

CHAPTER 7A

FRESHWATER WETLANDS PROTECTION
ACT RULES

Authority

N.J.S.A. 13:9B-1 et seq. and 58:10A-1 et seq.

Source and Effective Date

R.2001 d.312, effective August 3, 2001.
See: 32 N.J.R. 2693(a), 33 N.J.R. 3045(a).

Chapter Expiration Date

Chapter 7A, Freshwater Wetlands Protection Act Rules, expires on August 3, 2006.

Chapter Historical Note

Chapter 7A, Wetlands Management, was adopted as R.1972 d.68, effective April 13, 1972. See: 3 N.J.R. 255(a), 4 N.J.R. 96(d).

Chapter 7A, Wetlands Management, was repealed by R.1984 d.164, effective May 7, 1984 (operative June 1, 1984). See: 15 N.J.R. 2090(a), 16 N.J.R. 1073(a).

Chapter 7A, Freshwater Wetlands Protection Act Rules, was adopted as new rules by R.1988 d.267, effective June 6, 1988 (operative July 1, 1988). See: 19 N.J.R. 2330(a), 20 N.J.R. 1235(a).

Subchapter 16, Fees, and Subchapter 17, Civil Administrative Penalties and Requests for Adjudicatory Hearings, were adopted as R.1988 d.312, effective July 5, 1988. See: 20 N.J.R. 576(a), 20 N.J.R. 1553(a).

Subchapter 6, Transition Areas, and Subchapter 7, Transition Area Waivers, were adopted as new rules by R.1989 d.362, effective July 3, 1989. See: 21 N.J.R. 596(a), 21 N.J.R. 1858(a).

Petitions for Rulemaking. See: 21 N.J.R. 2675(b), 22 N.J.R. 253(a), 22 N.J.R. 1388(a).

Subchapter 4, General Standards for Granting an Open Water Fill Permit, was repealed by R.1992 d.117, effective March 16, 1992. See: 23 N.J.R. 338(a), 24 N.J.R. 975(b).

The Executive Order No. 66(1978) expiration date for Chapter 7A, Freshwater Wetlands Protection Act Rules, was extended by gubernatorial directive from June 6, 1993 to March 16, 1997. See: 24 N.J.R. 912(a).

The Executive Order No. 66(1978) expiration date for Chapter 7A, Freshwater Wetlands Protection Act Rules, was extended by gubernatorial directive from March 16, 1997 to March 16, 1998. See: 29 N.J.R. 1308(b).

The Executive Order No. 66(1978) expiration date for Chapter 7A, Freshwater Wetlands Protection Act Rules, was extended by gubernatorial directive from March 16, 1998 to March 16, 1999. See: 30 N.J.R. 1319(a).

The Executive Order No. 66(1978) expiration date for Chapter 7A, Freshwater Wetlands Protection Act Rules, was extended by gubernatorial directive from March 16, 1999 to March 16, 2000. See: 31 N.J.R. 871(b).

The Executive Order No. 66(1978) expiration date for Chapter 7A, Freshwater Wetlands Protection Act Rules, was extended by gubernatorial directive from March 16, 2000 to December 31, 2000. See 32 N.J.R. 1252(a).

The Executive Order No. 66(1978) expiration date for Chapter 7A, Freshwater Wetlands Protection Act Rules, was extended by gubernato-

rial directive from December 31, 2000 to June 30, 2001. See 33 N.J.R. 553(a).

The expiration date for Chapter 7A, Freshwater Wetlands Protection Act Rules, was extended by gubernatorial directive from June 30, 2001 to August 7, 2001. See: 33 N.J.R. 2640(b).

