

Frequently Asked Questions:
Adopted Amendments to Surface Water Quality Standards -
Category One (C1) Waterways

Adoption-Specific Information

What is the DEP adopting?

- The DEP is adopting rule amendments to the Surface Water Quality Standards (SWQS), N.J.A.C. 7:9B (<https://www.nj.gov/dep/wms/bears/swqs-rules.htm>), that will designate 600 miles of rivers and streams as C1 waterways.

Why is this significant?

- This adoption marks the first time in more than a decade that the State has designated waterways to this high level of protection. New Jersey has approximately 23,500 river miles, of which 6,800 river miles are currently designated as C1. This adoption increases the number of C1 designated waters by 2.6 percent. DEP last adopted C1 designation upgrades of approximately 686 river miles in 2008.

When will the rule be effective?

- The rule adoption will be effective on April 6, 2020, when the adoption notice appears in the New Jersey Register (N.J.R).

When was the rule proposed?

- These rule amendments were proposed on March 4, 2019.

What was proposed?

- The DEP proposed to upgrade 749 river miles to C1 designation based on exceptional ecological significance and exceptional fisheries resources.

What changed between proposal and adoption?

- The DEP will be adopting 600 river miles for C1 designation, instead of the 749 river miles initially proposed. More specifically:
 - Proposed – 749 river miles
 - 734 river miles based on ecological significance
 - 53 river miles based on exceptional fisheries resources
 - Adopted – 600 river miles
 - 547 river miles based on ecological significance
 - 53 river miles based on exceptional fisheries resources

Note: Some of the river miles are being adopted for both exceptional ecological significance and exceptional fisheries resources, therefore, the breakdown of mileage does not equal the total of river miles.

Why did the adoption change from what was proposed?

- Upon consideration of comments received, the DEP reevaluated all proposed C1 designations using the most recent publicly available data and found that approximately 150 river miles of the proposed C1 upgrades no longer satisfied the designation criteria of exceptional ecological significance based on an exceptional aquatic community.
- The initial C1 evaluation for the proposal used the statewide impervious surface information from a 2012 Land Use/Land Cover GIS layer; DEP has reevaluated impervious surface coverage

using the updated 2015 Land Use/Land Cover GIS layer published after the proposal.

Who is likely to be impacted by these changes?

- Property owners (including municipalities and other public entities) are likely to be impacted if they are planning to develop or redevelop within the 300-foot riparian zones surrounding the new C1 waters and their upstream tributaries.

What are the potential impacts of riparian zones?

- Currently, the Flood Hazard Area Control Act (FHACA) Rules establish either 50, 150, or 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.
- Additionally, the FHACA Rules require applicants to demonstrate that development or redevelopment within 150 feet of a surface water with a 300-foot riparian zone is unavoidable, minimized, and in the public interest. (See N.J.A.C. 7:13-11.2(d)).
- Under the FHACA rules, C1 waters, including all upstream tributaries within the same HUC 14 subwatershed area (as designated in the rules), will possess a 300-foot riparian zone.

How can you determine if your property is on an upstream tributary of a C1 water which may be subjected to the FHACA 300' riparian zone?

- Call DEP's Land Use Program general question line at (609) 777- 0454 or submit an email to <https://www.nj.gov/dep/landuse/contact.html>

What are the activities impacted within the riparian zones?

- The FHACA Rules automatically permit certain activities within riparian zones without prior written authorization from the DEP, 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 the DEP. The FHACA Rules limit the area of riparian zone vegetation that applicants can clear, cut, or remove, and require a demonstration that the proposed activity cannot be undertaken outside the riparian zone.
- 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.

What type of mitigations are allowed within the riparian zones?

- 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 in the following ways: 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).

Are there any waivers provided in the riparian zones?

- New private developments (buildings, parking areas, etc.) in a riparian zone would generally require a hardship exception. Under this process, the DEP can provide relief from one or more requirements of the rules when a property owner or public entity demonstrates, among other things, that "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 allow the construction of one new single-family home or duplex on a lot that was created prior to November 5, 2007.

What are potential impacts to existing point source dischargers?

- An existing New Jersey Pollutant Discharge Elimination System (NJPDES) permittee with a discharge to a proposed C1 waterbody is not required to upgrade their treatment. 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 C1 waterbody 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" requirement.
- A discharger can meet the "no measurable change" requirement 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.
- A NJPDES permittee proposing an increased discharge flow rate may have to provide a higher level of pollutant removal to maintain the existing 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.

What are the requirements of new point source dischargers?

- 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 additional economic and engineering challenges.

Where can I see maps of the new C1 waters?

- The updated C1 coverage will be available from the DEP's Bureau of Geographic Information Systems at: <https://gisdata-njdep.opendata.arcgis.com/datasets/surface-water-quality-classification-of-new-jersey>.

Where can I find the C1 proposal and adoption documents?

- The proposal and adoption documents can be found at <https://www.nj.gov/dep/rules/>.

Background Information

What are Surface Water Quality Standards and designated uses?

- The 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.

What are C1 Waters?

- C1 is an antidegradation designation that is designed to protect high quality waters from degradation.
- C1 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.

How does DEP identify waters potentially eligible for C1 designation?

Waterbodies qualify for C1 protection based on:

- Exceptional ecological significance:
 - documented occurrences and verified habitat of endangered and threatened species such as the Bog Turtle and a variety of freshwater mussels and/or;
 - exceptional aquatic communities which are demonstrated by factors including water quality chemical data, visual assessments of habitat, unimpaired macroinvertebrate communities and low impervious surface.
- Exceptional fisheries resource(s):
 - confirmed by DEP to support trout production and are classified as FW2-TP, or;
 - approved by DEP for unrestricted shellfish harvest pursuant to the Shellfish Growing Water Classification rules at N.J.A.C 7:12.
- Water supply significance:
 - a water supply system that serves a population greater than 100,000, including any reservoirs and their natural tributaries from source to the reservoir.
- Exceptional recreational significance (not currently defined in the SWQS rule)

Is there anything I can do to advance C1 designations?

- There are provisions in the SWQS to entertain petitions to reclassify specific segments for more restrictive uses.
- Quite often waterbodies are unable to be considered for potential C1 designations due to lack of monitoring data. Citizen Science monitoring is one avenue by which the DEP fills these data gaps. The Watershed Institute (<https://thewatershed.org/>) can provide guidance to those looking to engage in Citizen Science -related water monitoring.

Where can I find additional information on the SWQS?

- Surface Water Quality Standards
<https://www.nj.gov/dep/wms/bears/swqs.htm>
- Surface Water Quality Standards Fact Sheet
<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/2019%20Antideg%20Cat%201%20Fact%20Sheet02.pdf>