

“Transition area” means an area of upland adjacent to a freshwater wetland which minimizes adverse impacts on the wetland or serves as an integral component of the wetlands ecosystem.

“Transition area waiver” or “waiver” means a waiver issued by the Department under this chapter, authorizing any of the regulated activities enumerated at N.J.A.C. 7:7A-2.6 in a transition area.

“Tree” means a woody plant which is five inches or greater in diameter at a height of four and one half feet above the ground.

“Trout production waters” means waters designated in the Department’s Surface Water Quality Standards, N.J.A.C. 7:9B, for use by trout for spawning or nursery purposes during their first summer.

“USEPA” or “EPA” means the United States Environmental Protection Agency.

“USFWS” means the United States Department of the Interior, Fish and Wildlife Service.

“USGS” means the United States Geological Survey.

“USGS quad map” means a topographic quadrangle map issued by the USGS, 7.5 minute series, drawn at a scale of 1:24,000, available from the Department’s Maps and Publications Office at the address listed in N.J.A.C. 7:7A-1.3.

“Utility line” means a pipe, cable, line, conduit, or wire for the transport or transmission of gases, liquids, electrical energy or communications. This term includes a tower or pole required to support a utility line, but does not include a tower or pole that only transmits waves through the air, such as for radio, television, or telephone transmission. The term “utility line” does not include a stormwater pipe, or a pipe that drains a wetland or State open water, such as a drainage tile.

“Vernal habitat” means a wetland or water that meets all of the criteria at 1 through 4 below. Evidence of breeding by an obligate species under 2i below creates a rebuttable presumption that the criteria at 3 and 4 below are met:

1. Occurs in a confined basin depression without a permanent flowing outlet;
2. Features evidence of breeding by one or more species of fauna adapted to reproduce in ephemeral aquatic conditions, identified in N.J.A.C. 7:7A, Appendix 1, incorporated herein by reference. The following shall constitute evidence of breeding by such a species:
 - i. One or more obligate species listed in Appendix 1, or evidence of such a species, is found in the area of ponded water; or
 - ii. Two or more facultative species listed in Appendix 1, or evidence of the presence of such a species, are found in the area of ponded water;

3. Maintains ponded water for at least two continuous months between March and September of a normal rainfall year; and

4. Is free of fish throughout the year, or dries up at some time during a normal rainfall year.

“Water-dependent activity” means an activity that cannot physically function without direct access to the body of water along which it is proposed. An activity that can function on a site not adjacent to the water is not considered water dependent regardless of the economic advantages that may be gained from a waterfront location.

“Water Pollution Control Act” means the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.

“Waters of the State” means the ocean and its estuaries, all springs, streams, wetlands, and bodies of surface or ground water, whether natural or artificial, within the boundaries of the State of New Jersey or subject to its jurisdiction.

“Waters of the United States” means:

1. All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;
2. All interstate waters including interstate wetlands;
3. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), wetlands, mudflats, sandflats, sloughs, wet meadows, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:
 - i. Which are or could be used by interstate or foreign travelers for recreational or other purposes;
 - ii. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce;
 - iii. Which are used or could be used for industrial purposes by industries in interstate commerce;
 - iv. Which are or would be used as habitat by birds protected by Migratory Bird Treaties;
 - v. Which are or would be used as habitat by other migratory birds which cross state lines;
 - vi. Which are or would be used as habitat for endangered and threatened species; or
 - vii. Which are used to irrigate crops sold in interstate commerce;
4. All impoundments of waters otherwise defined as waters of the United States under this definition;
5. Tributaries of waters identified in paragraphs 1 through 4 of this definition;

6. The territorial seas; and

7. Wetlands adjacent to waters identified in paragraphs 1 through 6 of this definition other than those that are themselves wetlands.

The following waters are generally not considered "waters of the United States." However, the right is reserved to determine on a case by case basis, if particular watercourses or waterbodies are "waters of the United States":

1. Non-tidal drainage and irrigation ditches excavated on dry land;

2. Artificially irrigated areas which would revert to upland if the irrigation ceased;

3. Artificial lakes or ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing;

4. Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons;

5. Waterfilled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the above definition of "waters of the United States";

6. Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA (other than cooling ponds); and

7. Erosional channels less than two feet wide and six inches deep in upland areas resulting from poor soil management practices.

"Water quality certificate" means a Department determination issued for a proposed activity which requires a Federal license or permit, pursuant to 33 U.S.C. § 1341 of the Federal Act and N.J.S.A. 58:10A-1 et seq.

"Working day" means a day upon which the offices of the New Jersey Department of Environmental Protection are open for business.

Amended by R.1989 d.362, effective July 3, 1989.
See: 21 N.J.R. 596(a), 21 N.J.R. 1858(a).

Deleted old definition and added new for "Documented habitat for threatened or endangered species." Added new definition for "Transition area waiver."

Amended by R.1992 d.117, effective March 16, 1992.
See: 23 N.J.R. 338(a), 24 N.J.R. 975(b).

Changes initiated to create a program that is as stringent as that of the U.S. Army Corps of Engineers under the Clean Water Act (33 U.S.C. 1251 et seq.) in order to secure the assumption of the permit jurisdiction.
Amended by R.1993 d.159, effective April 19, 1993.
See: 24 N.J.R. 912(b), 25 N.J.R. 1755(b).

Added definitions for "advanced stages of construction."

Amended by R.1993 d.646, effective December 20, 1993.

See: 25 N.J.R. 1642(a), 25 N.J.R. 5954(a).

Amended by R.1999 d.352, effective October 4, 1999.

See: 31 N.J.R. 1562(a), 31 N.J.R. 2964(a).

Inserted definitions of "Abandoned", "Atlantic white-cedar wetlands", "Federal Manual", "Forested", "Loss", and "Tree".

Amended by R.2001 d.312, effective September 4, 2001.

See: 32 N.J.R. 2693(a), 33 N.J.R. 3045(a).

Rewrote the section.

Amended by R.2003 d.44, effective January 21, 2003.

See: 34 N.J.R. 2388(a), 35 N.J.R. 418(a).

Added "Property as a whole".

Amended by R.2007 d.243, effective August 20, 2007.

See: 38 N.J.R. 2913(a), 39 N.J.R. 3524(a).

Added definition "Grace period".

Case Notes

INVALIDITY ANNOTATION: Validity of definition of "residential development project" affected. In the Matter of Freshwater Wetlands Protection Act Rules, 180 N.J. 478, (2004).

Township's land use ordinance reducing permissible development area and requiring documentation was not preempted by Freshwater Wetlands Protection Act. *Crow-New Jersey 32 Ltd. Partnership v. Township of Clinton*, D.N.J.1989, 718 F.Supp. 378.

Regulation was not invalid on the theory that it permitted regulation outside freshwater wetlands. *New Jersey Chapter of Nat. Ass'n of Indus. and Office Parks v. New Jersey Dept. of Environmental Protection*, 241 N.J.Super. 145, 574 A.2d 514 (A.D.1990) certification denied 122 N.J. 374, 585 A.2d 379, certification denied 122 N.J. 374, 585 A.2d 380.

Projects that received preliminary approval prior to July 1, 1989 were exempt from compliance with transition-area provisions of Freshwater Wetlands Protection Act. *Appeal of Adoption of N.J.A.C. 7:7A-1.4 (Definition of "Documented Habitats for Threatened and Endangered Species" and "Swale")*, 7:7A-2.5(b)(2), and 7:7A-2.7(f), 118 N.J. 552, 573 A.2d 143 (1990).

7:7A-1.5 Severability

If any subchapter, section, subsection, provision, clause, or portion of this chapter, or the application thereof to any person, is adjudged unconstitutional or invalid by a court of competent jurisdiction, such judgment shall be confined in its operation to the subchapter, section, subsection, provision, clause, portion, or application directly involved in the controversy in which the judgment was rendered and it shall not affect or impair the remainder of this chapter or the application thereof to other persons.

Amended by R.2001 d.312, effective September 4, 2001.

See: 32 N.J.R. 2693(a), 33 N.J.R. 3045(a).

Substituted "the" for "such" following "the controversy in which", and "was" for "shall have been" preceding "rendered".

7:7A-1.6 Other statutes and regulations

(a) The powers, duties and functions vested in the Department under this chapter shall not limit in any manner the powers, duties and functions vested therein under any other law except as specifically set forth in this chapter.

(b) The Freshwater Wetlands Protection Act, on and subsequent to July 1, 1988, shall supersede any law or ordinance enacted by any municipality, county, or political subdivision thereof, regulating freshwater wetlands or freshwater wetlands transition areas except that the Pinelands Commission may provide for more stringent regulation of activities in and around freshwater wetland areas within its jurisdiction. No municipality, county, or political subdivision thereof shall enact any law, ordinance, or rule or regulation requiring a transition area adjacent to a freshwater wetland, except that the Pinelands Commission may provide for more stringent regulation of activities in and around freshwater wetland areas within its jurisdiction.

(c) This section shall not, however, preclude municipal advice to the Department concerning letters of interpretation or other matters.

(d) This chapter shall not preempt State regulatory programs which affect regulated activities in freshwater wetlands, including but not limited to Coastal Area Facility Review Act (CAFRA), N.J.S.A. 13:19-1 et seq., the Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq., and State approved municipal water quality management plans. These programs will continue to regulate based on the concerns covered by their respective enabling statutes and rules, and may, through such regulation, have some impact on projects in freshwater wetlands. However, those programs will not use freshwater wetlands concerns as a basis for regulation, and any regulation by these programs of projects in freshwater wetlands will be limited to that based on other (for example, flood danger) concerns.

Amended by R.2001 d.312, effective September 4, 2001.
See: 32 N.J.R. 2693(a), 33 N.J.R. 3045(a).
Rewrote the section.

Case Notes

N.J.S.A. 13:9B-9(a)(2) of the New Jersey Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 through 13:9B-30, requires an applicant for a wetlands permit who proposes to mitigate the adverse impact upon wetlands of a development project on its property at an off-site location to give notice to owners of property within 200 feet of the mitigation site. *Rinaldo v. RLR Inv.*, 387 N.J. Super. 387, 904 A.2d 725, 2006 N.J. Super. LEXIS 238 (App.Div. 2006).

Existing use zoning exception did not exempt owner from environmental requirements. *Stabile Estate v. DEPE*, 94 N.J.A.R.2d (EPE) 6.

