

(b) The combined permit provided for under this section shall be subject to the conditions for combined permits found at N.J.A.C. 7:7A-4.6. An application for the combined general permit 20 and flood hazard area permit shall meet the application requirements for combined permits at N.J.A.C. 7:7A-10.7.

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-5.21 General permit 21—Above ground utility lines

(a) General permit 21 authorizes the following activities in freshwater wetlands, transition areas, and/or State open waters, necessary for the construction of an above ground utility line, as defined at N.J.A.C. 7:7A-1.4:

1. Installation of poles, towers, or other supports from which to suspend a pipe, wire or cable;
2. Construction of a pad mounted transformer;
3. Placement of an above ground pipe, wire or cable;
4. Clearing of vegetation under and around utility lines, within the limits at (b) below; and
5. Minor, temporary disturbances, as defined at N.J.A.C. 7: 7A-1.4, necessary for access during construction.

(b) Activities under general permit 21 shall comply with the following limits:

1. Temporary disturbance of freshwater wetlands, transition areas, and/or State open waters during construction shall be no more than 60 feet wide, including vegetative clearing and disturbance for access under (a)5 above; and
2. Permanent disturbance of freshwater wetlands, transition areas, and/or State open waters, including the area of vegetative clearing to be maintained underneath the utility line, shall be:
 - i. No greater than one acre; and
 - ii. No wider than 20 feet, unless the applicant demonstrates that a wider disturbance is necessary to comply with applicable laws.

(c) Activities under general permit 21 shall not interfere with the natural hydrologic characteristics of the wetland, transition area, or State open water. The applicant shall place the utility line on pilings if necessary, in order to satisfy this condition.

(d) After the utility line is constructed, any freshwater wetlands, transition areas, or State open waters disturbed, which are not within the cleared area to be maintained under (b)2 above, shall be allowed to revert to their natural condition.

(e) Activities under general permit 21 shall comply with all applicable requirements at N.J.A.C. 7:7A-4.3, Conditions that apply to all general permits.

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).

7:7A-5.22 (Reserved)

7:7A-5.23 General permit 23—Expansion of cranberry growing operations in the Pinelands

(a) General permit 23 authorizes the expansion of certain cranberry growing operations in the Pinelands. To be eligible for authorization under the general permit, the cranberry growing operation must be a single, discrete legal entity that, prior to the date general permit 23 becomes operative under (u) below:

1. Is located in the Pinelands, as defined at N.J.A.C. 7:50-2.11;
2. Is in active cranberry production; and
3. Was reported as a cranberry growing operation to the United States Department of Agriculture Cranberry Marketing Committee under the Federal Cranberry Marketing Order (7 C.F.R. Part 929, as amended).

(b) Activities authorized under general permit 23 include, but are not limited to, the construction or expansion of a bog, reservoir, canal, ditch, dike, tail water recovery system, water quality improvement system, or other similar support type facility. General permit 23 does not authorize:

1. Construction or expansion of maintenance or storage sheds;
2. Construction or expansion of housing; or
3. Establishment of new sites for storing or stockpiling sand or other materials.

(c) The Department shall authorize activities under general permit 23 only if the activities will be conducted on the area with the lowest number ranking on the list at (d)

below, which is available and has the following characteristics:

1. The area is water accessible, that is, has direct access to free drainage and can be directly served by existing sources of water, or can feasibly be connected to a water source. The Natural Resources Conservation Service can assist the applicant in determining whether an area is water accessible. To minimize environmental impact, areas which can reasonably be served by existing infrastructure are preferred; and

2. Has access to a water supply with a minimum flow rate of 227 gallons per minute per acre (that is, one acre foot of water for every bog acre in production per day).

(d) For the purposes of general permit 23, State open waters and wetland types are ranked in the order that they shall be considered for use for the expansion of a cranberry growing operation, as follows:

1. State open waters;
2. Abandoned blueberry fields;
3. Abandoned cranberry bogs;
4. Abandoned agricultural fields;
5. Freshwater wetlands dominated by emergent vegetation;
6. Freshwater wetlands dominated by scrub/shrub vegetation;
7. Forested freshwater wetlands that are not Atlantic white-cedar wetlands; and
8. Atlantic white-cedar wetlands.

