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**State of New Jersey Issues Emergency Flood Hazard Area Control Act Rule Amendments**  
*Rules will impact post-Sandy Development*

By [William F. Harrison, Esq.](#) and [Erin K. Phalon, Esq.](#)

In response to the flood impacts of storms including Hurricane Sandy, the New Jersey Department of Environmental Protection (NJDEP) recently adopted emergency amendments to the Flood Hazard Area Control Act (FHACA) rules. This rulemaking incorporates the most current flood mapping and seeks to facilitate the reconstruction and elevation of structures in flood hazard areas to a safer height. The rules state that the standards are aimed at reducing future flood impacts and will reduce homeowners' flood insurance rates. The rules also impact all construction in flood hazard areas, with a significant impact on new multi-residence buildings.

The amendments require the use of the highest available State or Federal flood elevation data to determine a given site's flood hazard area design flood elevation. The rules govern the entire State, rather than simply the coastal and Hudson River areas. The rules adopt the Federal Emergency Management Agency's (FEMA) Advisory Base Flood Elevation (ABFEs) for coastal and tidal waters, which were released in 2012, as the highest available flood elevation data. Final FEMA maps that are developed in partnership with NJDEP and depict NJDEP's flood hazard area design flood elevation and floodway limit will be automatically incorporated into the FHACA rule when they are prepared by FEMA. As new FEMA and State mapping for communities throughout New Jersey are released, they will become effective as the highest available flood elevation data.

The amendments allow the use of flood-proofing measures rather than elevation of structures in certain situations. Under the rule, NJDEP will issue an individual permit to wet flood-proof a non-residential building only if the building is designed and constructed to be flood-resistant during a flood depth of at least one foot above the flood hazard area design flood elevation, so that floodwaters can enter the building through permanent openings, but will not damage the structural integrity of the building. Wet flood-proofing is not permitted in residential or multi-residence buildings. Multi-residence building is defined as any building intended to provide three or more units of temporary or permanent residence, including apartment buildings, condominium complexes, townhouse complexes, hotels, motels and mixed-use buildings containing three or more units of temporary or permanent residence.



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The rule states that dry flood-proofing generally offers the best protection against flooding because it does not allow water to enter the structure. Because dry flood-proofing can be cost-prohibitive and impractical, the rule allows wet flood-proofing of non-residential buildings where elevation and dry flood-proofing are not feasible. Wet flood-proofing allows floodwaters to enter a building, and thereby balance hydrostatic pressure on the structure during a flood. Wet flood-proofing includes using flood-resistant materials, protecting mechanical and utility equipment, and using openings or breakaway walls.

Under certain conditions, the rulemaking allows property owners to use a permit by rule to reconstruct, relocate or elevate a building according to the ABFE standards. Owners eligible for a permit by rule provide written notice to DEP, rather than apply for a permit and await DEP review and approval. This could save time and application fees.

The amendments require substantially damaged buildings to be elevated to prevent flooding. The rulemaking amends the rules governing general permits as well as individual permits by requiring that the lowest floor of a building must be raised to at least one foot above the flood hazard area design flood elevation; and that the area below the lowest finished floor cannot be used for habitation and must remain open to floodwaters. This applies to general permits for relocation of buildings, reconstruction of residences that have been damaged or destroyed by fire, flood or other natural disaster, and individual permits for construction of a new habitable building, modification of an existing building, or reconstruction of a building damaged by flood or fire. In addition, the rule provides property owners five years to apply for a general permit for the reconstruction of a damaged or destroyed residence. Finally, the amendments remove restrictions on the height of crawl spaces so that structurally-sound masonry foundations can be constructed where permitted in flood hazard areas under the Uniform Construction Code.

The emergency rule amendments become effective when published in the February 19, 2013 New Jersey Register. The emergency rules are only effective until a permanent rule is adopted. DEP concurrently proposed identical amendments as a permanent rule. A public hearing concerning the proposed amendments will be held on March 7, 2013 at 5:30 p.m. at the City of Long Branch Municipal Building Council Chambers, 344 Broadway, 2nd Floor, Long Branch, NJ 07740.



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Written comments may be submitted electronically by March 21, 2013 at <http://www.nj.gov/dep/rules/comments> or sent to:

Gary J. Brower, Esq.  
Attention: DEP Docket No. 01-13-01  
Office of Legal Affairs, Department of Environmental Protection  
401 East State Street, 4th Floor Mail Code 401-04L  
P.O. Box 402  
Trenton, New Jersey 08625-0402

For the full text of the rule, please click [here](#).

For more information contact [Environmental Law Practice Group](#) attorneys [William F. Harrison, Esq.](#), [Jennifer Mazawey, Esq.](#) and [George L. Garcia, Esq.](#) at 973.533.0777 or via email at [wharrison@genovaburns.com](mailto:wharrison@genovaburns.com), [jmazawey@genovaburns.com](mailto:jmazawey@genovaburns.com) or [ggarcia@genovaburns.com](mailto:ggarcia@genovaburns.com).