7:7A-2.2 Regulated activities in freshwater wetlands and State open waters

(a) The following activities are regulated under this chapter when performed in a freshwater wetland unless excluded under (c) below:

1. The removal, excavation, disturbance or dredging of soil, sand, gravel, or aggregate material of any kind;
2. The drainage or disturbance of the water level or water table so as to alter the existing elevation of groundwater or surface water, regardless of the duration of such alteration, by:
 - i. Adding or impounding a sufficient quantity of stormwater or other water to modify the existing vegetation, values or functions of the wetland; or
 - ii. Draining, ditching or otherwise causing the depletion of the existing groundwater or surface water so as to modify the existing vegetation, values or functions of the wetland;
3. The dumping, discharging or filling with any materials;
4. The driving of pilings;
5. The placing of obstructions, including depositing, constructing, installing or otherwise situating any obstacle which will affect the values or functions of a freshwater wetland;
6. The destruction of plant life which would alter the character of a freshwater wetland, including killing vegetation by applying herbicides or by other means, the physical removal of wetland vegetation, and/or the cutting of trees; and
7. Placement of any portion of a residential development project, as defined at N.J.A.C. 7:7A-1.4.

(b) The term "regulated activity" shall also mean the discharge of dredged or fill material into State open waters, except for a discharge into a non-delegable State open water which is subject to the Waterfront Development Law, N.J.S.A. 12:5-3.

(c) Notwithstanding (a) above, the following activities are not regulated activities:

1. Surveying or wetlands investigation activities, for the purpose of establishing or reestablishing a boundary line or points, which use only hand held equipment and do not involve the use of motorized vehicles to either clear vegetation or extract soil borings. The clearing of vegetation along the survey line or around the survey points shall not exceed three feet in width or diameter respectively and shall not be kept clear or maintained once the survey or delineation is completed;
2. The placement of temporary structures (such as observation blinds, waterfowl blinds, artificial nesting structures, or sign posts) for observing, managing, or harvesting fish or wildlife, provided the structures:
 - i. Do not have permanent foundations;
 - ii. Do not require the deposition of fill material; and
 - iii. Have a footprint no larger than 32 square feet;
3. Placement of one or more small guy anchors that screw into the ground to secure a guy wire supporting a utility pole, provided that the area of disturbance caused by each guy anchor is no more than 15 inches in diameter;
4. Hand trimming of trees or other vegetation, provided the trimming does not alter the character of the freshwater wetland; and
5. The driving of one or more pilings in a State open water, if the pilings are not regulated by the ACOE under the Federal 404 program. The ACOE regulates the placement of pilings if the placement would have the effect of a discharge of fill material. Examples of activities that are and are not regulated by the ACOE are:
 - i. Activities that generally do not have the effect of a discharge of fill material and thus are not regulated are:
 - (1) Placing pilings for linear projects, such as bridges, elevated walkways, and utility line structures; and
 - (2) Placement of pilings for piers or docks;
 - ii. Activities that generally do have the effect of a discharge of fill material and thus are regulated include, but are not limited to:
 - (1) Projects where the pilings are so closely spaced that sedimentation rates would be increased;
 - (2) Projects in which the pilings themselves effectively would replace the bottom of a water body;
 - (3) Projects involving the placement of pilings that would reduce the reach or impair the flow or circulation of waters of the United States;

(4) Projects involving the placement of pilings which would result in the adverse alteration or elimination of aquatic functions; and

(5) Projects where the pilings are intended to be used for structural support of a building such as a commercial or residential structure.

Amended by R.1992 d.117, effective March 16, 1992.

See: 23 N.J.R. 338(a), 24 N.J.R. 975(b).

Added new (c) regarding those activities not considered as resulting in alteration of the character of freshwater.

Amended by R.2001 d.312, effective September 4, 2001.

See: 32 N.J.R. 2693(a), 33 N.J.R. 3045(a).

Former N.J.A.C. 7:7A-2.2, Subchapters which apply to freshwater wetlands permits or open water fill permits, was repealed.

Case Notes

N.J.S.A. 13:9B-9(a)(2) of the New Jersey Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 to 13:9B-30, requires an applicant for a wetlands permit who proposes to mitigate the adverse impact upon wetlands of a development project on its property at an off-site location to give notice to owners of property within 200 feet of the mitigation site. *Rinaldo v. RLR Inv.*, 387 N.J. Super. 387, 904 A.2d 725, 2006 N.J. Super. LEXIS 238 (App.Div. 2006).

INVALIDITY ANNOTATION: Validity of N.J.A.C. 7:7A-2.2(a)7 affected. In the Matter of Freshwater Wetlands Protection Act Rules, 180 N.J. 478, 852 A.2d 1083 (2004).

7:7A-2.3 Identifying freshwater wetlands

(a) Freshwater wetlands shall be identified and delineated using the three-parameter approach (that is, hydrology, soils and vegetation) enumerated in the 1989 Federal Manual, as defined at N.J.A.C. 7:7A-1.4.

(b) To aid in determining the presence or absence of freshwater wetlands, the Department may refer to any of the following sources of information:

1. New Jersey Freshwater Wetlands maps prepared by the Department and available as indicated in (f) below;
2. United States Department of Agriculture Soil Surveys;
3. USGS quad maps;
 - i. NWI maps shall be used to indicate the approximate location of some freshwater wetlands;
 - ii. NWI maps have been determined to be unreliable for the purposes of locating the actual wetlands boundary;
4. United States Geologic Survey topographic maps;
5. Letters submitted by applicants containing site specific data;
6. Comments filed by municipal and county governments and interested citizens; and
7. Comments filed by State or Federal agencies.

(c) Vegetative species classified as hydrophytes and indicative of freshwater wetlands shall include, but not be limited to, those plants listed in "National List of Plant Species that Occur in Wetlands: 1988 New Jersey," compiled by the United States Fish and Wildlife Service in cooperation with the ACOE, USEPA, and the United States Soil Conservation Service, and any subsequent amendments thereto.

(d) To obtain a determination from the Department of the presence, absence, or boundaries of freshwater wetlands on a particular site, a person may apply to the Department for a letter of interpretation under N.J.A.C. 7:7A-3.

(e) The Department has developed freshwater wetlands maps at a scale of 1:12000 to provide guidance and for general informational purposes. These freshwater wetlands maps can help to determine the approximate extent and location of wetlands. However, these maps are for guidance only and do not take the place of nor supersede a wetland delineation that the Department has approved through a letter of interpretation issued for a particular site.

(f) The Department has provided the New Jersey freshwater wetlands maps to the following offices for public inspection:

1. The county clerk or registrar of deeds and mortgages in each county;
2. The municipal clerk of each municipality; and
3. The Department's Maps and Publications Sales Office, located at the address listed in N.J.A.C. 7:7A-1.3.

Amended by R.1992 d.117, effective March 16, 1992.

See: 23 N.J.R. 338(a), 24 N.J.R. 975(b).

Added new (c)1. and recodified existing 1.-6. as 2.-7.

Amended by R.2001 d.312, effective September 4, 2001.

See: 32 N.J.R. 2693(a), 33 N.J.R. 3045(a).

Case Notes

Engaging in regulated activities in freshwater wetlands and transition area without permit warranted imposition of civil penalty. *Department of Environmental Protection v. Ludlam*, 95 N.J.A.R.2d (EPE) 233.

Nursery required to seek permit to fill in intermittent stream; designated as priority wetlands. *Brookside Nursery v. DEPE*, 94 N.J.A.R.2d (EPE) 106.

7:7A-2.4 Classification of freshwater wetlands by resource value

(a) Freshwater wetlands shall be divided into three classifications based on resource value. The Department shall consider the resource value classification of a wetland in, among other things, evaluating alternatives to the proposed regulated activity, in determining the size of the transition area, and in determining the amount and/or type of mitigation required.

(b) A freshwater wetland of exceptional resource value, or exceptional resource value wetland, is a freshwater wetland which:

1. Discharges into FW-1 or FW-2 trout production waters or their tributaries;

2. Is a present habitat for threatened or endangered species; or

3. Is a documented habitat for threatened or endangered species, and which remains suitable for breeding, resting, or feeding by these species during the normal period these species would use the habitat.

(c) The Department identifies present or documented habitat for threatened or endangered species for purposes of (b) above using the Landscape Project method, which focuses on habitat areas required to support local populations of threatened or endangered wildlife species. The details of this method are described in the Land Use Regulation Program's freshwater wetlands technical manual, available from the Department's Office of Maps and Publications at the address in N.J.A.C. 7:7A-1.3. An applicant may request that a documented habitat not result in the classification of a freshwater wetland as a freshwater wetland of exceptional resource value. Such a request shall include a demonstration of the long-term loss of one or more habitat requirements of the specific documented threatened or endangered species, including, but not limited to, wetlands size or overall habitat size, water quality, or vegetation density or diversity. Upon such a request, the Department shall review all available information, and shall make a final classification of the wetland.

(d) A freshwater wetland of ordinary resource value, or an ordinary resource value wetland, is a freshwater wetland which does not exhibit any of the characteristics in (b) above, and which is:

1. An isolated wetland, as defined at N.J.A.C. 7:7A-1.4, which:

i. Is smaller than 5,000 square feet; and

ii. Has the uses listed below covering more than 50 percent of the area within 50 feet of the wetland boundary. In calculating the area covered by a use, the Department will only consider a use that was legally existing in that location prior to July 1, 1988, or was permitted under this chapter since that date:

- (1) Lawns;
- (2) Maintained landscaping;
- (3) Impervious surfaces;
- (4) Active railroad rights-of-way; and
- (5) Gravelled or stoned parking/storage areas and roads;

2. A drainage ditch;

3. A swale; or

4. A detention facility created by humans in an area that was upland at the time the facility was created.

(e) A freshwater wetland of intermediate resource value, or intermediate resource value wetland, is any freshwater wetland not defined as exceptional or ordinary.

(f) The classification system established under this section shall not restrict the Department's authority to require the creation or restoration of freshwater wetlands under N.J.A.C. 7:7A-.

(g) To obtain a Department determination of the resource value classification for a particular wetland, an applicant may obtain a letter of interpretation from the Department under N.J.A.C. 7:7A-3.

Amended by R.1989 d.362, effective July 3, 1989.
See: 21 N.J.R. 596(a), 21 N.J.R. 1858(a).

