

2026 Environmental and Energy Law Forecast

NEW JERSEY

New Jersey Governor Sherrill's Environmental Priorities

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On January 20, 2026, Governor Mikie Sherrill was sworn in, succeeding Governor Phil Murphy, who was term limited from running for a third term. We expect Governor Sherrill to continue with many of her predecessor's environmental policies, such as taking strong action to address statewide flooding exacerbated by climate change, remediate contaminated properties within the state, and protect state residents from contaminants in drinking water, most notably lead and PFAS. However, we expect the Sherrill Administration to take a somewhat different tack on energy policy and focus primarily on reducing the cost of energy. Although Sherrill has historically been a strong supporter of wind power, in light of the current headwinds faced by off-shore wind coming from Washington, D.C., we understand that the Sherrill Administration may take a pragmatic approach to off-shore wind projects and put them on a back burner while the Administration focuses on quicker ways to reduce energy costs, including electric generation from solar, natural gas, and nuclear, and structural changes to New Jersey's energy market.

The Governor kept her promise to declare a State of Emergency on Utility Costs on her first day in office by signing two Executive Orders aimed at lowering utility costs within hours of being sworn in. The first, EO-1, effectively freezes electricity supply rates, which were set to increase in summer 2026, by using existing funds to offset these increases, and directs the Board of Public Utilities (BPU) to conduct and issue a study examining various pathways to reduce energy costs to ratepayers. The second, EO-2, declares a State of Emergency and directs the BPU to: accelerate the development of solar generation, battery storage, and grid stabilization projects; modernize natural gas power plants to make them cleaner and more efficient; and develop a plan to address "ghost loads" from large consumers, namely data centers, which may be artificially inflating demand projections and impacting electricity supply. EO-2 also creates a Nuclear Power Task Force, which is directed to formulate and implement strategies for the development of new nuclear generation facilities within the state.

With regard to water, Sherrill has stated that she will strongly support continuing the state's work in replacing lead service lines and has expressed her concern regarding PFAS contamination and its impact on overburdened communities.

Although the Governor's plans for the New Jersey Department of Environmental Protection (NJDEP) had been kept close to the vest, the Sherrill Administration recently nominated Ed Potosnak as Commissioner of NJDEP. Potosnak is the Executive Director of the New Jersey League of Conservation voters and has focused his career on promoting development of clean energy, climate resilience, environmental justice, and land preservation. Potosnak has indicated that he intends to streamline permitting processes to

balance development with protection of the State's environmental resources. We expect Potosnak, if confirmed, to advance the Sherrill Administration's goals to promote Brownfield redevelopment and enhance flood resilience, likely building on what the Murphy Administration has achieved over the past eight years, although what form this will take has yet to be determined. We also expect NJDEP to remain a national leader in its crusade against PFAS, including the adoption of surface water quality standards for PFNA, PFOA and PFOS.

New Jersey PFAS Update

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The end of 2025 saw a flurry of legislative activity by the New Jersey Senate and General Assembly aimed at banning the intentional addition of PFAS in certain categories of consumer products sold in the State and collecting information on the impacts of PFAS on the State's various environmental media. On January 12, 2026, Governor Murphy signed into law the Protecting Against Forever Chemicals Act (PAFCA), which prohibits the intentional addition of PFAS substances to certain categories of consumer products, including cosmetics, carpet and fabric treatments, and food packaging. While the PAFCA requirements on consumer goods do not go into effect until two years after the effective date, manufacturers of cookware products are required to start including labels on their products that notify buyers about any intentionally added PFAS within one year after the effective date. In addition to the PFAS bans and labeling requirements, which will be enforced by the New Jersey Department of Law and Public Safety, the PAFCA also requires the New Jersey Department of Environmental Protection (NJDEP) to develop and implement a robust PFAS source reduction program within one year after its effective date. Specifically, the program requires NJDEP to begin collecting information through PFAS monitoring and testing of soil, air, water and biosolids throughout the State, with the goal of developing recommendations on the proper management of PFAS. Further, to the extent funding is available, the PAFCA requires NJDEP to offer grants to publicly owned treatment works facilities and municipalities for the purpose of implementing pretreatment procedures for PFAS and educating them on the sources of PFAS and proper management. The PAFCA requires NJDEP to report their findings and activities to the Governor and Legislature every two years, with recommendations for programs, policies, and legislation to address the presence of PFAS in the State. NJDEP is appropriated an initial sum of \$4.5 Million from the General Fund to implement the mandates of the PAFCA and is directed to request additional funds necessary to conduct PFAS-related testing and research in its annual budget on a going forward basis.

