - i. Before and after photographs of each site where each authorized activity was conducted; and
    - ii. A brief narrative of each authorized activity conducted at each site.
4. The State, County, or Municipal agency, notwithstanding the urgent need for repair or replacement of public infrastructure due to damage resulting from Hurricane Irene or subsequent flooding, will exercise due diligence to comply with the intent and purpose of the rules governing the regulated activities.
5. If, at any time, the Department determines that the State, County, and/or Municipal agency has conducted activities not authorized under this Administrative Order, the Department shall notify the State, County, and/or Municipal agency and may require a permit under N.J.A.C. 7:13 et seq. or N.J.A.C. 7:7A et seq. and/or restoration in order to bring the activities into compliance with this Administrative Order. Where appropriate, the Department may take enforcement action.

THIS ORDER shall take effect immediately and remain in effect for one-hundred and eighty (180) days. All other Administrative Orders or portions thereof, which are inconsistent herewith are hereby superseded or repealed. This Order shall be promulgated in accordance with N.J.S.A. App A: 9-45.

Dated: 9/18/12

By:   
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Bob Martin, Commissioner

Approved:  
Office of the Governor

  
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Charles B. McKenna, Chief Counsel