

Stream Control Act-Rockland County

CHAPTER 846

An Act to create a stream control act for the county of Rockland and defining its powers and duties.
Approved August 9, 1975, effective July 1, 1976. (Recent amendments appear in bold underlined print)

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Legislative intent and purpose. The alleviation of recurring flood damage to public and private property and the prevention of damage to the public health and safety resulting from floods in Rockland county are hereby declared a matter of concern to the state legislature. It is the intent of this act to protect the health, safety, economic and general welfare by:

- (a) Providing for the protection, preservation, proper maintenance, and use of its water courses, tidal marshes, flood plain lands, water sheds, water recharge areas, and natural drainage systems in order to minimize their disturbance:
- (b) Preventing damage from erosion, turbidity, siltation, and salt water intrusion:
- (c) Preventing loss of fish or other beneficial marine organism, aquatic wild life and vegetation, and the destruction of the natural habitat thereof:
- (d) Preventing the danger of flood damage and pollution:
- (e) Protecting the quality of water courses, wetlands, tidal marshes, shorelines, water sheds and water recharge areas, underground water reserves, and natural drainage systems:
- (f) Protecting the county's potable fresh water supplies from the dangers of drought, overdraft, pollution, and misusal or mismanagement.

§2. Short title. This act shall be known and shall be cited as the "Rockland county stream control act".

§3. Jurisdiction. The County of Rockland, acting through the Rockland County Drainage Agency, shall have the power with respect to all existing or future water courses within the County of Rockland shown on the official county drainage map as hereinafter provided, to (a) establish channel lines; (b) issue or withhold the issuance of permits for channel obstructions and/or alterations; (c) prescribe regulations with respect to the construction and maintenance of structures (1) within one hundred feet beyond channel lines, (2) as more particularly described in section eight of this act, it is also intended that these purposes be integrated into federal, state, county and local conservation measures, pollution control measures, and watershed management measures not inconsistent with the primary purpose of this act; and, may maintain and make alterations and improvements within one hundred feet beyond the channel lines to improve the flow of water within all existing streams, rivers, lakes, ponds, tributaries, waterways and watercourses shown on the official county drainage map or to provide for flood control or to regulate the quantity, quality and timing of surface water runoff, or to protect, preserve and enhance groundwater and surface water quality or to insure the continued integrity of the County's aquifers or to enhance the environment.

§ 4. Application. a. This act shall apply to (1) all existing or future water courses shown on the official county drainage map;

- (2) the construction and maintenance of any channel obstruction, or watercourse alteration;
- (3) the construction and maintenance of any structure hereafter erected and maintenance of any structure heretofore existing, within the channel lines established pursuant to section eight hereof.

b. Exceptions. This act shall not apply to:

- (1) any part of the Hudson river;
- (2) minor repair to structures constructed pursuant to this act or routine maintenance of existing structures.

§ 5. Definitions. For the purpose of this act the following terms shall have the following meanings:

- (1) "County". The county of Rockland.
- (2) "Chairman". The Chairman of the drainage agency of the county of Rockland or a deputy appointed by him to act for him in exercising the powers and performing the duties specified by this act, including the conducting of hearings.
- (3) "Channel Lines". The channel line shall be the one hundred year frequency line as indicated from the studies and investigation by the chairman of the drainage agency. If no such study has been completed, the channel line shall be one hundred feet in distance or three feet in elevation, whichever is greater from the normal high water line as evidenced by vegetation undisturbed by flowing water.
- (4) "Channel obstruction". Any abutment, bridge, building, conduit, culvert, dam, dump, embankment, fill, pipe crossing, wall, wingwall, wharf or similar or analogous structure or any other object that would impede or increase the flow of water, lying wholly or partly within any channel lines established pursuant to the provisions of this act.
- (5) "Flood plains". Any soil areas which during seasonal periods are covered with water.
- (6) "Municipality or municipal corporation". Includes a county, city, town, village or political subdivision thereof.
- (7) "Persons". Any individual, firm, co-partnership, association or corporation other than the state and a state public corporation and a public corporation.
- (8) "Wetlands". All lands and submerged lands known as bogs, marshes, swamps and estuarine areas.

