

New Jersey DEP's Resilient Environments and Landscapes (REAL) Regulations: An Overview of the Proposed Rulemaking and Its Impacts on Development

What You Need to Know

- The New Jersey Department of Environmental Protection has put forward a comprehensive regulatory overhaul proposal to mitigate the risks posed by climate change impacts.
- If adopted, the proposed regulations will significantly impact the process of gaining approval for residential and commercial construction, development, and redevelopment projects throughout New Jersey.
- The deadline for submitting public comments on the proposed rulemaking is November 3, 2024.

The New Jersey Department of Environmental Protection (NJDEP) is immersed in one of the most impactful rulemaking proceedings in the state's history in an effort to implement regulatory changes to address and mitigate the increasing risks posed by climate change.

The proposed rule amendments, referred to as the Resilient Environments and Landscapes (REAL) rules, are in response to global, regional, and New Jersey-specific scientific information related to climate change, and are geared to implement NJDEP's Protecting Against Climate Threats (PACT) initiative. The REAL rules include discussions of the scientific studies reviewed and those relied upon by NJDEP that quantify anticipated sea level rises by the year 2100 and conclude that rising temperatures will result in increased rainfall and flooding.

The REAL rules, which comprehensively overhaul the state's Land Resource Protection program, were published in the August 5, 2024 edition of the *New Jersey Register* with a directive that persons/entities interested in submitting comments to the 1,000+ page proposal do so by November 3, 2024. Given the breadth and comprehensive scope of the new rules, and their wide-ranging impacts on permitting project development, those interested in submitting comments to the rules should do so promptly considering the impending deadline.

If adopted, the proposed regulations will have a significant impact on the ability to secure required approvals for residential and commercial construction, development and redevelopment projects and substantial improvements to existing development. Not surprisingly, comments during recent stakeholder meetings included opposition to the proposed rules by the building industry, residential homeowners and some municipalities, who cited the increased burdens the rules will inevitably have on development, construction and the utilization of waterfront properties, a lack of economic impact analysis, challenges to implementation, and impacts on property value.

The NJDEP emphasizes that the REAL rules focus on the "long term economic viability of communities" while protecting the current landscape for future generations. It describes its proposed rulemaking as a ground-breaking rule proposal "that will make New Jersey the first state to modernize land-resource protection regulations to address the current and future impacts" of climate change.

Principles Underlying the REAL Rulemaking

The NJDEP announced the following eight general principles guiding its proposed rulemaking:

Rules Impacted by the REAL Rules

In addition to the proposed amendments, repeals, and additions to the CZM rules (N.J.A.C. 7:7), FWPA rules (N.J.A.C. 7:7A), FHACA rules (N.J.A.C. 7:13), and SWM rules (N.J.A.C. 7:8), several additional rules that refer to these four chapters are proposed to be amended in order to align with the changes.

The other rules impacted by the REAL rules reference standards or use terms associated with CZM, FWPA, FHACA and SWM rules include: Discharges of Petroleum and Other Hazardous Substances Rules (N.J.A.C. 7:1E); Underground Storage Caverns (N.J.A.C. 7:1F); Forestry (N.J.A.C. 7:3-5); Standards for Individual Subsurface Disposal Systems (N.J.A.C. 7:9A); Well Construction and Maintenance; Sealing Of Abandoned Wells (N.J.A.C. 7:9D); the Safe Drinking Water Act Rules (N.J.A.C. 7:10); the NJPDES Rules (N.J.A.C. 7:14A); Solid Waste (N.J.A.C. 7:26); the Recycling Rules (N.J.A.C. 7:26A); Hazardous Waste (N.J.A.C. 7:26G); the Radiation Protection Program Rules (N.J.A.C. 7:28); Green Acres Program (N.J.A.C. 7:36); and Highlands Water Protection and Planning Act Rules (N.J.A.C. 7:38).

The NJDEP asserts that the proposed rules are intended to "work in tandem and collectively help protect New Jersey's land and water resources, as well as afford protections to public safety, health, and welfare."

What's Next

Parties interested in submitting comments on the proposed rulemaking must do so no later than November 3, 2024. Written comments can be submitted electronically at [this link](#).

Greenbaum's environmental team is continuing to review and evaluate the REAL rulemaking proposal, and will be publishing a series of Client Alerts in the coming days and weeks that provide more detailed information concerning the proposed regulatory reforms outlined in this Alert. We encourage you to contact **Barbara J. Koonz**, the author of this Alert, with questions related to NJDEP's proposed rulemaking or to discuss impacts on your business in greater detail.

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