(e) For the purposes of general permit 23, if a freshwater wetlands area was forested, but the trees have been harvested within the five years immediately preceding submittal of an application for authorization, the area is considered forested.

(f) The Department shall not issue more than one authorization under general permit 23 per year to a single cranberry growing operation.

(g) The Department shall not issue an authorization under general permit 23 for activities that will cause a net loss of freshwater wetlands at a single cranberry growing operation.

(h) The Department shall limit authorizations issued to any single cranberry growing operation under general permit 23 so as to ensure that the loss and/or disturbance of freshwater wetlands and/or State open waters at that single operation meets all of the following criteria:

1. No more than 10 acres of freshwater wetlands and/or State open waters shall be lost and/or disturbed in any one year;

2. No more than 10 acres of forested freshwater wetlands shall be lost and/or disturbed over the five year term of general permit 23; and

3. No more than four of the 10 acres lost and/or disturbed under (h)2 above shall be Atlantic white-cedar wetlands.

(i) The Department shall limit authorizations issued Statewide so as to ensure that the total Statewide loss and/or disturbance of freshwater wetlands and/or State open waters under general permit 23 meets all of the following criteria:

1. No more than 60 acres of freshwater wetlands and/or State open waters shall be lost and/or disturbed in any one year that general permit 23 is operative, except that if the Department authorizes fewer than 60 acres of loss and/or disturbance in any year, up to 30 acres of unused loss or disturbance may be carried forward to a subsequent year, but in no case shall more than 90 acres of freshwater wetlands and/or State open waters be lost or disturbed in one year;

2. No more than 300 acres of freshwater wetlands and/or State open waters shall be lost and/or disturbed during the five year term of general permit 23;

3. No more than 80 of the 300 acres lost and/or disturbed under (i)2 above shall be forested freshwater wetlands; and

4. No more than 25 of the 80 acres of forested freshwater wetlands lost and/or disturbed under (i)3 above shall be Atlantic white-cedar wetlands.

(j) If an applicant proposes activities under general permit 23 that will result in the loss and/or disturbance of Atlantic white-cedar wetlands, the applicant shall, in addition to meeting all other requirements, demonstrate that there is no suitable upland area available, which is owned by the applicant, which the applicant could use in order to eliminate or minimize impacts to Atlantic white-cedar wetlands. For purposes of this subsection, a suitable upland area is an upland area which meets all of the following criteria:

1. The area is water accessible, as described at (c)1 above, and has adequate water as required at (c)2 above;

2. Soils of the area are composed of Klej, Lakehurst, Pemberton, Hammonton, Woodstown or other soil types that are somewhat poorly drained or moderately well drained, as defined in the applicable county soil survey, published by the United States Department of Agriculture's Natural Resources Conservation Service, as amended and/or supplemented;

3. The seasonal high water table is within 24 inches of the surface; and

4. All of the soil to be excavated can be used in the construction of new bogs and sanding operations, or, if the soil cannot be used for construction, a storage or disposal site is available.

(k) If an applicant proposes activities under general permit 23 in an Atlantic white-cedar wetlands that is larger than five acres, the applicant shall, in addition to meeting all other requirements of this section, submit a written statement from the Natural Resources Conservation Service that the activities will minimize, to the extent feasible, the impacts to the remaining Atlantic white-cedar wetlands.