§6. Survey. The chairman shall, as soon as practicable, after the effective date of this act, make a survey and investigation of the streams and watercourses, their run-off characteristics, flood plains and other wetlands within the county and prepare an inventory thereof.

§7. Channel lines. A. The chairman shall have the power by order to establish channel lines, including designation of the grades of the streams and watercourses, the flood plains and wetlands. Before issuing any such order he shall prepare a map accurately showing such areas and shall hold a public hearing on the proposal to establish such areas.

b. The chairman shall cause notice of such hearing to be published in at least one newspaper of general circulation in the county once a week for two consecutive weeks. At least fifteen days prior to the date of such hearing he shall mail or deliver notice, together with a copy of aforesaid map to the clerk of each municipality in which the proposed channel lines, flood plains or wetlands are located.

c. Subsequent to the hearing the chairman shall file in the office of the county clerk an order establishing channel lines, flood plains and other wetlands, together with a map thereof, and such areas shall be deemed established as of the time of ratification by majority vote of the county legislature.

§8. Regulations. The chairman shall have the power after notice and hearing as required in section seven, with respect to the establishment of channel lines to prescribe regulations governing (a) the construction and maintenance of any channel obstruction; and (b) the maintenance of any structure hereafter erected and maintenance of any structure heretofore existing within a distance of one hundred feet from any channel line, flood plain or wetland established pursuant to the provisions of this act, to such extent as such regulation of adjacent structures may be necessary to prevent any danger of obstruction of the stream, watercourse, easement, or right of way bounded by such channel lines by reason of erosion or the collapse or other impairment of any such structure and such additional rules and regulations as are necessary to the implementation of this act. Such regulations shall take effect on approval thereof by the county legislature. The Rockland County Legislature shall have concurrent power to adopt regulations designed for the preservation of the natural or permitted flow and drainage patterns along the watercourses as defined by this act.

Section 8-A. The Chairman of the Drainage Agency shall conduct studies and investigation necessary to and shall establish the one hundred year frequency line for

watercourses contained on the official map within six months of the adoption of the Home Rule legislation or within one year of the addition of a watercourse to the official county drainage map.

§9 Notice of the provisions of this act at hearing. At the hearing to consider the establishment of channel lines and the designation of channel grades, it shall be the duty of the chairman to present these rules, regulations and ordinances, to explain in summary their contents and the fact that they will govern the uses of land subject to this act after said channel lines are established.

§10 Permit: necessity for. No person shall construct any channel obstruction or make any changes therein or addition thereto, or make any change in any existing channel obstruction, or make any alteration including the deposit or removal of materials natural or otherwise into, within or upon the watercourses, wetlands, or flood plain lands, or in any manner change the location or cross-section of any stream or watercourse for which channel lines have been established, or change the course or current of any stream within any channel lines established therefor, or perform any work affecting the construction and maintenance of any existing or proposed structure within the lands governed by this act, without first applying for and obtaining a written permit for such work as provided in this section. Failure to obtain a permit when required shall constitute a violation of this act.

§11. Permit: application for, how made. Application for a permit must be made in writing in triplicate on a form adopted by the chairman. The individual owner, or his agent, or a member of a partnership must sign the application. If the project is to be undertaken by a corporation, the application must be signed by an officer, and if undertaken by a municipal corporation, the application must be signed by the chief executive officer or his agent. Notice of such application shall be published by the applicant in a paper having general circulation in the county within five days of filing the application with the chairman.