In (b)2: Deleted language to clarify definition of "documented habitat for endangered or threatened species" for use in classifying freshwater wetlands.

Amended by R.1992 d.117, effective March 16, 1992.
See: 23 N.J.R. 338(a), 24 N.J.R. 975(b).

New (c)i., i-iii added defining for this subsection "isolated wetlands" and "development" and requiring investigation of area within 50 ft. of wetland boundary.

Amended by R.2001 d.312, effective September 4, 2001.
See: 32 N.J.R. 2693(a), 33 N.J.R. 3045(a).

Amended by R.2002 d.234, effective July 15, 2002.
See: 34 N.J.R. 390(a), 34 N.J.R. 2436(b).

Rewrote (c).

Public Notice: Notice of Revision and Updating of Freshwater Wetlands Technical Manual to Incorporate Version 2.0 of the Landscape Maps.
See: 36 N.J.R. 1129(a).

Public Notice: Notice of Revision and Updating of the Landscape Maps.
See: 40 N.J.R. 2572(b).

Case Notes

Department of Environmental Protection could adopt landscape method to classify those wetlands which support the habitats of threatened or endangered species, even if the species had not been seen in that particular area; Freshwater Wetlands Protection Act did not limit identification of wetlands of exceptional value to habitats which had a sighted or documented presence of an endangered or threatened species, evidence supported idea that species were not stationary and needed large contiguous blocks of habitat to survive, and landscape method helped implement that idea. In the Matter of Adopted Amendments to N.J.A.C. 7:7A-2.4, 365 N.J. Super 255, 839 A.2d 60.

Projects that received preliminary approval prior to July 1, 1989 were exempt from compliance with transition-area provisions of Freshwater Wetlands Protection Act. Appeal of Adoption of N.J.A.C. 7:7A-1.4 (Definition of "Documented Habitats for Threatened and Endangered Species" and "Swale"), 7:7A-2.5(b)(2), and 7:7A-2.7(f), 118 N.J. 552, 573 A.2d 143 (1990).

Wetland was suitable habitat for endangered species even though none had been sighted on wetland; exceptional resource value. Rossi v. Division of Coastal Resources, 92 N.J.A.R.2d (EPE) 244.

Intermittent stream; man-made alterations; not "ditch" ranked as ordinary value wetlands. Classic Custom Homes v. Land Use Regulation Program, 92 N.J.A.R.2d (EPE) 230.

7:7A-2.5 General transition area provisions

(a) A transition area serves as:

1. An ecological transition zone from uplands to freshwater wetlands which is an integral portion of the freshwater wetlands ecosystem, providing temporary refuge for freshwater wetlands fauna during high water episodes, critical habitat for animals dependent upon but not resident in freshwater wetlands, and slight variations of freshwater wetland boundaries over time due to hydrologic or climatologic effects; and

2. A sediment and storm water control zone to reduce the impacts of development upon freshwater wetlands and freshwater wetlands species.

(b) Acts or acts of omission in a transition area that adversely affect a transition area's ability to serve as any of the areas described below at (b)1 to 7 shall be deemed inconsistent with (a) above:

1. A temporary refuge for freshwater wetlands fauna during high water episodes;

2. A habitat area for activities such as breeding, spawning, nesting and wintering for migrating, endangered, commercially and recreationally important wildlife;

3. An area to accommodate slight variations in freshwater wetland boundaries over time due to hydrologic or climatologic effects;

4. A remediation and filtration area to remove and store nutrients, sediments, petrochemicals, pesticides, debris and other pollutants as they move from the upland towards the freshwater wetlands;

5. A buffer area to keep human activities at a distance from freshwater wetlands, thus reducing the impact of noise, traffic, and other direct and indirect human impacts on freshwater wetlands species;

6. A corridor area which facilitates the movement of wildlife to and from freshwater wetlands and from and to uplands, streams and other waterways; and

7. A sediment and storm water control area to reduce the adverse effects of development or disturbance upon freshwater wetlands, flora and fauna, and nearby waterways.

(c) A transition area is required adjacent to a freshwater wetland of exceptional resource value and of intermediate resource value as classified in N.J.A.C. 7:7A-2.4. A transition area is not required adjacent to a freshwater wetland of ordinary resource value or adjacent to a State open water.

(d) The standard width of a transition area adjacent to a freshwater wetland of exceptional resource value shall be 150 feet. This standard width shall only be modified through the issuance of a transition area waiver. The types of transition area waivers are listed at N.J.A.C. 7:7A-6.1(a).

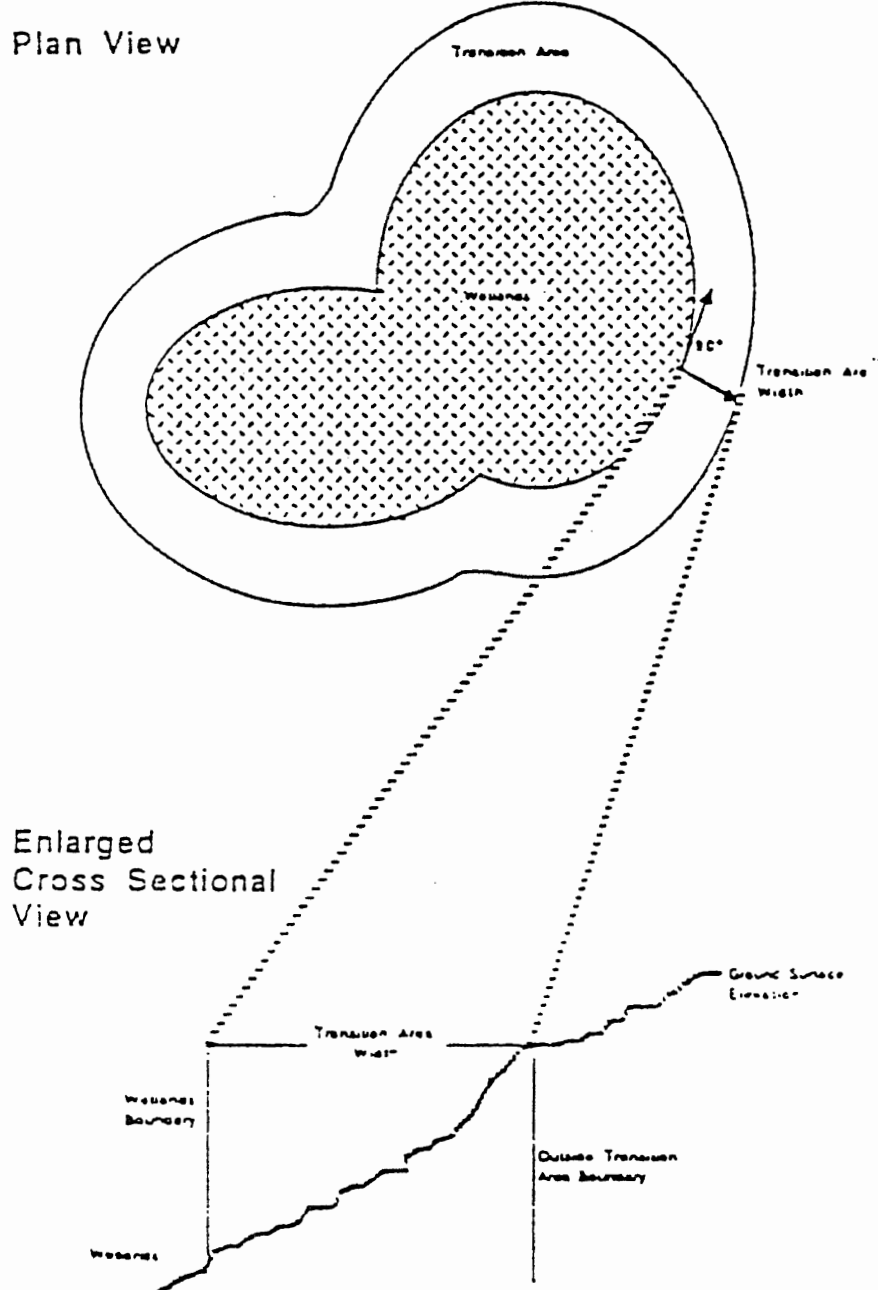
(e) The standard width of a transition area adjacent to a freshwater wetland of intermediate resource value shall be 50 feet. This standard width shall only be modified through the issuance of a transition area waiver. The types of transition area waivers are listed at N.J.A.C. 7:7A-6.1(a).

(f) A person shall not engage in regulated activities, as described at N.J.A.C. 7:7A-2.6, in a transition area except pursuant to a transition area waiver.

(g) A transition area shall be measured outward from a freshwater wetland boundary line on a horizontal scale perpendicular to the freshwater wetlands boundary line as shown in Figure 1 below. The outside boundary line of a transition area shall parallel, that is, be equidistant from, the freshwater wetlands boundary line, unless the Department issues a transition area waiver. The width of the transition area shall be measured as the minimum distance between the freshwater wetlands boundary and the outside transition area boundary.

Figure 1-Transition Area

Example of a transition area adjacent to a freshwater wetland.
Depicted are a plan and elevational view.



Amended by R.1992 d.117, effective March 16, 1992.

See: 23 N.J.R. 338(a), 24 N.J.R. 975(b).

Minor change in (b)6.

Amended by R.2001 d.312, effective September 4, 2001.

See: 32 N.J.R. 2693(a), 33 N.J.R. 3045(a).

Case Notes

Ban on sewer hookups for new residential construction precluded use of any part of property for residential purposes; highest and best use of subject property, consisting of 36 separate contiguous parcels comprising city water reserve, open space or conservation, for purposes of township's real property tax. *East Orange City v. Livingston Tp.*, 15 N.J.Tax 36 (1995).

7:7A-2.6 Regulated activities in transition areas

(a) Except as provided in (b) and (c) below, the following are regulated activities when they occur in transition areas:

1. Removal, excavation, or disturbance of the soil;
2. Dumping or filling with any materials;
3. Erection of structures;
4. Placement of pavements;
5. Destruction of plant life which would alter the existing pattern of vegetation; and
6. Placement of any portion of a residential development project, as defined at N.J.A.C. 7:7A-1.4.

