

58:16A-37

LEGISLATIVE HISTORY CHECKLIST
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(Stream cleaning)

NJSA: 58:16A-37

LAWS OF: 1993

CHAPTER: 376

BILL NO: S111

SPONSOR(S): Cardinale

DATE INTRODUCED: Pre-filed

COMMITTEE: **ASSEMBLY:** Environment

SENATE: Environment

AMENDED DURING PASSAGE: Yes Amendments denoted by asterisks
(ACS-2R enacted)

DATE OF PASSAGE: **ASSEMBLY:** June 21, 1993 Re-enacted 1-10-94

SENATE: May 14, 1992 Re-enacted 1-10-94

DATE OF APPROVAL: January 11, 1994

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes

SENATE: Yes

FISCAL NOTE: No

VETO MESSAGE: Yes

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

KBG:pp

P.L.1993, CHAPTER 376, approved January 11, 1994
Senate Committee Substitute for
1992 Senate No. 111 (Second Reprint)

1 AN ACT concerning certain stream cleaning activities by
2 governmental entities and supplementing P.L.1962, c.19
3 (C.58:16A-50 et seq.).
4

5 BE IT ENACTED by the Senate and General Assembly of the
6 State of New Jersey:

7 1. a. The provisions of any other law, or ¹any¹ rule or
8 regulation adopted pursuant thereto^{1,1} to the contrary
9 notwithstanding, a county or municipality, or designated agency
10 thereof, before undertaking any project to clean, clear, or desnag
11 a stream within its jurisdiction, shall submit to the Department
12 of Environmental Protection or to any State agency requiring a
13 stream cleaning permit ¹or an application for the proposed
14 stream cleaning, clearing or desnagging project¹, a written notice
15 of intent to undertake a project to clean, clear, or desnag a
16 stream and a certification attested to by the county or municipal
17 engineer ¹or the local soil conservation district, provided that the
18 certification is made by a licensed professional engineer¹. The
19 engineer shall certify that:

20 (1) the project is being undertaken solely for the purpose of
21 stream cleaning, clearing, or desnagging;

22 (2) the removal of any material will not extend below the
23 natural stream bed;

24 (3) the activities will not alter the natural ¹[steambanks]
25 streambanks¹;

26 (4) the activities ¹[would] will¹ consist of the removal only of
27 accumulated ²[sediments,]² debris ²[,]² and garbage ²from a
28 stream with a natural stream bed or the removal of any
29 accumulated material from a stream previously channelized with
30 concrete or similar artificial material² ;

31 (5) every effort will be made to perform work from only one
32 streambank and that vegetation and canopy on the more southerly
33 or westerly banks will be preserved for stream shading; and

34 (6) the activities are necessary and in the public interest.

35 The notice shall also include a description of the nature of the
36 project ²[and] , a description, including a photograph, of² the
37 reach of the stream in which the activity is to take place ², and

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in the
above bill is not enacted and is intended to be omitted in the law.

Matter underlined ~~thus~~ is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AEM committee amendments adopted May 6, 1993.

² Senate amendments adopted in accordance with Governor's
recommendations January 10, 1994.

1 an identification of the regulatory water quality classification of
2 the stream in which the activity is to take place². The reach of
3 the stream may be provided by the submission of a photostatic
4 copy of the United States Geological Survey topographic
5 quadrangle.

6 b. Upon receipt of a notice and certification submitted
7 pursuant to this section, the department, or any other State
8 agency requiring a stream cleaning permit ¹or an application for
9 the proposed stream cleaning, clearing or desnagging project¹, as
10 the case may be, shall have 30 days to notify the county or
11 municipality, or designated agency thereof, if particular
12 circumstances mandate that the stream cleaning not be done in
13 this particular case. If the department, or any other State
14 agency requiring a stream cleaning permit ¹or an application for
15 the proposed stream cleaning, clearing or desnagging project¹, as
16 the case may be, makes such a determination, it shall provide the
17 county or municipality, or designated agency thereof, with the
18 technical reasons therefor.