Chapter 7A, Freshwater Wetlands Protection Act Rules, was re-adopted as R.2001 d.312, effective August 3, 2001. As a part of R.2001 d.312, effective September 4, 2001, N.J.A.C. 7:7A-2.2 was repealed, and N.J.A.C. 7:7A-2.3 was recodified as N.J.A.C. 7:7A-2.2; N.J.A.C. 7:7A-2.4 and 7:7A-2.5 were recodified as N.J.A.C. 7:7A-2.3 and 7:7A-2.4; Subchapter 3, General Standards for Granting Freshwater Wetlands and Open Water Fill Permits, was recodified as Subchapter 7, Individual Freshwater Wetlands and Open Water Fill Permits; Subchapter 3, Letters of Interpretation, was adopted as new rules; Subchapter 5, Emergency Permits, was recodified as Subchapter 8; Subchapter 6, Transition Areas, was recodified as N.J.A.C. 7:7A-2.5 through 7:7A-2.7 and existing N.J.A.C. 7:7A-2.7 through 7:7A-2.9 were recodified as N.J.A.C. 7:7A-2.8 through 7:7A-2.10; Subchapter 6, Transition Area Waivers, was adopted as new rules; Subchapter 7, Transition Area Waivers, was repealed; N.J.A.C. 7:7A-8.6 and 7:7A-8.7 were recodified as N.J.A.C. 7:7A-3.6; N.J.A.C. 7:7A-9.2 was recodified as Subchapter 5, Adopted General Permits; N.J.A.C. 7:7A-9.1, 7:7A-9.3 and 7:7A-9.4 were recodified as Subchapter 4, General Provisions for General Permits; N.J.A.C. 7:7A-9.23 was recodified as N.J.A.C. 7:7A-5.23; Subchapter 10, Pre-Application Conferences, was recodified as Subchapter 9; Subchapter 11, Application Procedure, was recodified as Subchapter 10, Application Contents and Procedure; N.J.A.C. 7:7A-11.3 and 7:7A-11.4 were recodified as N.J.A.C. 7:7A-10.10 and 7:7A-10.11; Subchapter 14, Mitigation, was repealed, and Subchapter 14, Changes to Issued Permits or Waivers, was adopted as new rules; Subchapter 15, Enforcement, was recodified as Subchapter 16; N.J.A.C. 7:7A-15.1 through 7:7A-15.5 were recodified as N.J.A.C. 7:7A-16.1 through 7:7A-16.5; N.J.A.C. 7:7A-15.6 and 7:7A-15.7 were recodified as N.J.A.C. 7:7A-16.13 and 7:7A-16.14; N.J.A.C. 7:7A-15.8 and N.J.A.C. 7:7A-15.9 were recodified as N.J.A.C. 7:7A-16.16 and 7:7A-16.17; N.J.A.C. 7:7A-15.10 was recodified as N.J.A.C. 7:7A-14.5; N.J.A.C. 7:7A-15.11 was recodified as N.J.A.C. 7:7A-16.18; Subchapter 15, Mitigation, was adopted as new rules; Subchapter 16, Fees, was recodified as Subchapter 11; N.J.A.C. 7:7A-16.1 was recodified as N.J.A.C. 7:7A-11.1; N.J.A.C. 7:7A-17.1 and 7:7A-17.3 were repealed; N.J.A.C. 7:7A-17.2 was recodified as N.J.A.C. 7:7A-16.8; N.J.A.C. 7:7A-17.4 through 7:7A-17.7 were recodified as N.J.A.C. 7:7A-16.9 through 7:7A-16.12; and N.J.A.C. 7:7A-17.8 and 7:7A-17.9 were recodified as N.J.A.C. 7:7A-16.6 and 7:7A-16.7. See: Source and Effective Date. See, also, section annotations.

Law Review and Journal Commentaries

Freshwater Wetlands Protection: An Update. Lewis Goldshore, Marsha Wolf, 133 N.J.L.J. No. 14, S6 (1993).

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SUBCHAPTER 1. GENERAL INFORMATION

7:7A-1.1 Scope and authority

This chapter constitutes the rules governing the implementation of the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq., and the New Jersey Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq. Certain violations of the New Jersey Water Pollution Control Act are also subject to enforcement provisions at N.J.A.C. 7:14.

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

The Commissioner has no power under CAFRA to make an independent judgment as to the ability of a nuclear facility to protect against radiation hazards, as regulation in this regard is preempted by the federal government. Public Interest Research Group of New Jersey, Inc. v. State, 152 N.J.Super. 191, 377 A.2d 915 (App.Div.1977), certification denied 75 N.J. 538, 384 A.2d 517 (1977).

Only lots for which preliminary site plan or subdivision applications had received preliminary approvals were exempt from wetland permit requirements. Seemar v. Department of Environmental Protection, 95 N.J.A.R.2d (EPE) 225.