In 2026, the New Jersey Department of Environmental Protection (NJDEP) will continue pressing forward on PFAS data collection efforts for Publicly Owned Treatment Works (POTWs) with approved industrial pretreatment programs. New Jersey has 17 POTWs with approved industrial pretreatment program, which are referred to as "Delegated Local Agencies" (DLAs). All DLAs were required to sample wastewater and biosolids for PFAS during 2025. Detectable levels of PFAS were found by all 17 DLAs. NJDEP is requiring all DLAs to collect monthly samples of wastewater effluent and biosolids and analyze for certain PFAS. In addition, DLAs are required to investigate, reduce, and/or eliminate the discharge of PFAS to the local agency by industrial users and to report the results of these efforts to NJDEP on a quarterly basis. Many DLAs have begun requiring all industrial users to sample their wastewater for PFAS sent to the POTW. When PFAS are detected, DLAs may require source control measures and/or pollution prevention strategies. NJDEP intends to use the data collected in 2025 and 2026 to determine whether further actions including effluent limitations are necessary to control the discharge of PFAS to New Jersey waters.

NJDEP is also expected to propose surface water quality standards for PFOA, PFOS, and PFNA to protect both human health and aquatic life. The surface water quality standards will likely be used by NJDEP to establish effluent limitations for these PFAS.

Given the various PFAS data collection efforts and requirements flowing from the above regulatory and legislative actions, we anticipate a continued uptick in PFAS related enforcement and litigation activity in 2026.

Recent Changes to Discharge Reporting Under the New Jersey Site Remediation Program *Michael Dillon, Esq., Natalia P. Teekah, Esq., and Technical Consultant Christopher R. Furlong, MBS, PMP*

In 2025, the New Jersey Department of Environmental Protection (NJDEP) adopted significant changes to several of its site remediation regulations, including the Technical Requirements for Site Remediation (N.J.A.C. 7:26E), Industrial Site Recovery Act Rules (N.J.A.C. 7:26B), Heating Oil Tank System Remediation Rules (N.J.A.C. 7:26F), and the Administrative Requirements for the Remediation of Contamination Sites (ARRCS) (N.J.A.C. 7:26C). These changes follow the October 21, 2024 proposed rule which is described more fully in [our 2025 Forecast article on the same](#). These changes follow other key regulatory adoptions and largely align regulations with the 2021 amendments to the Site Remediation Reform Act (N.J.S.A. 58:10c-1 to 58:10c-29), referred to as “SRRA 2.0”.

The October 2024 proposed rule introduced a change to discharge reporting requirements pursuant to ARRCS whereby persons conducting all appropriate inquiry, which includes the performance of a preliminary assessment and potential site investigation pursuant to the Spill Compensation and Control Act (N.J.S.A. 58:10-23.11 et. seq.), as part of a contemplated real estate transaction would be required to report any contamination identified at the real property to both the property owner and the NJDEP. Previously, only the person responsible for conducting the remediation and their Licensed Site Remediation Professional (LSRP) had statutory liability to report a discharge to the NJDEP, and the initial proposed rule expanded the discharge reporting obligation to include any party that obtained knowledge of a discharge. In response to objections from the regulated community citing the potential chilling effect that this requirement could have on real estate transactions, the NJDEP published a Notice of Substantial Change (NOSC) in November 2025 to repropose the due diligence discharge reporting rule. The NOSC clarifies that a person conducting due diligence must only notify the property owner if contamination is identified at the property, and that the person responsible for conducting the remediation (including property owners and current operators) notify NJDEP of previously unknown contamination reported to the property owner by a party conducting all appropriate inquiry.