(b) Notwithstanding (a) above, the following activities are not regulated in transition areas and do not require Department approval under this chapter, provided that the activities are performed in a manner that minimizes adverse effects to the transition area and adjacent freshwater wetlands:

1. Normal property maintenance;
 - i. For the purposes of this paragraph, "normal property maintenance" means activities required to maintain lawfully existing artificial and natural features, landscaping and gardening. These activities include:
 - (1) Mowing of existing fields or lawns;
 - (2) Pruning of trees and shrubs;
 - (3) Selective cutting of trees;
 - (4) Replacement of existing non-native plants with either native or non-native species;
 - (5) Limited supplemental planting of non-native plant species that will not significantly change the character of the existing vegetational community of the transition area. The creation of a lawn is not considered supplemental planting;
 - (6) Planting of native species, that is, plants naturally occurring in transition areas in the local region, (the county agricultural agent may be consulted to obtain information regarding these species);
 - (7) Continued cultivation of existing gardens and the development of new gardens no larger than one quarter acre in size; and

(8) Maintenance of artificial features including the repair, rehabilitation, replacement, maintenance or reconstruction of any previously authorized, currently serviceable structure, lawfully existing prior to July 1, 1989, or permitted under this chapter, provided such activities do not result in additional disturbance of the transition area upon completion of the activity. Minor deviations from the existing structure due to changes in materials or construction techniques and which are necessary to make repairs, rehabilitation or replacements are allowed provided such changes do not result in disturbance of additional transition area upon completion of the activity.

ii. Any activity which involves or causes the substantial alteration or change of the existing characteristics of a transition area shall not be considered normal property maintenance. Activities which involve or cause substantial alteration or change of the transition area include, but are not limited to, extensive removal or destruction of vegetation by clear cutting, cutting, mowing (except as described in (b)1i above), burning or application of herbicides, planting of ornamental plants or lawns for landscaping purposes (except as described in (b)1i above), regrading or significant changes in the existing surface contours and the placement of fill, pavement or other impervious surfaces.

2. Minor and temporary disturbances of the transition area resulting from, and necessary for, normal construction activities on land adjacent to the transition area, provided the activities do not result in adverse environmental effects on the transition area or on the adjacent freshwater wetlands, and do not continue for more than six months. For the purposes of this paragraph, minor and temporary disturbances include, but are not limited to, the placement of scaffolds or ladders, the removal of human-made debris by non-mechanized means which does not destroy woody vegetation, the placement of temporary construction supports, and the placement of utility lines over or under a previously authorized, currently serviceable paved roadway surface;

3. The erection of one or more temporary structures covering a combined total of 150 square feet or less of the transition area. For the purposes of this paragraph, a "temporary structure" means a shed or fence without a foundation, or a structure that remains in the transition area for no more than six months.

(c) Certain regulated activities are exempt from transition area requirements under N.J.A.C. 7:7A-2.8(f). In addition, an activity that is exempt from freshwater wetlands permit requirements under N.J.A.C. 7:7A-2.8(c) for farming activities, or N.J.A.C. 7:7A-2.8(d) for forestry activities, is also exempt from transition area requirements, subject to the limits on freshwater wetlands exemptions at N.J.A.C. 7:7A-2.8. A person may request an exemption letter confirming the exemption status of an activity by using the procedures at N.J.A.C. 7:7A-2.10.

Amended by R.1992 d.117, effective March 16, 1992.

See: 23 N.J.R. 338(a), 24 N.J.R. 975(b).

At (b)2i added reference to placement of utility lines; corrected cross references in (c) and (d).

Amended by R.2001 d.312, effective September 4, 2001.

See: 32 N.J.R. 2693(a), 33 N.J.R. 3045(a).

Former N.J.A.C. 7:7A-2.6, Designation of State open waters, was repealed.

7:7A-2.7 Transition areas due to freshwater wetlands on adjacent property

(a) The outside boundary of a transition area is determined solely by reference to the freshwater wetlands boundary and is not affected by property lines. Therefore, a property within 150 feet of a freshwater wetlands may contain a transition area that arises from a freshwater wetlands on another property. Every property containing a transition area is subject to this chapter, even if the freshwater wetland that causes the transition area is located on another property.

(b) To determine whether a site has transition areas on it caused by wetlands on another property:

1. Determine whether there are any wetlands on any property within 150 feet of the site's property line. If not, there are no transition areas on the site due to wetlands on nearby properties;

2. If there are freshwater wetlands on another property within 150 feet of the site's property line, determine the resource value classification of the wetlands on the nearby property. For a Department-issued resource value classification of the wetlands, obtain an LOI under N.J.A.C. 7:7A-3;

3. If all of the freshwater wetlands on nearby properties within 150 feet of the site's property line are ordinary resource value wetlands, there is no transition area on the site arising from wetlands on other properties;

4. If any of the freshwater wetlands on nearby properties within 150 feet of the site's property line cannot be classified as ordinary resource value wetlands, determine the transition area on the site as follows:

i. If any wetlands on nearby properties are intermediate resource value wetlands, and are within 50 feet of the site's property line, there is at least some transition area on the site arising from these wetlands. In order to determine the size and shape of the transition area, obtain a delineation of the wetlands on the nearby properties and determine the transition area for each under N.J.A.C. 7:7A-2.5(e); and

ii. If any wetlands on nearby properties are exceptional resource value wetlands, and are within 150 feet of the site's property line, there is at least some transition area on the site arising from these wetlands. In order to determine the size and shape of the transition area, obtain a delineation of the wetlands on the nearby properties and determine the transition area for each under N.J.A.C. 7:7A-2.5(d); and

5. To avoid obtaining an LOI and/or delineating wetlands under (b)3 and 4 above, a person can ensure compliance with transition area requirements arising from wetlands on other properties by assuming that there are exceptional resource value wetlands on all adjacent properties and refraining from any regulated activities within 150 feet of the site's property line.

(c) It may be necessary to obtain written permission from adjacent property owners to investigate their land within 150 feet of the site's boundary.

Amended by R.1992 d.117, effective March 16, 1992.

See: 23 N.J.R. 338(a), 24 N.J.R. 975(b).

Repealed (b)5 and recodified existing 5-7 as 5 and 6; new language added at 6 regarding notification to owners of adjacent property. Amended by R.2001 d.312, effective September 4, 2001.

See: 32 N.J.R. 2693(a), 33 N.J.R. 3045(a).

7:7A-2.8 Activities exempted from permit and/or waiver requirement

(a) This section sets forth certain activities that are exempt from certain permit requirements in this chapter. However, even if an activity is exempt under this chapter, it may still require a permit from the Army Corps of Engineers under the Federal wetlands program, and/or a water quality certificate issued by the Department.

(b) The farming, ranching, and silviculture exemptions in (c) and (d) below are subject to the following limits:

1. The exemptions shall not apply to any discharge of dredged or fill material into freshwater wetlands or State open water incidental to any activity which involves bringing an area of freshwater wetlands or State open waters into a use to which it was not previously subject, where the flow or circulation patterns of the freshwater wetlands or waters may be impaired, or the extent or values and functions of freshwater wetlands or State open waters is reduced;

2. The exemptions apply only as long as the area is used for the exempted activity. Therefore, if the area stops being used for farming, ranching, or silviculture, the exemption no longer applies;

3. The exemptions apply only to the portion of the property which meets all requirements for the exemption. For example, if half of a 20 acre property has been actively farmed and half has not, the half that has not been actively farmed would not be considered to be part of an established, ongoing farming operation and would therefore not be eligible for the farming exemption;

4. Clear cutting of a non-cultivated, wooded wetland area is not covered by the exemptions unless it is part of the normal harvesting of forest products performed in accordance with a written approval from the State Forester; and

5. If an area with hydric soils has been drained for farming purposes through the use of drainage structures

such as tiles or ditches, the Department shall presume that the area has wetlands hydrology for the purpose of identifying a freshwater wetland under N.J.A.C. 7:7A-2.3. To rebut this presumption of wetlands hydrology, all drainage structures shall be removed or completely disabled and the area shall be left undisturbed for at least one normal rainfall year, after which the presence or absence of wetlands hydrology shall be determined through use of technical criteria, field indicators, and other information, in accordance with the 1989 Federal manual.

(c) Subject to the limitations of this section, the following activities, when part of an established, ongoing farming, ranching or silviculture operation, on properties which have received or are eligible for a farmland assessment under the New Jersey Farmland Assessment Act, N.J.S.A. 54:4-23.1 et seq., are exempt from the requirement of a freshwater wetlands or open water fill permit, or transition area waiver:

1. Normal farming, silviculture, and ranching activities such as plowing, seeding, cultivating, minor drainage, harvesting for the production of food and fiber, or soil and water conservation practices. For the purposes of this paragraph, "minor drainage" means:

i. The discharge of material incidental to connecting upland drainage facilities to adjacent wetlands, adequate to effect the removal of excess soil moisture from upland croplands;

ii. The discharge of material for the purpose of installing ditching or other such water control facilities incidental to planting, cultivating, protecting, or harvesting of rice, cranberries or other wetland crop species, where these activities and the discharge occur in waters which are in established use for such agricultural and silvicultural wetlands crop production;

iii. The discharge of material for the purpose of manipulating the water levels of, or regulating the flow or distribution of water within, existing impoundments which have been constructed in accordance with applicable requirements of the Federal Act and which are in established use for the production of rice, cranberries, or other wetland crop species;

iv. The discharge of material incidental to the emergency removal of sandbars, gravel bars, or other similar blockages which are formed during flood flows or other events, where such blockages close or constrict previously existing drainageways and, if not properly removed, would result in damage to or loss of existing crops on land in established use for crop production. Such removal does not include enlarging or extending the dimensions of, or changing the bottom elevations of, the affected drainageway as it existed prior to the formation of the blockage. Removal must be accomplished within one year of formation of such blockages in order to be eligible for exemption under this paragraph; and

v. Minor drainage in wetlands is limited to drainage within areas that are part of an established farming or silvicultural operation. It includes maintenance of existing drainage tile or other drainage structures. It does not include drainage associated with the immediate or gradual conversion of a wetland to a non-wetland (for example, wetlands species to upland species not typically adapted to life in saturated soil conditions), or conversion from one wetland use to another (for example, silviculture to farming). In addition, minor drainage does not include the construction of any new canal, ditch, dike or other waterway or structure. Any discharge of dredged or fill material into the wetlands or State open waters incidental to the construction of any such structure or waterway requires a freshwater wetlands or State open water permit, and will not be considered minor drainage;

2. Construction or maintenance of farm or stock ponds or irrigation ditches, or the maintenance of drainage ditches, provided that such facilities are for farming, ranching or silvicultural purposes and do not constitute a change in use. Any dredged material from pond construction or maintenance must be placed outside the freshwater wetlands unless it is needed for the structural or environmental integrity of the pond; and

3. Construction or maintenance of farm roads or forest roads constructed and maintained in accordance with best management practices (BMPs) to assure that flow and circulation patterns and chemical and biological characteristics of freshwater wetlands and State open waters are not impaired and that any adverse effect on the aquatic environment will be minimized. Where the proposed discharge will result in significant discernible alterations to flow or circulation, the presumption is that flow or circulation may be impaired by such alteration. Roads constructed for forestry and silviculture purposes shall be constructed using temporary mats whenever practicable. All roads employing the placement of fill shall be removed once the land use changes from forestry to another use.