§12. Application: information required. The application shall be in triplicate and include such supporting papers and plans as will clearly describe the nature and extent of the work, its starting date and the expected completion date. Data in the supporting papers should include, but not be limited to, information as to width of existing stream, elevation of existing stream bed and adjacent banks, slope of stream and elevation of water at ordinary flow, at ordinary high flow, and at extreme high flow, and an environmental impact statement, containing such information as the chairman shall designate; provided, however, the chairman may in his discretion waive the same having due regard for the circumstances of each application. The supporting papers should also illustrate and describe the design of the project. The latter need not be final design plans, but before the permit is granted, final design plans will be required and will be endorsed to show they are part of the permit.

§13. Application: approval of municipality. An application for a permit may be accompanied by approval of the municipality in which the project is located, of the same shall be issued subject to the approval of the municipality.

Section 13-A. No subdivision map shall be filed by the Rockland County Clerk without first being signed by the Chairman of the Rockland County Drainage Agency to ensure that the subdivision map is in compliance with this Act and any local law, rules or regulations adopted pursuant thereto and to ensure that no existing violations of this Act or any other local law, rules or regulations adopted pursuant thereto or of a permit issued pursuant thereto remains uncured and the county clerk shall not file such map and shall notify the applicant and the municipality that granted and approved such subdivision.

§14. Application: hearing on. Upon receipt of a permit application the chairman will order a public hearing on an application for permit if, in his judgement, such a hearing is necessary and appropriate and in the public interest. Notice of such hearing shall be published at least

Once not less than ten days prior to the date set for such hearing in a paper having general circulation within the county.

§15. Permit: terms and conditions. All permits issued shall contain, among other matters, the following terms, agreements, covenants and conditions:

a. The term "permittee" shall mean the applicant obtaining the permit, or his or its duly authorized agents or representatives.

b. The permittee assumes all risks in the operations covered by the permit and shall be solely responsible and answerable in damages for all accidents or injuries to persons or property.

c. The permittee shall indemnify and save harmless the county of Rockland and the chairman from any and all claims, suits, losses, damage to property or injury to persons of whatsoever kind and nature, whether direct or indirect, arising out of the permittee's operations under the permit, and the permittee agrees to reimburse the county of Rockland and the chairman for all the expenses, costs or judgements to which they may be put arising from such operation.

d. No change in the plans or in the nature and extent of the work shall be made without the chairman's written consent. The project shall be subject at all times to inspection by the chairman or his agents.

e. The permittee agrees that, during the performance of the work, the permittee will not cause or allow in any way or manner any unreasonable interference with the free flow of any stream, and that the permittee will not place, store, remove or dump any materials, equipment or debris in or about any designated channel line, flood plain or other wetland in any way which may cause interference with the free flow or quality of water or to reduce the capacity of flood water retention basins to an extent that would increase the hazard of floor damage either upstream or downstream.

f. The permittee, upon completion of the work, shall cause to be removed from within the channel lines and within the lands governed by this ordinance all equipment, surplus materials, debris and structure not shown on the approved plans.

g. Within sixty days after completion, the permittee shall certify that the work has been completed in accordance with the permit and the approved plans and that all unauthorized channel obstructions have been removed.

h. The land to which the permit is issued shall be subject to all laws of the State of New York including other applicable permit requirements and to all applicable zoning regulations of the municipality within which the land to which the permit applies is located, and to all other regulations thereof applying to the construction of buildings and other structures. In the event of any conflict the more restrictive provision shall apply.

i. The Chairman reserves the right to revoke or cancel the permit at any time should the permittee fail to comply with any of the terms, agreements, covenants and conditions of the permit.

j. The permit does not give any property rights either in real property or material, or any exclusive privileges. It does not authorize any injury to public or private property, any invasion of property right, any occupation of riparian or county property, or any infringement of state or local laws or regulations. Local and state permits and consent must be obtained when necessary.

k. The work must be completed on or before the stated completion date unless the time is extended for good cause shown by the chairman.