19 ¹c. Any person or governmental entity violating the provisions
20 of this act shall be subject to penalties imposed for violations of
21 the "Flood Hazard Area Control Act," P.L.1962, c.19
22 (C.58:16A-50 et seq.)¹

23 2. This act shall take effect immediately.

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28 Allows counties and municipalities and agencies thereof to
29 undertake certain stream cleaning activities upon notice and
30 certification to the relevant State agency.

[SECOND REPRINT]

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 111

STATE OF NEW JERSEY

ADOPTED MARCH 26, 1992

Sponsored by Senators CARDINALE, McNAMARA,
Assemblyman Rooney and Senator Bubba

1 AN ACT concerning certain stream cleaning activities by
2 governmental entities and supplementing P.L.1962, c.19
3 (C.58:16A-50 et seq.).
4

5 BE IT ENACTED by the Senate and General Assembly of the
6 State of New Jersey:

7 1. a. The provisions of any other law, or ¹any¹ rule or
8 regulation adopted pursuant thereto^{1,1} to the contrary
9 notwithstanding, a county or municipality, or designated agency
10 thereof, before undertaking any project to clean, clear, or desnag
11 a stream within its jurisdiction, shall submit to the Department
12 of Environmental Protection or to any State agency requiring a
13 stream cleaning permit ¹or an application for the proposed
14 stream cleaning, clearing or desnagging project¹, a written notice
15 of intent to undertake a project to clean, clear, or desnag a
16 stream and a certification attested to by the county or municipal
17 engineer ¹or the local soil conservation district, provided that the
18 certification is made by a licensed professional engineer¹. The
19 engineer shall certify that:

20 (1) the project is being undertaken solely for the purpose of
21 stream cleaning, clearing, or desnagging;

22 (2) the removal of any material will not extend below the
23 natural stream bed;

24 (3) the activities will not alter the natural ¹[steambanks]
25 streambanks¹;

26 (4) the activities ¹[would] will¹ consist of the removal only of
27 accumulated ²[sediments,]² debris ²[,]² and garbage ²from a
28 stream with a natural stream bed or the removal of any
29 accumulated material from a stream previously channelized with
30 concrete or similar artificial material²;

31 (5) every effort will be made to perform work from only one
32 streambank and that vegetation and canopy on the more southerly
33 or westerly banks will be preserved for stream shading; and

34 (6) the activities are necessary and in the public interest.

35 The notice shall also include a description of the nature of the
36 project ²[and] , a description, including a photograph, of² the
37 reach of the stream in which the activity is to take place ², and

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AEN committee amendments adopted May 6, 1993.

² Senate amendments adopted in accordance with Governor's
recommendations January 10, 1994.

1 an identification of the regulatory water quality classification of
2 the stream in which the activity is to take place². The reach of
3 the stream may be provided by the submission of a photostatic
4 copy of the United States Geological Survey topographic
5 quadrangle.

6 b. Upon receipt of a notice and certification submitted
7 pursuant to this section, the department, or any other State
8 agency requiring a stream cleaning permit ¹or an application for
9 the proposed stream cleaning, clearing or desnagging project¹, as
10 the case may be, shall have 30 days to notify the county or
11 municipality, or designated agency thereof, if particular
12 circumstances mandate that the stream cleaning not be done in
13 this particular case. If the department, or any other State
14 agency requiring a stream cleaning permit ¹or an application for
15 the proposed stream cleaning, clearing or desnagging project¹, as
16 the case may be, makes such a determination, it shall provide the
17 county or municipality, or designated agency thereof, with the
18 technical reasons therefor.

19 ¹c. Any person or governmental entity violating the provisions
20 of this act shall be subject to penalties imposed for violations of
21 the "Flood Hazard Area Control Act," P.L.1962, c.19
22 (C.58:16A-50 et seq.).¹

23 2. This act shall take effect immediately.
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28 _____
29 Allows counties and municipalities and agencies thereof to
30 undertake certain stream cleaning activities upon notice and
certification to the relevant State agency.

[FIRST REPRINT]

SENATE COMMITTEE SUBSTITUTE FOR

SENATE, No. 111

STATE OF NEW JERSEY

ADOPTED MARCH 26, 1992

Sponsored by Senators CARDINALE and McNAMARA

1 AN ACT concerning certain stream cleaning activities by
2 governmental entities and supplementing P.L.1962, c.19
3 (C.58:16A-50 et seq.).