(d) Normal harvesting of forest products in accordance with a forest management plan approved by the State Forester is exempt from the requirement of a freshwater wetlands permit, transition area waiver, or open water fill permit, subject to the limitations of this section. However, the removal of stumps results in a discharge of dredged or fill material, and a change in use and an impairment of flow or circulation. Therefore, under (b)1 above, the removal of stumps is not exempt.

(e) Until March 2, 1994, when the Department assumed responsibility for the Federal 404 program, the Department issued certain exemptions based on prior local approvals. However, as of March 2, 1994, these exemptions are void as they apply to freshwater wetlands permit and open water fill requirements. The exemptions continue to apply to transition area requirements, and are described at (f) below.

(g) The Department shall issue an LOI for a portion of a site, also called a footprint of disturbance, under N.J.A.C. 7:7A-3.2(c)2 or 3.4(b)2. Special application requirements shall apply to such an LOI, in order to ensure that the portion of the site is clearly marked on the plan and on the ground. These requirements are described at N.J.A.C. 7:7A-10.3(b) and (d)4.

(h) The Department shall not issue an LOI if the Department determines that the information submitted in the application for the LOI is inaccurate. In such a case, the applicant may provide corrected information upon the Department's request, or may apply directly for a permit without obtaining an LOI. If the applicant applies for the permit without first obtaining an LOI, the permit application must include all information that would be necessary for the Department to issue an LOI for the site, in accordance with N.J.A.C. 7:7A-10.4(a)2, 10.5(a)1, or 10.6(a)3, as applicable. The Department will then review the submitted wetland delineation as part of the permit review process.

(i) In order to ensure that a delineated wetlands boundary can be located in the future after the LOI is issued, an LOI applicant shall provide the Department with a survey of the approved delineated wetlands boundary line. The survey may be submitted as part of the LOI application, or if the applicant prefers, the survey may be submitted after the Department inspects the site and approves the delineation as marked on the site with flags or other markers. If the Department requires adjustments to the delineated wetlands boundary after the survey is submitted, the applicant shall resurvey the delineated boundary after the adjustments are made and the Department has approved the boundary. The issued LOI will reference the approved and surveyed boundary line. The Department shall waive the survey requirement if the applicant demonstrates that the extent of wetlands on the site can be easily determined in the future without a survey, so that the expense of a survey is not warranted. For example, the Department may waive the survey requirement if an entire site is covered completely with freshwater wetlands.

(j) If an LOI covers only a portion of a site in accordance with N.J.A.C. 7:7A-3.2(c)2 or 3.4(b)2, the applicant shall provide, in addition to the survey required at (i) above, a survey of the boundaries of the portion of the site that are covered by the LOI.

(k) If a site is located in an area under the jurisdiction of the Pinelands Commission, the Department shall not issue a letter of interpretation. The lead agency in this area for determining the presence, absence, or extent of freshwater wetlands is the Pinelands Commission. However, in cases of disagreement, the Department and the Pinelands Commission retain authority to independently or jointly establish these boundaries.

7:7A-3.2 Presence/absence LOI

(a) A presence/absence LOI identifies whether any freshwater wetlands, State open waters or transition areas exist on a site, or on a portion of a site (footprint of disturbance).

A presence/absence LOI also provides the resource value classification for any wetlands on the site.

(b) A presence/absence LOI does not identify the boundaries or location of any freshwater wetlands, transition areas, and/or State open waters found within a site or portion thereof. To obtain an LOI indicating the location or the boundaries of freshwater wetlands, transition areas, and/or State open waters, an applicant shall apply for a line delineation LOI under N.J.A.C. 7:7A-3.3, or a line verification LOI under N.J.A.C. 7:7A-3.4.

(c) The Department shall issue a presence/absence LOI for either of the following:

1. An entire site, as defined at N.J.A.C. 7:7A-1.4, regardless of its size; or
2. A portion of a site, also known as a footprint of disturbance, provided the portion is no larger than one acre.

(d) The Department shall issue a presence/absence LOI for more than one portion of a site, provided that:

1. Each portion is no larger than one acre;
2. The applicant submits a separate fee for each portion; and
3. No more than three presence/absence LOIs shall be issued for a single site under this subsection.

7:7A-3.3 Line delineation LOI

(a) A line delineation LOI identifies the boundaries of any freshwater wetlands, transition areas, and/or State open waters on a site or a municipal tax lot that is one acre or smaller, and identifies the resource value classification of any freshwater wetlands on the site. For a line delineation LOI, the applicant need not submit a delineation. Rather, the Department shall inspect the site and delineate the boundary lines of any freshwater wetlands, transition areas, and/or State open waters.

(b) The Department shall issue a line delineation LOI for a site, as defined at N.J.A.C. 7:7A-1.4, or for a municipal tax lot, that is one acre or smaller. The Department shall not issue a line delineation LOI for a site larger than one acre. The Department shall not issue a line delineation LOI for a portion of a site, unless the portion is a municipal tax lot.

7:7A-3.4 Line verification LOI

(a) A line verification LOI identifies the boundaries of any freshwater wetlands, transition areas, and/or State open waters on a site, and the resource value classification of any freshwater wetlands on the site. For a line verification LOI, the applicant shall submit a proposed delineation of wetlands, transition areas, and/or State open waters, which the Department will confirm or modify.

(b) The Department shall issue a line verification LOI for the following:

1. A site, as defined at N.J.A.C. 7:7A-1.4, regardless of its size;
2. A municipal tax lot no larger than the site; or
3. A portion of a site, if all of the following criteria are met:
 - i. The site is publicly owned;
 - ii. The site is larger than 10 acres;
 - iii. The portion is one acre or smaller; and
 - iv. The portion is clearly marked on the plan and on the ground.

7:7A-3.5 Application for a letter of interpretation

(a) An applicant for a letter of interpretation shall follow all application procedures and information requirements at N.J.A.C. 7:7A-10, Application contents and procedures. However, if a site is located in an area under the jurisdiction of the Pinelands Commission, the applicant shall instead apply to the Pinelands Commission for a determination regarding the presence, absence, and/or extent of wetlands on the site; and the transition area for any wetlands on site.

(b) The Department shall review an application for a letter of interpretation using the procedures at N.J.A.C. 7:7A-12, Department review of an application.

(c) The Department, in reviewing an application for an LOI, shall consider comments filed by municipal and county governments and interested citizens. Comments should be submitted to the Department in writing within 15 days after the commenter receives notice of the LOI application, to ensure adequate time for the Department to fully consider them. However, comments shall be accepted until the Department makes a decision on the application.

7:7A-3.6 Effect, duration, and extension of a letter of interpretation

(a) A person who is issued a letter of interpretation pursuant to this subchapter shall be entitled to rely on the determination of the Department, concerning the presence or absence, or the extent of freshwater wetlands and/or State open waters, for a period of five years from its issuance, unless the letter of interpretation is determined to have been based on inaccurate or incomplete information, in which case the Department may void the original letter of interpretation and issue a new letter of interpretation reflecting the actual conditions on the site. For example, the LOI may be revised to reflect additional wetland areas identified after LOI issuance; or if a threatened or endangered species habitat is disclosed or discovered after the LOI was issued, the Department may correct the resource value classification.

(b) The term of a letter of interpretation may be extended, provided that the information upon which the original letter was based remains valid, but shall not exceed five years from the original expiration date.

(c) Requests for extensions shall be made in writing to the Department before the letter of interpretation has expired and shall be subject to the application requirements at N.J.A.C. 7:7A-10. Applicants will be required to submit a new application if an extension is not applied for prior to the expiration date of the letter of interpretation.

Amended by R.1992 d.117, effective March 16, 1992.

See: 23 N.J.R. 338(a), 24 N.J.R. 975(b).

References added specifically to freshwater wetlands and State open waters.

Amended by R.2001 d.312, effective September 4, 2001.

See: 32 N.J.R. 2693(a), 33 N.J.R. 3045(a).

SUBCHAPTER 4. GENERAL PROVISIONS FOR GENERAL PERMITS

7:7A-4.1 Department issuance of general permits

(a) This section details how the Department will adopt General permits except for general permits numbers 6 and 7. To adopt a general permit, the Department will publish a draft general permit as a rule proposal pursuant to the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. In addition, the Department will send a copy of the draft general permit to USEPA, and will follow the procedures for EPA comment found at N.J.A.C. 7:7A-12.2.

(b) The Department may adopt a general permit only if all of the following conditions are met:

1. After conducting an environmental analysis, the Department determines that the regulated activities will cause only minimal adverse environmental impacts when performed separately, will have only minimal cumulative adverse impacts on the environment, and will cause only minor impacts on freshwater wetlands and State open waters;

2. The Department determines that the activity will conform to the purposes of the Freshwater Wetlands Protection Act, and will not violate the Federal Act; and

3. The Department provides public notice and opportunity for a public hearing.

(c) In addition to the conditions required by this subchapter, each general permit shall contain limitations as necessary to comply with Federal regulations governing the Department's assumption of the Federal 404 program at 40 CFR § 233.21(c) as follows:

1. A description of the activities which are authorized, including limits for any single project. At a minimum, these limits shall include:

- i. The maximum quantity of material that may be discharged;

- ii. The type(s) of material that may be discharged;

10. If activities under the general permit meet the definition of "major development" at N.J.A.C. 7:8-1.2, the Stormwater Management Rules at N.J.A.C. 7:8 apply.