§16. Chairman's action on application for permit. The chairman shall review the application and plans and determine to issue or withhold the permit. In making this determination the chairman shall take into consideration, among other things, the testimony received at a public hearing held pursuant to section fifteen hereof; whether the proposed action would reduce or increase the run off of flood waters; reduce the capacity of flood water retention basins; the health, safety and welfare of the community and the effect on the natural resources, including soil, forests, water, fish and aquatic resources. Upon consideration of the

foregoing facts, the chairman shall decide whether the issuance of a permit would be in violation of the public interest as set forth in section one hereof.

§17. Inspection. Final inspection of all work authorized by the permit will be made by the chairman or his agents to determine that the work has been performed in compliance with the permit.

§18. Board of appeal. a. There shall be created a board of appeal to consist of three members, one of whom shall be an engineer duly licensed to practice engineering in the state of New York and another of whom shall be an attorney. All members of the board of appeals to be appointed by the county legislature, one member for a term of one year, one for a term of two years, and one for a term of three years, and at the expiration of each term, one member shall be appointed for a term of three years. One member shall be designated by the county legislature as chairman. No member of the board shall hold salaried public office with the county, city, town or village. The members of the board of appeal shall receive a fee of fifty dollars per day for each day engaged in hearing appeals. Members of the board shall also be paid their actual and necessary expenses in the performance of their official duties. In the event of a vacancy, the same shall be filled by the chairman of the county legislature for the unexpired term.

b. Any person aggrieved by any action of the chairman of the drainage agency pursuant to section seven of this act, or pursuant to section sixteen of this act in issuing, conditionally or otherwise, or refusing to issue a permit for a channel obstruction, or in issuing any order in connection with the enforcement of the provisions of this act, may appeal at any time within sixty days after the date of such action. Such appeal shall be filed with the board of appeals, through the clerk of the county legislature, referring therein to the specific action complained of and praying for a reversal thereof or such modification thereof as may be specifically set forth in the appeal. Such petition shall specify the petitioner's objections to the action of the chairman and no objection not so specified shall be considered by the board. A copy of the petition shall be filed with the chairman on the same day that it is filed with the board of appeals and the chairman shall within thirty days thereafter file with the board of appeal an answer thereto and send a copy thereof by registered mail to the person or municipality filing the appeal petition.

The board of appeals shall fix a time and a place of hearing, of which at least ten days written notice shall be given to the applicant, the chairman and, in the case of an order establishing channel lines, to the clerk of each municipality within which the channel lines lie.

c. After hearing, if the board of appeals is of the opinion that the establishment of channel lines as set forth in the order of the chairman, or that the action of the chairman in refusing to issue a permit or in imposing conditions in connection with the issuance of a permit, is not supported by substantial evidence. Said board shall make a determination with respect to such permit revising in whole or in part, or modifying the action of the chairman, or with respect to such channel lines denying affirmation of such order which shall thereupon be referred back to the chairman for modification, after which it shall again be submitted to the board for hearing and affirmation. Otherwise, the board shall make a determination affirming the action of the chairman; provided, however, that if the board finds that the owner of land within the channel lines bounding a right of way, or easement for the relocation of a stream or watercourse is deprived of the reasonable use thereof as a result of refusal by the chairman to issue a permit or by the imposition by him of conditions in connection with the issuance of a permit, the board shall have power in a specific case to grant a permit that will as little as possible be in conflict with the purposes of this act, and may impose reasonable requirements as a condition of granting such permit.

All action of the board of appeals shall be by majority vote of the members of the board, and every rule of procedure, every amendment or repeal thereof, and every requirement, decision or determination of the board shall immediately be filed in the office of the clerk of the county legislature and shall be a public record. Each decision of the board shall be accompanied by an opinion fully setting forth conclusions of fact and of law and giving the reasons on which the opinion is based.