4
5 BE IT ENACTED by the Senate and General Assembly of the
6 State of New Jersey:

7 1. a. The provisions of any other law, or ¹any¹ rule or
8 regulation adopted pursuant thereto^{1,1} to the contrary
9 notwithstanding, a county or municipality, or designated agency
10 thereof, before undertaking any project to clean, clear, or desnag
11 a stream within its jurisdiction, shall submit to the Department
12 of Environmental Protection or to any State agency requiring a
13 stream cleaning permit ¹or an application for the proposed
14 stream cleaning, clearing or desnagging project¹, a written notice
15 of intent to undertake a project to clean, clear, or desnag a
16 stream and a certification attested to by the county or municipal
17 engineer ¹or the local soil conservation district, provided that the
18 certification is made by a licensed professional engineer¹. The
19 engineer shall certify that:

20 (1) the project is being undertaken solely for the purpose of
21 stream cleaning, clearing, or desnagging;

22 (2) the removal of any material will not extend below the
23 natural stream bed;

24 (3) the activities will not alter the natural ¹[steambanks]
25 streambanks¹;

26 (4) the activities ¹[would] will¹ consist of the removal only of
27 accumulated sediments, debris, and garbage;

28 (5) every effort will be made to perform work from only one
29 streambank and that vegetation and canopy on the more southerly
30 or westerly banks will be preserved for stream shading; and

31 (6) the activities are necessary and in the public interest.

32 The notice shall also include a description of the nature of the
33 project and the reach of the stream in which the activity is to
34 take place. The reach of the stream may be provided by the
35 submission of a photostatic copy of the United States Geological
36 Survey topographic quadrangle.

37 b. Upon receipt of a notice and certification submitted
38 pursuant to this section, the department, or any other State
39 agency requiring a stream cleaning permit ¹or an application for

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AEN committee amendments adopted May 6, 1993.

1 the proposed stream cleaning, clearing or desnagging project¹, as
2 the case may be, shall have 30 days to notify the county or
3 municipality, or designated agency thereof, if particular
4 circumstances mandate that the stream cleaning not be done in
5 this particular case. If the department, or any other State
6 agency requiring a stream cleaning permit ¹or an application for
7 the proposed stream cleaning, clearing or desnagging project¹, as
8 the case may be, makes such a determination, it shall provide the
9 county or municipality, or designated agency thereof, with the
10 technical reasons therefor.

11 ¹c. Any person or governmental entity violating the provisions
12 of this act shall be subject to penalties imposed for violations of
13 the "Flood Hazard Area Control Act," P.L.1962, c.19
14 (C.58:16A-50 et seq.).¹

15 2. This act shall take effect immediately.

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20 _____
21 Allows counties and municipalities and agencies thereof to
22 undertake certain stream cleaning activities upon notice and
certification to the relevant State agency.

SENATE, No. 111

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1992 SESSION

By Senator CARDINALE

1 AN ACT concerning certain stream cleaning permits and
2 supplementing chapter 16A of Title 58 of the Revised Statutes.

3

4 BE IT ENACTED *by the Senate and General Assembly of the*
5 *State of New Jersey:*

6 1. The provisions of any other law, or rule or regulation
7 adopted pursuant thereto to the contrary notwithstanding, a
8 county or municipality, or designated agency thereof, before
9 undertaking any project to clean, clear, or desnag a stream within
10 its jurisdiction, shall submit to the Department of Environmental
11 Protection or to any State agency requiring a stream cleaning
12 permit, a notice of intent to undertake a project to clean, clear,
13 or desnag a stream and a certification attested to by the county
14 or municipal engineer that the project is being undertaken solely
15 for the purpose of stream cleaning, clearing, or desnagging and
16 that it is necessary and in the public interest. Upon receipt of a
17 notice and certification submitted pursuant to this act, the
18 department, or any other State agency requiring a stream
19 cleaning permit, as the case may be, shall have 30 days to notify
20 the county or municipality, or designated agency thereof, if
21 particular circumstances mandate that the stream cleaning not
22 be done in this particular case. If the department, or any other
23 State agency requiring a stream cleaning permit, as the case may
24 be, makes such a determination, it shall provide the county or
25 municipality, or designated agency thereof, with the technical
26 reasons therefor.