11. If activities under the general permit involve excavation or dredging, the applicant shall use an acceptable disposal site for the excavated or dredged material. No material shall be deposited or dewatered in freshwater wetlands, transition areas, State open waters or other environmentally sensitive areas. The Department may require testing of dredged material if there is reason to suspect that the material is contaminated. If any dredged material is contaminated with toxic substances, the dredged material shall be removed and disposed of in accordance with Department-approved procedures;

12. The amount of rip-rap or other energy dissipating material shall not exceed the minimum necessary to prevent erosion, as calculated under the Standards for Soil Erosion and Sediment Control in New Jersey at N.J.A.C. 2:90;

13. Best management practices, as defined at N.J.A.C. 7:7A-1.4, shall be followed whenever applicable;

14. If the general permit activities are subject to the Department's Water Quality Management Planning rules at N.J.A.C. 7:15, the activities shall be consistent with those rules and with the applicable approved Water Quality Management Plan (208 Plan) adopted under the New Jersey Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq.;

15. The timing requirements at (c) below shall be met; and

16. Activities authorized under a general permit shall not take place in a vernal habitat, as defined at N.J.A.C. 7:7A-1.4, or in a transition area adjacent to a vernal habitat. *Overruled in 180 N.J. 494 (2004)*

(c) In order to protect the fishery resources and/or the spawning of the fish population, any activity which may introduce sediment into a stream or cause a stream to become turbid shall not be performed during the time periods listed in Table A below:

Table A¹

RESTRICTED TIME PERIODS FOR WATERS WITH FISHERY RESOURCES

Water body or water body classification	Time period (inclusive) during which activities shall not be performed
Brook trout production waters; Brown trout production waters; and All other trout production waters except Rainbow trout production waters	September 15 through March 15
Rainbow trout production waters	February 1 through April 30
Trout-stocked waters; Trout maintenance waters; and An area within one mile upstream of a trout-stocked or a trout maintenance water	March 15 through June 15
All unimpeded tidal waters open to the ocean, including: Coastal bays; Delaware Bay and River up to any impassable barrier; and Water bodies identified as anadromous migratory pathways.	April 1 to June 30
Water bodies that support general game fish	May 1 to June 30
Water bodies that support pickerel	Ice out to April 30
Water bodies that support walleye	March 1 to May 30
Water bodies used by American Shad for migrations in the Delaware River: —Mouth of Delaware Bay to Delaware Memorial Bridge; and —Tidal Maurice River.	March 1 through June 30; and October 1 through November 30
—Delaware Memorial Bridge to Trenton; and —Tidal portions of Rancocas, Raccoon, and Crosswicks Creeks.	March 1 through June 30; and September 1 through November 30
—Delaware River from Trenton to New York State line.	April 1 through June 30; and September 1 through November 30

¹ Note that the Delaware River Basin Commission (DRBC) imposes additional timing restrictions on certain activities in waters under DRBC jurisdiction. Contact the U.S. Fish and Wildlife Service's River Basin Coordinator through the DRBC at (609) 883-9500 for information on these additional timing restrictions.

(d) The Department may reduce, extend or otherwise modify the timing requirements listed at (c) above on a case-by-case basis provided:

1. The applicant demonstrates that the impact to the fishery resource shall be less if the regulated activities

occur during the timing restriction rather than during an unrestricted period;

2. The combined effects of the timing restrictions above would restrict activities to less than 183 calendar days per year. In such a case, the Department may allow regulated activities to occur for up to 183 calendar days if

the applicant demonstrates to the Department that proper steps will be taken that will minimize the impact to the fishery resources;

3. The Department determines that regulated activities must occur during periods when local schools are not in session in order to avoid increased risks or excessive delays to school buses or vans; or

4. The Department determines that, due to the nature of the project or an unusual circumstance on site, the timing restriction must be modified or extended in order to prevent a substantial adverse impact to the fishery resource, to the aquatic environment, or to a threatened or endangered species or its habitat.

(e) If an activity will take place in a non-delegable water, as defined at N.J.A.C. 7:7A-1.4, and the activity requires approval from the ACOE under the Federal 404 program, the activities authorized under the general permit shall not begin until the permittee obtains the required Federal 404 program approval.

(f) No activity is authorized under a general permit without a written approval from the Department, except for the following, which are subject to the notice and application requirements set forth in the applicable provisions cited below:

1. Maintenance of an off-stream stormwater management facility, as authorized under general permit 1 at N.J.A.C. 7:7A-5.1(d);

2. Repair of a malfunctioning septic system, as authorized under general permit 25 at N.J.A.C. 7:7A-5.25; and

3. Minor channel or stream cleaning activities, as authorized under general permit 26 at N.J.A.C. 7:7A-5.26.

Amended by R.2001 d.312, effective September 4, 2001.

See: 32 N.J.R. 2693(a), 33 N.J.R. 3045(a).

Amended by R.2002 d.320, effective October 7, 2002.

See: 33 N.J.R. 2937(a), 33 N.J.R. 3631(a), 34 N.J.R. 3518(a).

In (b), added 16.

Amended by R.2003 d.409, effective October 20, 2003.

See: 34 N.J.R. 3420(a), 35 N.J.R. 4873(a).

Rewrote (b)5.

Amended by R.2004 d.48, effective February 2, 2004.

See: 35 N.J.R. 119(a), 35 N.J.R. 1328(a), 36 N.J.R. 670(a).

Rewrote (b)10.

Case Note

INVALIDITY ANNOTATION: Validity of N.J.A.C. 7:7A-4.3(b)16 affected. In the Matter of Freshwater Wetlands Protection Act Rules, 180 N.J. 478 (2004).

7:7A-4.4 Use of multiple general permits

(a) The Department may authorize activities under one or more general permits on a single site, provided that:

1. The individual limits of each general permit are complied with. If activities under one general permit are conducted in more than one place on a site, the total disturbance caused by all activities at all locations onsite under that general permit shall be summed in order to determine if the limits in the general permit are met; and

2. The total combined area of wetlands, State open waters, and transition areas disturbed or modified on the site under general permits 2, 6, 7, 8, 10A, 10B, 11, 12, 13, 14, 17, 18, 19, 21, 22, 24, 25, and 26 does not exceed one acre with the exception of the following:

i. Disturbance of State open waters as part of a lake dredging project under general permit 13 at N.J.A.C. 7:7A-5.13. However, disturbance of wetlands or transition area in the lake or for access to the dredging project shall be counted toward the one acre limit in this subsection;

ii. Disturbance of State open waters as part of a channel or stream cleaning project under general permit 26 at N.J.A.C. 7:7A-5.26. However, disturbance of wetlands or transition area in the channel or stream or for access to the channel or stream cleaning project shall be counted toward the one acre limit in this subsection;

iii. Disturbance of a transition area solely for access to a general permit activity performed in a wetland in accordance with N.J.A.C. 7:7A-4.2(c); and

iv. Disturbance authorized under general permit 17 on a publicly owned site.

(b) The Department may authorize activities under a general permit more than once on the same site, and/or at different times on the same site. However, the total disturbance authorized on a site under general permits since July 1, 1988 shall meet the criteria for use of multiple general permits set forth at (a)1 and 2 above.

(c) If a general permit is not listed at (a)2 above, any acreage disturbed under that general permit is not counted towards the one acre limit in (a)2 above, regardless of whether the general permit is used singly or in combination with other general permits, and regardless of whether the general permit is used once or repeatedly.

(d) In addition to the limits above in this section, the Department shall not authorize activities under general permit numbers 13, 15, or 18 more often than once every five years on a single site.

Amended by R.2001 d.312, effective September 4, 2001.

See: 32 N.J.R. 2693(a), 33 N.J.R. 3045(a).

7:7A-4.5 Application for authorization to act under General Permits

(a) An applicant for authorization to act under a general permit shall follow all application procedures and information requirements at N.J.A.C. 7:7A-10, Application Contents and Procedures, unless the activity is one of the following, in which case the application requirements are found in the general permit itself:

1. Maintenance of an off-stream stormwater management facility under N.J.A.C. 7:7A-5.1(d);
2. Repair or modification of a malfunctioning individual subsurface sewage disposal system under N.J.A.C. 7:7A-5.25; or
3. Minor channel or stream cleaning under N.J.A.C. 7:7A-5.26.

New Rule, R.2001 d.312, effective September 4, 2001.
See: 32 N.J.R. 2693(a), 33 N.J.R. 3045(a).

7:7A-4.6 Combined general permit authorization and flood hazard area permit

(a) An applicant may obtain a combined freshwater wetlands general permit authorization and flood hazard area permit for an activity that is in a freshwater wetlands and also in an area regulated under the Department's Flood Hazard Area Control Act rules under the following provisions:

1. N.J.A.C. 7:7A-5.2A, authorizing an underground utility line;
2. N.J.A.C. 7:7A-5.10C, authorizing a minor road crossing;
3. N.J.A.C. 7:7A-5.11A, authorizing an intake or outfall structure;

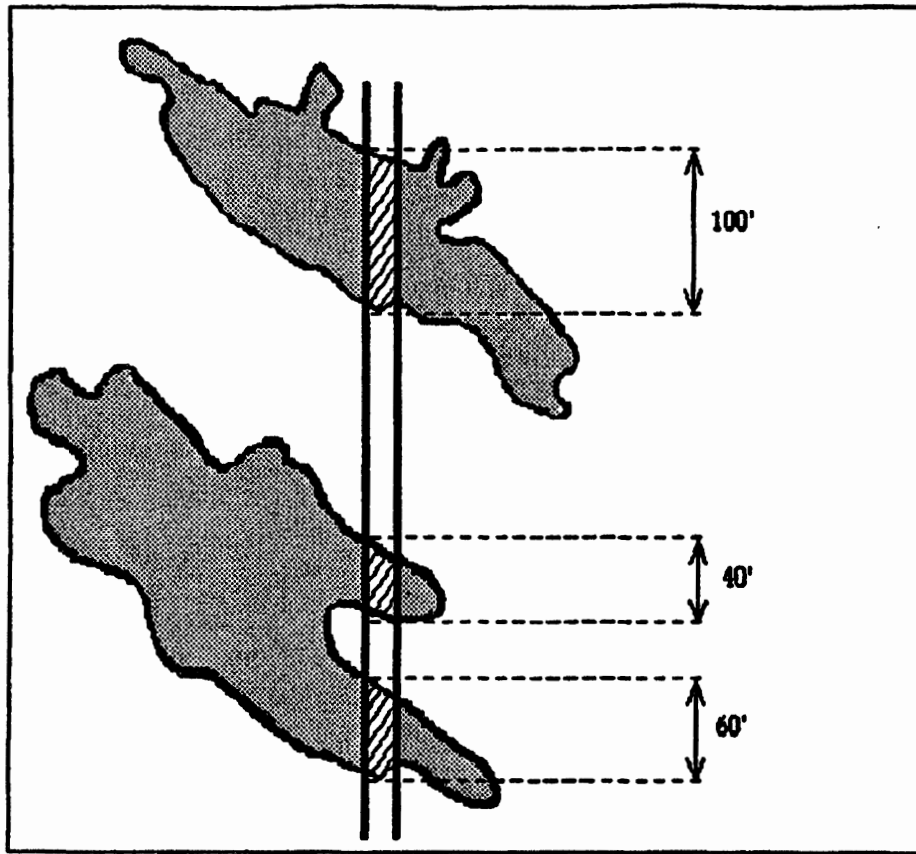


Figure 3
Two Road Crossings, Each Crossing A Different Freshwater Wetland

Amended by R.1989 d.373, effective July 17, 1989.