The reproposed discharge reporting requirements will represent a meaningful shift in how due diligence is performed during property transactions in New Jersey. If implemented, this change would require that any contamination discovered through all appropriate inquiry during due diligence be reported to the property owner, regardless of any provisions of any contracted agreement to the contrary, and regardless of whether that investigation was performed by a LSRP. The property owner would then incur a mandatory reporting and potential cleanup obligations to NJDEP for any contamination that had not been previously reported to the agency. Any parties engaging in the transfer of potentially contaminated properties in New Jersey should be aware of these reporting obligations and their potential impact on the transaction,

Public comments on the NOSC closed January 16, 2026. The NOSC must be signed into law by April 2026 or the proposed rule will expire, requiring a prompt review of comments to prevent that outcome.

Resilient Environments and Landscapes Rule Updates

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New Jersey's Resilient Environments and Landscapes (REAL) rule has undergone some significant changes since last discussed in our [2025 New Jersey Forecast](#). The [original REAL rule](#), proposed on August 5, 2024 (the "2024 Rule Proposal"), made notable changes to the current regulatory scheme in order to aggressively address coastal flooding impacts driven by climate change. The 2024 Rule Proposal received thousands of comments and substantial pushback from the public, municipalities, and industry alike, and on July 21, 2025, the New Jersey Department of Environmental Protection (NJDEP) published a [Notice of Substantial Change](#) (NOSC) significantly amending the 2024 Rule Proposal to address widespread concerns. The 2024 Rule Proposal, including the provisions contemplated under the NOSC, were adopted on January 20, 2026.

The NOSC amended the 2024 Rule Proposal in a number of key ways:

Sea-Level Rise

The NOSC reflects a likely four (4) feet of sea-level rise by 2100 where the 2024 Rule Proposal reflected a likely sea-level rise of five (5) feet by 2100. This change reflects predictions from updated climate models and reduces the tidal climate-adjusted flood elevation, the extent of flood hazard area jurisdiction, and the extent of the proposed Inundation Risk Zone (IRZ). It would also allow buildings in flood zones to be constructed one-foot lower than contemplated under the 2024 Rule Proposal. NJDEP will also revisit sea-level rise and precipitation predictions upon which the REAL rule is built every five (5) years from the effective date of the rulemaking to ensure that the rule reflects the most-current science.

Dry Access

Current Flood Hazard Area Rules require that all new multi-residence buildings be served by at least one roadway with a travel surface constructed at least one foot above the flood hazard area design flood elevation. The 2024 Rule Proposal would have made that elevation requirement more onerous. The NOSC provides additional clarity for construction projects in various types of flood zones and allows developers to apply to NJDEP for relief from these requirements under certain conditions.

Inundation Risk Zone

Under the 2024 Rule Proposal, certain tidal flood hazard areas expected to be underwater, either permanently or twice a day at high tide, by the year 2100 were designated as being within an IRZ. Properties within this IRZ would have been required to have a maximum of three percent impervious cover. The NOSC removed this requirement, instead relying on a requirement that NJDEP evaluate the State Planning Commission's actions (including planning for future climate conditions and managing coastal resources in a manner protective of public health) to meet the spirit of this requirement.

Grandfathering

The NOSC provides that major development applications deemed complete within 180 days of the REAL rule's effective date (or by July 19, 2026) can be reviewed under the prior version of the applicable regulations, whereas the 2024 Rule Proposal would have taken effect immediately upon adoption.

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