§19. Maintenance of channel obstructions and structures. a. Any person or municipality owning or otherwise responsible for the whole or part of lands under the authority of the chairman as determined by subdivision c or section seven of this act upon which is erected or maintained a channel obstruction or other structure shall maintain such structures in such a manner as not to materially increase the flow of water, or present a danger of obstruction of the stream, water course, flood plain or wetlands by erosion, sediment or other impairment of such structure.

b. Whenever, after investigation and inquiry, the chairman determines that the person owning or otherwise responsible for the maintenance of channel obstruction or other structure has failed to maintain these structures as provided in subdivision a, the chairman shall cause a notice of violation to be served upon such person. Failure by said person or municipality to comply with the requirements as expressed in said notice shall constitute a violation of this act. Such notice shall be served personally or by registered or certified mail at his or its last known address.

Section 19-A. If the Chairman of the Agency finds a violation, the County Drainage Agency shall have the right to enter and correct, remove or repair the obstruction or structure or recreate the drainage pattern as provided for in the plans submitted by the applicant for a permit or to repair or replace any structure required by the permit or contained in the plans submitted to obtain the permit at the sole cost to the owner of the property and such cost may be assessed as a property tax and collected in like manner; however, notice permitting the owner to cure the defect shall be given to the property owner by registered mail, return receipt requested, at least four weeks before a second notice that the Agency shall perform the work shall be given to the property owner by registered mail, return receipt requested, at least seven days prior to the entry on the property by the County to perform such work provided that if the Chairman of the Rockland County Legislature and the Rockland County Executive at the request of the Chairman of the Drainage Agency declares an emergency after determining that the violation is causing an imminent danger to the life of any individual, then one notice combining the two above referred may be limited to forty-eight hours prior to taking only emergency repairs or actions to remove the danger.

§20. Entry upon land or water. The chairman or his agents, engineers, surveyors and other employees may enter upon any land or water course for the purpose of any investigation, examination or survey necessary for any of the purposes of the Rockland county stream control act.

§21. Investigation by chairman. The chairman may subpoena and require the attendance of witnesses and the production by them of records and papers pertinent to the investigations and inquiries which he is authorized to make and may examine them and such records and papers, and may administer oaths in connection with such examination.

§22. Enforcement of permits issued by the chairman. The chairman shall have the authority to enforce the requirements, terms, agreements, covenants and conditions of any permit issued.

§23. Penalties and enforcement. a. A violation of any of the provisions of this act, or any order or regulation under section eight of this act shall be subject to a civil penalty of a minimum of Five hundred dollars for each violation to a maximum of twenty five hundred dollars for each violation, to be recovered in an action or proceeding brought by the county attorney in the name of the county in a court of competent jurisdiction. In addition to the foregoing, any permits issued pursuant to this act shall be deemed revoked. Each day of a continuing violation shall be subject to a separate fine or civil penalty.

b. An action or proceeding may be maintained by the county attorney in the name of the county in a court of competent jurisdiction to compel compliance with, or restrain by injunction any violation of this act or any rules, regulations or permit issued pursuant to any of

the foregoing sections notwithstanding that another punishment for such violation is prescribed.

c. Any action to recover a penalty under this section may be brought in any court of competent jurisdiction on order of the county attorney and in the name of the county. In any such action, all penalties incurred up to the time of commencing the same may be sued for and recovered therein and the commencement of an action to recover any further penalty for continued violation. All monies recovered in any such action, with the costs recovered therein, shall be paid to the county treasury by the chairman to the credit of the general fund.

§24. Validity: If any section, paragraph, subdivision, clause or provision of these rules, regulations and ordinances shall be adjudged invalid, such judgment shall apply only to such section, paragraph, subdivision, clause or provision so adjudged and shall be confined to the particular ruling or section to which the same is applicable.

§25. This act shall take effect on the first day of July next succeeding the date on which it shall have become law.

ROCKLAND COUNTY STREAM CONTROL ACT
APPROVED, AUGUST 9, 1975
EFFECTIVE, JULY 1, 1976
AMENDED, NOVEMBER 21, 2001