See: 20 N.J.R. 1327(a), 21 N.J.R. 2024(a).

Added eight new Statewide General Permits, (a)10-17.

Amended by R.1990 d.446, effective September 4, 1990.

See: 22 N.J.R. 278(a), 22 N.J.R. 2753(a).

Expedited review process provided at (a)4 for hazardous waste remediation activities.

Public Notice: Request for public comments and public hearings.

See: 24 N.J.R. 975(a).

Amended by R.1992 d.117, effective March 16, 1992.

See: 23 N.J.R. 338(a), 24 N.J.R. 975(b).

Changes initiated to create a program that is as stringent as that of the U.S. Army Corps of Engineers under the Clean Water Act (33 U.S.C. 1251 et seq.) in order to secure the assumption of the permit jurisdiction.

Public Notice: Notice of action on adoption of statewide general permits pursuant to Freshwater Wetlands Protection Act.

See: 24 N.J.R. 2252(a).

Amended by R.1999 d.352, effective October 4, 1999.

See: 31 N.J.R. 1562(a), 31 N.J.R. 2964(a).

Rewrote (a).

Amended by R.2001 d.312, effective September 4, 2001.

See: 32 N.J.R. 2693(a), 33 N.J.R. 3045(a).

Case Notes

Permit for construction within protected freshwater wetlands area requires proof that total length of disturbance will not exceed 100 feet. *Luchese v. Department of Environmental Protection*, 96 N.J.A.R.2d (EPE) 227.

Magnitude of wetland disturbance had to be determined on basis of total length of proposed roadway regardless of property boundaries. *Zimmer v. Department of Environmental Protection*, 93 N.J.A.R.2d (EPE) 199.

7:7A-5.10B General permit 10B—Minor road crossings

(a) General permit 10B authorizes the following activities in freshwater wetlands, transition areas, and/or State open waters:

1. Construction of one or more new road crossings, including attendant features such as shoulders, sidewalks and embankments;
2. Expansion, widening, or upgrading of one or more existing paved or unpaved roads, including attendant features such as shoulders, sidewalks and embankments; and
3. Activities necessary to reduce horizontal curves in an existing paved road to comply with New Jersey Department of Transportation safety regulations.

(b) The Department shall issue a general permit 10B authorization only if all of the following criteria are met:

1. The applicant demonstrates in accordance with (d) below that there is no alternative onsite location and/or configuration for the road crossing that would provide access to the developable upland with less adverse environmental impact; and
2. The total area of freshwater wetlands, transition areas, and/or State open waters disturbed under general permit 10B shall not exceed one-quarter of an acre.

(c) Activities under general permit 10B shall minimize environmental impact as follows:

1. The applicant shall design the crossing to ensure that fish passage is unimpeded during times when the water level is at its lowest, unless the applicant demonstrates that the water body is unsuitable for habitation by fish and will remain so for the foreseeable future. The applicant shall ensure fish passage by maintaining the existing gradient and bottom contours of the water body to the extent possible, and by using arches, culverts, or other structures that will ensure fish passage;

2. The applicant shall install cross drains or other devices to ensure that the crossing does not alter the hydrology of the freshwater wetlands and/or State open waters on either side of the crossing;

3. The amount of rip-rap or other energy dissipating material used shall be the minimum necessary to prevent erosion, and shall not exceed 200 cubic yards of fill below the top of bank or high water mark, unless a larger amount is required in order to comply with the Standards for Soil Erosion and Sediment Control in New Jersey at N.J.A.C. 2:90; and

4. The cartway, shoulder, and side slopes of the roadway shall be the minimum necessary for the crossing and shall not exceed the limits in the New Jersey Department of Community Affairs' Residential Site Improvement Standards at N.J.A.C. 5:21. If the project is not a residential development, the cartway, shoulder, and side slopes of the roadway shall be the minimum necessary for safety.

(d) In evaluating whether there is an alternative onsite location and/or configuration for a road crossing under (b)1 above, the Department shall make the presumptions at (d)1 through 5 below. However, these presumptions may be rebutted based on site-specific or unusual circumstances:

1. Disturbance of a non-transition area upland would have less adverse environmental impact than disturbance of a transition area, State open water or freshwater wetland;

2. Disturbance of a transition area would have less adverse environmental impact than disturbance of a freshwater wetland or State open water;

3. Disturbance of a freshwater wetland would have less adverse environmental impact than disturbance of a State open water;

4. Expansion or upgrading of an existing and currently serviceable drive or crossing would have less adverse environmental impact than placement of a new crossing; and

5. Placement of a new crossing in an area that is already significantly disturbed would have less adverse environmental impact than disturbance of a previously undisturbed wetland and/or State open water.

i. The public interest in preservation of natural resources and the interest of the property owners in reasonable economic development. In determining whether a proposed activity is in the public interest, the Department shall consider, as one source of guidance, the goals, strategies, policy objectives and policies of the New Jersey State Development and Redevelopment Plan, adopted and/or readopted by the State Planning Commission pursuant to the New Jersey State Planning Act, N.J.S.A. 52:18A-196 et seq., and the State Planning Act rules, N.J.A.C. 17:32;

ii. The relative extent of the public and private need for the proposed regulated activity;

iii. Where there are unresolved conflicts as to resource use, the practicability of using reasonable alternative locations and methods, to accomplish the purpose of the proposed regulated activity;

iv. The extent and permanence of the beneficial or detrimental effects which the proposed regulated activity may have on the public and private uses for which the property is suited;

v. The quality and resource value classification pursuant to N.J.A.C. 7:7A-2.5 of the wetland which may be affected and the amount of freshwater wetlands to be disturbed;

vi. The economic value, both public and private, of the proposed regulated activity to the general area; and

vii. The functions and values provided by the freshwater wetlands and probable individual and cumulative impacts of the regulated activity on public health and fish and wildlife;

13. Will not involve a discharge of dredged material or a discharge of fill material, unless the material is clean, suitable material free from toxic pollutants in toxic amounts, which meets Department rules for use of dredged or fill material; and

14. Is consistent with the applicable approved Water Quality Management Plan (208 Plan) adopted under the New Jersey Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., unless the activities are not subject to the Department's Water Quality Management Planning rules at N.J.A.C. 7:15.

(c) The following shall apply to the Department's consideration of whether an alternative is practicable under (b)1 above:

1. An alternative shall be practicable if it is available and capable of being carried out after taking into consideration cost, existing technology, and logistics in light of overall project purposes;

i. In considering cost in accordance with (c)1 above, the Department shall consider the acquisition history of the property as a whole, as defined at N.J.A.C.

7:7A-1.4, and the amount, nature, and date of investments that the applicant has made in the property as a whole; and

2. An alternative shall not be excluded from consideration under this provision merely because it includes or requires an area not owned by the applicant which could reasonably have been or be obtained, utilized, expanded, or managed in order to fulfill the basic purpose of the proposed activity.

Amended by R.1992 d.117, effective March 16, 1992.

See: 23 N.J.R. 338(a), 24 N.J.R. 975(b).

Recodified from 3.1; added references to State open water.

Amended by R.1992 d.117, effective March 16, 1992.

See: 23 N.J.R. 338(a), 24 N.J.R. 975(b).

Recodified from 3.4; recodified 7:7A-3.5(a)1-7 as (a)11, i-vii.

Amended by R.2001 d.312, effective September 4, 2001.

See: 32 N.J.R. 2693(a), 33 N.J.R. 3045(a).

Amended by R.2003 d.44, effective January 21, 2003.

See: 34 N.J.R. 2388(a), 35 N.J.R. 418(a).

Deleted (b)12viii; in (c), deleted ", or under N.J.A.C. 7:7A-7.3(b)" following "above" and added 1i.

Amended by R.2003 d.409, effective October 20, 2003.

See: 34 N.J.R. 3420(a), 35 N.J.R. 4873(a).

Rewrote (b)9.

Case Notes

Property owner violated Freshwater Wetlands Protection Act by filling in and clearing away protected wetlands areas without obtaining permit to do so. Department of Environmental Protection v. Janovic Construction Company, 96 N.J.A.R.2d (EPE) 211.

Developer not entitled to freshwater wetlands permit in order to construct 47 homes. Goodwin v. Department of Environmental Protection, 93 N.J.A.R.2d (EPE) 83.

Property owner was properly denied individual freshwater wetland permit sought for construction of individual residence. Stone v. Division of Coastal Resources, 92 N.J.A.R.2d (EPE) 148.

7:7A-7.3 (Reserved)

New Rule, R.2001 d.312, effective September 4, 2001.

See: 32 N.J.R. 2693(a), 33 N.J.R. 3045(a).

Repealed by R.2003 d.44, effective January 21, 2003.

See: 34 N.J.R. 2388(a), 35 N.J.R. 418(a).

Section was "Taking without compensation".

7:7A-7.4 Additional requirements for a non water-dependent activity in a wetland or special aquatic site

(a) In addition to meeting the requirements of N.J.A.C. 7:7A-7.2, a non water-dependent activity in a freshwater wetland or special aquatic site, as defined in N.J.A.C. 7:7A-1.4, shall meet the requirements of this section. If an activity is water-dependent, as defined at N.J.A.C. 7:7A-1.4, or if it disturbs only a State open water that is not a special aquatic site, this section does not apply to the activity.

(b) There shall be a rebuttable presumption that there is a practicable alternative to a non water-dependent activity in a freshwater wetland or in a special aquatic site, which alternative does not involve a freshwater wetland or special aquatic site, and that such an alternative would have less of an impact on the aquatic ecosystem.