(l) If an applicant proposes activities that will result in the loss and/or disturbance of more than one half acre of freshwater wetlands and/or State open waters, the applicant shall transfer Pinelands Development Credits (PDCs) to the Department in accordance with the following:

1. The applicant shall transfer PDCs in the following ratios to acres of loss and/or disturbance:

- i. For Atlantic white-cedar wetlands, four tenths of a PDC for every acre of loss and/or disturbance;
- ii. For forested freshwater wetlands that are not Atlantic white-cedar wetlands, fifteen one hundredths of a PDC for every acre of loss and/or disturbance;
- iii. For emergent or scrub/shrub wetlands, one tenth of a PDC for every acre of loss and/or disturbance; and
- iv. For wetlands that are abandoned blueberry, cranberry, or agricultural fields, or State open waters, zero PDCs;

2. Each portion of the site that is one quarter acre or larger shall be assigned its own PDC requirement, and these requirements shall be summed to calculate the PDC requirement for the entire site. A portion smaller than one quarter acre will be given the ranking of the area surrounding it. For example, an applicant may have three acres of State open waters, and one eighth acre of Atlantic white-cedar wetlands surrounded by eight and seven eighths acres of scrub/shrub wetlands. The disturbance of the State open waters requires no PDCs under (l)iv above. The one eighth acre of Atlantic white-cedar wetlands is smaller than one quarter acre and therefore is treated as part of the surrounding scrub/shrub wetlands. Under (l)iii above, nine tenths of a PDC are required for the disturbance of the scrub/shrub wetlands. This would be the total for the site; and

3. The total PDC requirement for the site shall be rounded up to the nearest one quarter PDC. Under the example at (l)2 above, the PDC requirement for the entire site is nine tenths of a PDC, which would then be rounded up to one PDC.

(m) The applicant shall transfer any PDCs required under (l) above to the Department, or to a nonprofit or governmental agency designated by the Department, prior

to beginning activities authorized under general permit 23, and no later than 90 days after receiving the general permit authorization. The Department or its designee shall convey the PDCs to the Pinelands Development Credit Bank in accordance with the MOA established under (n) below, and shall use the resulting funds to establish and/or restore Atlantic white-cedar wetlands in the Pinelands.

(n) The Department shall enter into a memorandum of agreement (MOA) with the Pinelands Commission and the Pinelands Development Credit Bank. The MOA shall include a general plan for implementing the Atlantic white-cedar restoration program required by this section, and shall:

1. Identify at least one potential site for Atlantic white-cedar restoration;
2. Include a requirement for at least one acre of Atlantic white-cedar restoration for each acre of Atlantic white-cedar wetlands lost and/or disturbed under general permit 23;
3. Include clear success criteria for the Atlantic white-cedar restoration program; and
4. Ensure that Atlantic white-cedar restoration efforts will not adversely impact existing areas of forested wetlands.

(o) To minimize impacts to freshwater wetlands and/or State open waters, a permittee under general permit 23 shall:

1. Follow, to the maximum extent practicable, the management practices recommended by the Rutgers Cranberry and Blueberry Experiment Station;
2. Stabilize all disturbed areas in accordance with the New Jersey Field Office Technical Guide, 1998 edition, as amended and supplemented, issued by the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS), available from the NRCS at 1370 Hamilton Street, Somerset, New Jersey 08873;
3. Use only suitable, clean, non-toxic fill material;
4. Use integrated pest management techniques; and
5. Design and carry out the activities to avoid irreversible adverse impacts on the survival of any local populations of threatened or endangered plants of the Pinelands, consistent with the Pinelands Comprehensive Management Plan at N.J.A.C. 7:50-6.27.

(p) The requirements of (c), (j), (k), (l), and (m) above shall not apply to the proposed activities under general permit 23 if the Department determines that the activities:

1. Will improve water conservation or water quality; and
2. Will result in a loss and/or disturbance of one half acre or less of freshwater wetlands and/or State open

waters at that cranberry growing operation during the five year term of the general permit.

(q) Each year, the Commissioner shall make a finding as to whether the pace of impacts under the general permit is proportional to the pace of Atlantic white-cedar restoration efforts. The Commissioner shall consult with the Pinelands Commission, and shall consider, among other factors, whether restoration efforts are making reasonable progress towards the goals in the Department's overall plan for Atlantic white-cedar restoration. The Department shall publish the Commissioner's finding as a public notice in the New Jersey Register by October 31 of each year:

1. If the Commissioner finds that the pace of impacts is proportional to the pace of restoration efforts, the Department shall publish a finding of continuance of the general permit. A finding of continuance shall remain in effect until the next October 31 following the publication of the finding; or

2. If the Commissioner finds that the pace of impacts is out of proportion to the pace of Atlantic white-cedar restoration efforts, the Department shall publish a finding of temporary hold of general permit authorizations, and shall stop issuing authorizations under general permit 23. A finding of temporary hold shall remain in effect until the Commissioner determines that the pace of impacts under the general permit has again become proportional to restoration efforts, and the Department publishes a finding of continuance.