27 2. This act shall take effect immediately.

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STATEMENT

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32 As an alternative to the existing permit procedure, this bill
33 requires any county or municipality, or designated agency
34 thereof, before undertaking a stream cleaning project, to send a
35 notice of intent to undertake the project to the Department of
36 Environmental Protection and to any other State agency requiring
37 a stream cleaning permit. The notice of intent would include a
38 certification that the stream cleaning project is necessary solely
39 for the purpose of stream cleaning, clearing, or desnagging, and
40 that it is in the public interest. Upon receipt of such a notice of
41 intent, the Department of Environmental Protection, or any other
42 State agency requiring a stream cleaning permit, would have 30
43 days to notify the county or municipality if particular
44 circumstances mandate that the stream cleaning not be done. If
45 the department or other State agency makes such a

1 determination, it would be required to state the technical reasons
2 for making the determination.

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7 Exempts local government agencies from requirement to obtain
8 stream cleaning permits.

ASSEMBLY ENVIRONMENT COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR

SENATE, No. 111

with committee amendments

STATE OF NEW JERSEY

DATED: MAY 6, 1993

The Assembly Environment Committee favorably reports the Senate Committee Substitute for Senate Bill No. 111 with Assembly committee amendments.

The Senate Committee Substitute for Senate Bill No. 111 of 1992 requires any county or municipality, or designated agency thereof, before undertaking a stream cleaning project, to send a notice of intent to undertake the project and an engineer's certification to the Department of Environmental Protection and to any other State agency requiring a stream cleaning permit.

The county or municipal engineer is required to certify that:

(1) the project is being undertaken solely for the purpose of stream cleaning, clearing, or desnagging;

(2) the removal of any material will not extend below the natural stream bed;

(3) the activities will not alter the natural streambanks;

(4) the activities will consist of the removal only of accumulated sediments, debris, and garbage;

(5) every effort will be made to perform work from only one streambank and that vegetation and canopy on the more southerly or westerly banks will be preserved for stream shading; and

(6) the activities are necessary and in the public interest.

The notice must also describe the nature of the project and the location of the activities to be undertaken. Upon receipt of the notice and certification, the Department of Environmental Protection, or any other State agency requiring a stream cleaning permit, would have 30 days to notify the county or municipality if particular circumstances mandate that the stream cleaning not be done. If the department or other State agency makes such a determination, it would be required to state the technical reasons therefor.

The committee amended the Senate Committee Substitute to clarify that the required notice of intent and certification also be sent to State agencies requiring an application for the proposed stream cleaning, clearing or desnagging project as well as to those agencies requiring stream cleaning permits. The Pinelands Commission requires an application for stream cleaning activities rather than a stream cleaning permit per se when work is being done in streams in the Pinelands area.

It is the intent of the committee that if the work for a project proceeds and is in violation of the "Pinelands Protection Act," P.L.1979, c.111 (C.13:18A-1 et seq.), or is contrary to the Pinelands Commission's comprehensive management plan prepared and adopted pursuant to section 7 of that act (C.13:18A-8), the Pinelands Commission shall have the right to exercise or pursue against the person violating the act or the plan all and any authority, rights, and remedies extended to it by the "Pinelands Protection Act."

In addition, the committee amendments provide that the local soil conservation district or the county or municipal engineer may certify the project, provided that the certification is made by a licensed professional engineer. The committee amendments also clarify that any person or governmental entity violating the provisions of this act will be subject to penalties for violations of the "Flood Hazard Area Control Act," P.L.1962, c.19 (C.58:16A-50 et seq.). Finally, the committee also made technical amendments to the Senate Committee Substitute.

As amended and reported by the committee, this bill is identical to the Assembly Committee Substitute for Assembly Bill No. 814 of 1992 as also reported by the committee.