(c) In order to rebut the presumption established in (b) above, an applicant must demonstrate all of the following:

1. That the basic project purpose cannot reasonably be accomplished using one or more other sites in the general region that would avoid or reduce the adverse impact on an aquatic ecosystem;
2. That the basic project purpose cannot reasonably be accomplished if there is a reduction in the size, scope, configuration, or density of the project as proposed;
3. That the basic project purpose cannot reasonably be accomplished by an alternative design that would avoid or reduce the adverse impact on an aquatic ecosystem;
4. That in cases where the applicant has rejected alternatives to the project as proposed due to constraints such as inadequate zoning, infrastructure, or parcel size, the applicant has made reasonable attempts to remove or accommodate such constraints; and
5. If any portion of the proposed activity will take place in an exceptional resource value wetland or in trout production waters, that the requirements of N.J.A.C. 7:7A-7.4 are met.

Amended by R.2001 d.312, effective September 4, 2001.
Sec: 32 N.J.R. 2693(a), 33 N.J.R. 3045(a).

Case Notes

Individual permit to fill freshwater wetlands denied where practical alternatives to construction existed. Lacki v. New Jersey Department of Environmental Protection, 96 N.J.A.R.2d (EPE) 220.

No permit required for modification or widening of access road. Griffith v. DEPE, 94 N.J.A.R.2d (EPE) 220.

7:7A-7.5 Additional requirements for a non-water dependent activity in exceptional resource value wetlands or trout production waters

(a) If an applicant proposes a non water-dependent activity in wetlands of exceptional resource value or in trout production waters, the applicant, in addition to complying with all other requirements in this subchapter, shall also demonstrate either:

1. That there is a compelling public need for the proposed activity greater than the need to protect the freshwater wetland or trout production water, and that the need cannot be met by essentially similar projects in the region which are under construction or expansion, or which have received the necessary governmental permits and approvals; or
2. That denial of the permit would impose an extraordinary hardship on the applicant brought about by circumstances peculiar to the subject property.

Amended by R.1992 d.117, effective March 16, 1992.
Sec: 23 N.J.R. 338(a), 24 N.J.R. 975(b).

Recodified from 3.3; added references to trout production waters.
Amended by R.2001 d.312, effective September 4, 2001.
Sec: 32 N.J.R. 2693(a), 33 N.J.R. 3045(a).

3. The violator's full payment of a specified part of a civil administrative penalty, if payment is made within a time period established by the Department in an administrative order, and if the violator waives the right to request an adjudicatory hearing on the civil administrative penalty; or

4. Any other terms or conditions acceptable to the Department.

Amended by R.1992 d.117, effective March 16, 1992.

See: 23 N.J.R. 338(a), 24 N.J.R. 975(b).

Deleted "waiver" at (a)1.

Amended by R.2001 d.312, effective September 4, 2001.

See: 32 N.J.R. 2693(a), 33 N.J.R. 3045(a).

Former N.J.A.C. 7:7A-16.6, Fees for the review and processing of requests for exemption letters, was repealed.

7:7A-16.7 Appeal of an administrative order and/or notice of civil administrative penalty assessment

(a) A violator may request an adjudicatory hearing to contest an administrative order, and/or a notice of civil administrative penalty assessment issued under this chapter. To request an adjudicatory hearing, the violator shall submit the following information in writing to the Department at the address in (b) below:

1. The name, address, and telephone number of the violator and its authorized representative;

2. The violator's defenses to each of the findings of fact in the administrative order and/or notice of civil administrative penalty assessment, stated in short and plain terms;

3. An admission or denial of each of the findings of fact. If the violator is without knowledge or information sufficient to form a belief as to the truth of a finding, the violator shall state this and this shall have the effect of a denial. A denial shall fairly meet the substance of the findings denied. When the violator intends in good faith to deny only a part or a qualification of a finding, the violator shall specify so much of it as is true and material and deny only the remainder. The violator may not generally deny all the findings but shall make all denials as specific denials of designated findings. For each finding the violator denies, the violator shall allege the fact or facts as the violator believes it or them to be;

4. Information supporting the request and copies of other written documents relied upon to support the request;

5. An estimate of the time required for the hearing (in days and/or hours); and

6. A request, if necessary, for a barrier-free hearing location accessible to physically disabled persons.

(b) A request for an adjudicatory hearing under this subchapter shall be addressed to:

Office of Legal Affairs

ATTENTION: Adjudicatory Hearing Requests

Department of Environmental Protection

PO Box 402

Trenton, New Jersey 08625-402

(c) If the Department does not receive the hearing request within 20 days after the violator receives the notice of civil administrative penalty assessment and/or the administrative order which is being contested, the Department shall deny the hearing request.

(d) If the violator fails to include all the information required by (a) above, the Department may deny the hearing request.

(e) Any adjudicatory hearing shall be conducted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

Administrative change to (a).

See: 23 N.J.R. 3325(b).

Amended by R.2001 d.312, effective September 4, 2001.

See: 32 N.J.R. 2693(a), 33 N.J.R. 3045(a).

Former N.J.A.C. 7:7A-16.7, Fees for the review and processing of requests for permit modifications, was repealed.

7:7A-16.8 Civil administrative penalty amount

(a) When the Department assesses a civil administrative penalty, the Department shall use the procedures in this section to determine the amount of the penalty if the violation pertains to wetlands and transition areas, except if the violation is listed at N.J.A.C. 7:7A-16.9, 16.10, or 16.11, in which case the penalty amount shall be determined under whichever of those sections applies.

(b) If a violation of this chapter pertains to State open waters, the Department shall not determine the amount of the civil administrative penalty under this subchapter, but shall determine the penalty under the Department's rules implementing the enforcement provisions of the Water Pollution Control Act at N.J.A.C. 7:14-8.

(c) The Department shall use the three factors described below to determine the amount of a civil administrative penalty under this section. Using the standards below, the Department assigns each violation a point value for each factor. The total number of points is used in Table D at (d) below to determine the penalty amount per day for each violation. The factors, and the point values assigned to them, are as follows:

1. The conduct factor of the violation shall be classified as major, moderate or minor and assigned points as follows:

i. Major conduct shall include an intentional, deliberate, purposeful, knowing or willful act or omission by the violator and is assigned three points;

ii. Moderate conduct shall include any unintentional but foreseeable act or omission by the violator and is assigned two points; and

iii. Minor conduct shall include any conduct not identified in (c)1i or ii above and is assigned one point.

2. The acreage of wetlands impacted factor shall be assigned points as follows:

i. A violation impacting more than three acres of wetlands is assigned three points;

ii. A violation impacting one to three acres of wetlands is assigned two points; and

iii. A violation impacting less than one acre of wetlands is assigned one point; and

3. The resource value classification factor shall be assigned points as follows:

i. A violation impacting exceptional resource classification wetlands is assigned three points;

ii. A violation impacting intermediate resource classification wetlands is assigned two points; and

iii. A violation impacting ordinary resource classification wetlands is assigned one point.

(d) The Department shall sum the total points assigned according to the three factors in (c) above, and shall determine the penalty amount per day using the following table:

Table D
Penalty points table

Total Points	Penalty Amount Per Day
9	\$10,000
8	9,000
7	7,500
6	6,000
5	4,500
4	3,000
3	1,500

Amended by R.1992 d.117, effective March 16, 1992.

See: 23 N.J.R. 338(a), 24 N.J.R. 975(b).

Repealed use of "major" and "minor" seriousness and added factors to be used in determining penalties.

Amended by R.2001 d.312, effective September 4, 2001.

See: 32 N.J.R. 2693(a), 33 N.J.R. 3045(a).

Former N.J.A.C. 7:7A-16.8, Fee refunds, was repealed.

Case Notes

Placement of fill material on wetlands without freshwater permit and transition waiver warranted civil penalty when not part of farming activity. Department of Environmental Protection v. Rapisardi, 95 N.J.A.R.2d (EPE) 248.

Engaging in regulated activity in a freshwater wetland without a permit warranted civil penalty and restoration order. Department of Environmental Protection and Energy v. Toufayan, 95 N.J.A.R.2d (EPE) 71.

Assessment of \$9,000 penalty against homeowner for improperly placing fill within 100-year floodplain and for placing asphalt paving in wetlands transition zone was proper. Department of Environmental Protection v. Ruelan. 93 N.J.A.R.2d (EPE) 239.

Evidence established that diverting stream and filling stream bed violated statutes; penalty assessed. Department of Environmental Protection v. DiFlorio. 93 N.J.A.R.2d (EPE) 187.

7:7A-16.9 Civil administrative penalty amount for submitting inaccurate or false information

(a) When the Department assesses a civil administrative penalty for submittal of inaccurate information or submittal of a false statement, representation, or certification in an application, record, or other document required to be submitted or maintained under the Freshwater Wetlands Protection Act or under a permit, waiver, order, exemption letter, mitigation proposal, or rule promulgated or approved pursuant thereto, the Department shall use the procedures in this section to determine the amount of the civil administrative penalty.

(b) If a violation described in this section pertains to State open waters, the Department shall not determine the amount of the civil administrative penalty under this section, but shall determine the penalty under the Department's rules implementing the enforcement provisions of the Water Pollution Control Act at N.J.A.C. 7:14-8.

(c) Each day, from the day that a violator submits inaccurate or false information to the Department, to the day the Department receives a written correction from the violator, shall be an additional, separate, and distinct violation.

(d) The daily civil administrative penalty for each intentional, deliberate, purposeful, knowing, or willful act or omission under this section shall be assessed at the midpoint between \$10,000 and \$8,000 unless adjusted under (f) below.

(e) The daily civil administrative penalty for each violation under this section that is not listed in (d) above shall be assessed at the midpoint between \$1,000 and \$0 unless adjusted under (f) below.

(f) For a violation under this section, the Department may adjust the civil administrative penalty amount from the midpoint within the range listed in (d) or (e) above, based on the following factors:

1. The violator's compliance history;
2. The nature, timing and effectiveness of measures the violator takes to mitigate the effects of the violation;
3. The nature, timing and effectiveness of measures the violator takes to prevent future similar violations;
4. Any unusual or extraordinary costs or impacts directly or indirectly imposed on the public or the environment as a result of the violation; and/or
5. Other specific circumstances of the violator or violation.