(r) The Commissioner reserves the right (that is, discretion) to modify, suspend, or revoke general permit 23 authorizations. Modification means the imposition of additional or revised terms or conditions on the authorization. Suspension means the temporary cancellation of the authorization while a decision is made to either modify, revoke, or reinstate the authorization. Revocation means the cancellation of the authorization. The Commissioner may assert discretionary authority by modifying, suspending, or revoking general permit 23 authorizations for a specific geographic area or class of waters, whenever the Commissioner determines sufficient concerns for the environment under the Freshwater Wetlands Protection Act or the Federal Section 404(b)(1) Guidelines, or if the Commissioner otherwise determines that the general permit would result in more than minimal adverse environmental effects either individually or cumulatively. Whenever the Commissioner determines that a proposed specific activity covered by general permit 23 would have more than minimal individual or cumulative adverse effects on the environment, the Commissioner shall either modify the general permit 23 authorization to reduce or eliminate the adverse impacts, or notify the prospective permittee that the proposed activity is not authorized by general permit 23 and provide instructions on how to seek authorization under an individual permit. The Commissioner shall restore authorization under general permit 23 at any time that the Commissioner determines that the reason for asserting discretionary authority has been satisfied by a condition, project modification, or new information.

(s) An application for authorization under general permit 23 shall be submitted within 90 days after the general permit becomes operative under (u) below. Within 180 days after general permit 23 becomes operative, the Department shall make a final decision on all applications submitted within the 90-day deadline. Thereafter, applications shall be submitted to the Department by January 1 of each year. The Department shall issue decisions on applications by March 1 of each year.

(t) If the Department receives applications for authorization under general permit 23 which would, if approved, result in a total Statewide loss and/or disturbance of freshwater wetlands and/or State open waters that exceeds the limits at (i) above, the Department shall give priority to applications involving areas with the lowest number rankings on the list at (d) above, taking into consideration overall environmental impacts. If two or more applications involve similarly ranked land and similar environmental impacts, the Department shall give priority to the application submitted and determined complete under N.J.A.C. 7:7A-9.5(d) first.

(u) General permit 23 shall become operative as of the date that the Department publishes a notice in the New Jersey Register announcing that:

1. The Department has signed the Memorandum of Agreement required under (n) above; and

2. Twenty-five thousand dollars has been deposited from public sources to the fund established by the Department under the Memorandum of Agreement for the implementation of the Atlantic white-cedar restoration program.

(v) In order to ensure compliance with the Endangered Species Act of 1973, 16 U.S.C. §§ 1531 et seq., general permit 23 will be added to the list of general permits subject to coordination procedures with the U.S. Fish and Wildlife Service under the Department's Memorandum of Agreement regarding the Endangered Species Act and New Jersey's assumption of the Federal 404 program.

New Rule, R.1999 d.352, effective October 4, 1999.

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

Operative Date of Statewide General Permit 23: April 3, 2000.

See: 32 N.J.R. 1253(a).

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-5.24 General permit 24—Spring developments

(a) General permit 24 authorizes activities in farmed wetlands, or in State open waters, necessary for the construction of a spring development or other structure that diverts or collects water for the purpose of watering livestock. Activities authorized under general permit 24 include the installation of a collecting trench, a cutoff wall, crushed rock, perforated tubing, and/or a spring box. General permit 24 does not authorize diversion or use of water for irrigation, or for any purpose other than watering livestock. The activities authorized under general permit 24 constitute soil and water conservation practices that are exempt in transition areas under N.J.A.C. 7:7A-2.8(c)1.