

Statement of Imminent Peril to the Public Health, Safety, and Welfare Requiring Adoption of Amendments to Existing Coastal Rules Codified at N.J.A.C. 7:7 and 7:7E on an Emergency Basis

The State of New Jersey has suffered extraordinary levels of damage to homes, businesses, and infrastructure as a result of Superstorm Sandy. In fact, in each of the last eight years, New Jersey has experienced at least one major disaster declaration from the Federal Emergency Management Agency (FEMA) resulting in millions of dollars of flood and other damage. In 2011, FEMA issued five major disaster declarations in the State, four of which were due to flooding from severe weather events. Most recently, the October 2012 Superstorm Sandy caused damage exceeding 37 billion dollars, leading to a presidential disaster declaration for all of New Jersey.

Superstorm Sandy significantly damaged the State's beaches and shore protection structures. Based on observations by, among others, Richard Stockton College of New Jersey, those municipalities with engineered dune systems or wide and well-developed natural beach and dune systems suffered less damage than those without such protections. Thus, to protect our shore against the threats from all manner of future storms, it is imperative that the State take immediate steps to ensure that any damaged shore protection structures be repaired or replaced as soon as practicable in an ecologically beneficial manner, that dunes be reestablished, and that the State ensure that engineered beaches and dune systems, which have proven to be effective in mitigating damage from coastal storms, be maintained at their engineered design levels. Taking these actions will help protect the State, its residents, and their property from future storms, which can occur at any time.

In addition, our waterways were severely harmed by the deposit of debris and sand from Superstorm Sandy and other storms, threatening the health and safety of boaters if not removed expeditiously. The State's residents need to dredge and remove sand and material from man-made lagoons, marinas, and waterways, both to recover from these recent storms by ensuring safe and navigable waterways and to protect against future severe storms. Immediate action is needed because the boating season begins in the spring. Marinas, which play a key role in the State's coastal communities, also depend on safe and navigable waterways. Many of these marinas suffered severe direct damage from Superstorm Sandy, and need immediate reconstruction to safely serve the State's residents and visitors in the upcoming season. In addition, the State's aquaculture industry was significantly and adversely affected by Superstorm Sandy, as many facilities and structures were totally destroyed and need replacement. Without immediate attention, the continuing viability of the aquaculture industry, a multi-million dollar industry in New Jersey, is seriously threatened.

The impacts of Sandy and other storms have been felt in every county in the State, but in particular in the nine counties bordering the Atlantic Ocean and the Hudson River. Those are the same areas that are generally subject to our coastal rules. As a result of Sandy, New Jersey's housing stock was significantly affected. In March 2013, the State reported that approximately 67,977 owners' primary residences sustained some amount of physical damage and this number continues to increase as the assessment of damages continues. Many dwellings that suffered significant damage will continue to deteriorate and need to be reconstructed in an expeditious, resilient, and environmentally mindful manner. Residents remain displaced. A large number of commercial buildings also were physically damaged, many of which need to be substantially reconstructed. Many businesses that were not physically destroyed were economically

harmed because of the impacts on their neighbors and the community at large. The economic health, safety, and welfare of this State and our residents are dependent on the rapid and resilient restoration of our coastal communities that were devastated by Superstorm Sandy's winds and coastal flooding. Economic recovery and revitalization is a central component of the State's longstanding multi-billion dollar tourism industry and essential to the welfare of the State's timely long-term recovery efforts. With the crucial summer season approaching, it is vital that our residents and businesses begin the process of rebuilding immediately not only for their enjoyment, but for the economic wellbeing of the State and, more important, for the safety and welfare of our residents and visitors. Indeed, the amendments, repeals, and new rules provided for in this proposal will collectively allow the Jersey Shore to continue its recovery and rebuilding efforts while simultaneously better preparing our citizens and their property from harm in future storms, all in an environmentally mindful and conscious manner.

Under the Coastal Area Facility Review Act, N.J.S.A. 13:19- 1 et seq., and the Waterfront Development Act, N.J.S.A. 12:5-3, the Department of Environmental Protection is empowered to adopt rules to regulate development activities in the coastal and waterfront areas. Given the enormity of the devastation to our coastal areas and the need to rebuild expeditiously to protect the health, safety, and welfare of the State, I find that some regulations need to be enhanced.