SENATE ENVIRONMENT COMMITTEE
STATEMENT TO
SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 111
STATE OF NEW JERSEY

DATED: MARCH 26, 1992

The Senate Environment Committee favorably reports a committee substitute for Senate Bill No. 111.

The committee substitute requires any county or municipality, or designated agency thereof, before undertaking a stream cleaning project, to send a notice of intent to undertake the project and an engineer's certification to the Department of Environmental Protection and Energy and to any other State agency requiring a stream cleaning permit. The county or municipal engineer shall certify that:

(1) the stream cleaning project is necessary solely for the purpose of stream cleaning, clearing, or desnagging, and that it is in the public interest;

(2) the removal of any material will not extend below the natural stream bed;

(3) the activities will not alter the natural streambanks;

(4) the activities will consist of the removal only of accumulated sediments, debris, and garbage;

(5) every effort would be made to perform work from only one streambank and that vegetation and canopy on the more southerly or westerly banks will be preserved for stream shading; and

(6) the activities are necessary and in the public interest.

The notice will also describe the nature of the project and the location of the activities to be undertaken. Upon receipt of the notice and certification, the Department of Environmental Protection and Energy, or any other State agency requiring a stream cleaning permit, would have 30 days to notify the county or municipality if particular circumstances mandate that the stream cleaning not be done. If the department or other State agency makes such a determination, it would be required to state the technical reasons for making the determination.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

January 10, 1994

SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 111
(First Reprint)

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the New Jersey Constitution, I am returning the Senate Substitute for Senate Bill No. 111 (First Reprint) with my recommendations for reconsideration.

I strongly support the intent of this bill, which would establish a streamlined procedure for the approval of certain local stream cleaning projects by the Department of Environmental Protection and Energy (DEPE). At the same time, I am concerned that this bill, in its current form, could inadvertently result in environmental damage to our State's streams and waterways, since the bill is unclear on the extent to which projects involving the disturbance or removal of sediments at the bottom of a stream would be eligible for the proposed "fast-track" DEPE approval process. In particular, while one bill provision would prohibit stream cleaning projects that remove any material extending below the "natural stream bed," a second provision specifically authorizes the removal of "accumulated sediments" from a stream. Since sedimentation is a naturally occurring physical process within streams, these provisions could cause confusion in the regulated community, or they could be interpreted as authorizing major stream channel straightening or channel deepening projects with only minimal DEPE oversight.

With these concerns in mind, I would propose a key amendment that would have the effect of restricting "fast-track" stream cleaning approvals to the removal only of accumulated debris or garbage from a stream with a natural stream bed, or the removal of any materials from a stream previously channelized with concrete or similar artificial material. This amendment would continue to authorize speedy action by local governments to remove rubbish and other major in-stream obstructions, while at the same time restricting automatic approvals for more environmentally disruptive channelization or channel deepening projects. I would also propose the inclusion of an amendment that would specifically require local

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

governments, as part of their project certifications to the DEPE, to provide a photograph of the affected stream segment and also identify the regulatory water quality classification of the stream. This additional information would enable DEPE officials to give prompt, careful attention to the review of stream cleaning projects that affect our State's most environmentally sensitive waterways, such as trout fishing streams or drinking water sources.

For these reasons, I herewith return the Senate Committee Substitute for Senate Bill No. 111 (First Reprint) and recommend that it be amended as follows:

<u>Page 1, Section 1, Line 27:</u>	Delete "sediments,"
<u>Page 1, Section 1, Line 27:</u>	After "debris" delete ",,"
<u>Page 1, Section 1, Line 27:</u>	After "garbage" insert "from a stream with a natural stream bed or the removal of any accumulated material from a stream previously channelized with concrete or similar artificial material"
<u>Page 1, Section 1, Line 33:</u>	Delete "and" and insert ", a description, including a photograph, of"
<u>Page 1, Section 1, Line 34:</u>	After "place" insert ", and an identification of the regulatory water quality classification of the stream in which the activity is to take place"

Resectfully

/s/ Jim Florio

GOVERNOR

[seal]

Attest:

/s/ William Harla

Deputy Chief Counsel to the Governor