There are five categories of regulatory amendments to our coastal rules that are necessary to address the imminent perils outlined above. These are: (1) ensuring needed maintenance of our engineered beaches and dunes, and allowing the creation of ecologically beneficial living shorelines; (2) enabling dredging of materials deposited by the recent storms and their removal from lagoons, waterways, marinas, and where bulkheads have failed, as well as ensuring safe and environmentally sound places to deposit dredge materials; (3) addressing the devastation to our aquaculture industry by ensuring its ability to rebuild in a timely fashion; (4) expediting the safe reconstruction of residential and commercial buildings in the waterfront area that were destroyed by the storm; and (5) ensuring that marinas can be rebuilt safely and be restored to productive service.

These measures will help our residents rebuild their lives, remain employed, reestablish their communities, and help prevent unsafe and unsanitary conditions that could occur should redevelopment projects not move forward expeditiously.

More specifically some of the more significant amendments to the rule would do the following:

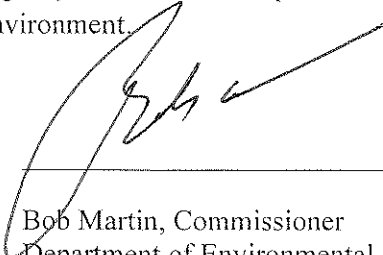
- Establish permits by rule to reconstruct residential and commercial developments in a safe and efficient manner. These provisions will facilitate rebuilding previously existing structures in a more resilient manner. These changes are consistent with recently adopted emergency rules implemented under our Flood Area Hazard Control Act.
- Help protect waterfront properties and the safety of their occupants by authorizing the elevation of bulkheads for added safety.
- Allow for the efficient and cost effective rebuilding of marinas, many of which were devastated by Superstorm Sandy, by establishing permits by rule to reconfigure docks, wharfs, or piers more safely or efficiently, and install environmentally necessary pump out facilities, and authorizing a general permit to construct necessary support facilities.
- Help restore the storm devastated aquaculture industry by establishing permits by rule for upwellers and raceways, placement of predator screens and oyster spat attraction devices, and for

the placement of shellfish cages. These measures will help this industry rebound and remain viable. Without these regulatory changes, another year may go by before their facilities can be reconstructed.

- Help ensure the immediate and continued protection of the citizens along the shore by creating a permit by rule to help create or sustain dunes through the use of sand fencing and to specifically allow engineered beaches and dunes to be maintained at their designed levels. Engineered beaches and dune systems are crucial protection measures for the health, safety, and welfare of the State and its residents.
- Enhance the environment and protection of structures and properties by authorizing the creation of living shorelines. Living shorelines provide increased protection for upland structures and activities while enhancing the ecology of the water body in which these are placed. Without such a change, hard structures may be installed which would have a long term ecologically deleterious impact.
- Protect the public safety by creating general permits to dredge man-made lagoons, marinas, and areas of bulkhead failures and to remove storm related debris and shoaling from navigable waterways that might otherwise pose safety hazards.
- Protect the public safety by facilitating necessary dredging and re-using previously used facilities in a safe and environmentally sound manner.

I therefore find that an imminent peril exists to the public health, safety, and welfare of the State and its residents that requires the adoption of amendments to our coastal rules at N.J.A.C. 7:7 and 7:7E on an emergency basis pursuant to N.J.S.A. 52:14B-4 (c). These emergency regulations will help ensure that the coastal area will be better protected from future storms, that the public safety is protected by the removal of sand and debris from our navigable waterways, and that the rebuilding and the coastal areas can be, in an environmentally mindful manner, enabled and accelerated for the benefit of coastal communities and their residents, the coastal economy and tourism industry, and for the continued enjoyment of all the citizens of the State. These emergency coastal rules respond to these urgent needs while continuing to protect our natural resources and environment.

4/16/2013
Date



Bob Martin, Commissioner
Department of Environmental Protection