7:7A-1.2 Construction of this chapter

This chapter shall be liberally construed to allow the Department to implement fully its statutory functions pursuant to the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq., and pursuant to the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.

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

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

Added reference to N.J.S.A. 58:10A-1 et seq.

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

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

Inserted "Freshwater Wetlands Protection" preceding the first "Act, N.J.S.A. 13:9B-1", and inserted "pursuant" preceding "to the Water Pollution".

7:7A-1.3 Forms and information; internet web site

(a) Forms or other information related to this chapter may be obtained from the Land Use Regulation Program as follows:

1. Through the Land Use Regulation Program website at www.state.nj.us/dep/landuse; or
2. By contacting the Land Use Regulation Program at:

Land Use Regulation Program
New Jersey Department of Environmental Protection
PO Box 439
Trenton, New Jersey 08625-0439
(609) 292-0060
Fax: (609) 292-8115

(b) Applications, fees, and correspondence shall be submitted to the address in (a) above, except that courier and hand deliveries shall be delivered to:

Land Use Regulation Program
New Jersey Department of Environmental Protection
5 Station Plaza
501 East State Street
Trenton, New Jersey 08609

(c) Applications or other materials sent or delivered to a Department address other than those in (a) and (b) shall not be deemed to have been received for the purposes of calculating application review deadlines or other time periods under this chapter.

(d) Other sources of information referred to in this chapter are available on the Land Use Regulation Program website at www.state.nj.us/dep/landuse, or from the Office of Maps and Publications, located at 428 State Street, Trenton, New Jersey 08625, (609) 777-1038.

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

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

Added address for other sources of information.

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.

7:7A-1.4 Definitions

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise. Additional definitions specifically applicable to N.J.A.C. 7:7A-15, Mitigation, are set forth at N.J.A.C. 7:7A-15.1.

“Abandoned” means, with respect to an agricultural field, including a blueberry field or a cranberry bog, that the field was used for agriculture, but has not been used to produce a crop or product for five years or more. If an agricultural field has been abandoned for 40 or more years, it shall no longer be considered an abandoned agricultural field.

“ACOE” or “Corps” means the United States Army Corps of Engineers.

“Acid producing soils” means soils that contain geologic deposits of iron sulfide minerals (pyrite or marcasite) which, when exposed to oxygen from the air or from surface waters, oxidize to produce sulfuric acid. Acid producing soils, upon excavation, generally have a pH of 4.0 or lower. After exposure to oxygen, these soils generally have a pH of 3.0 or lower. Information regarding the location of acid producing soils in New Jersey can be obtained from local Soil Conservation District offices.

“Agency of the State” means each of the principal departments in the executive branch of the State Government, and all boards, divisions, commissions, agencies, departments, councils, authorities, offices or officers within any such departments.

“Applicant” means a person who submits an application for a permit, waiver, or any other Department decision pursuant to N.J.A.C. 7:7A.

“Aquatic ecosystem” means waters of the United States, including wetlands, that serve as habitat for interrelated and interacting communities and populations of plants and animals.

“Atlantic white-cedar wetlands” means a type of forested freshwater wetlands where Atlantic white-cedar tree is the dominant vegetation, as described in the Federal Manual.

“Best Management Practices” or “BMPs” means methods, measures, designs, performance standards, maintenance procedures, and other management practices which prevent or reduce adverse impacts upon or pollution of freshwater wetlands, State open waters, and adjacent aquatic habitats, which facilitate compliance with the Federal Section 404(b)(1) guidelines (40 C.F.R. Part 230), New Jersey Department of Environmental Protection Flood Hazard Area Control rules, N.J.A.C. 7:13; the Department’s Storm Water Management Regulations, N.J.A.C. 7:8; the Standards for Soil Erosion and Sediment Control in New Jersey, promulgated by the New Jersey State Soil Conservation Committee at N.J.A.C. 2:90; and effluent limitations or prohibitions under Section 307(a) of the Federal Act and the Department’s Surface Water Quality Standards, N.J.A.C. 7:9B. Examples include practices found at 33 C.F.R. 330.6, 40 C.F.R. 233.35(a)6, the Department’s Technical Manual for Stream Encroachment, and “A Manual of Freshwater Wetland Management Practices for Mosquito Control in New Jersey.” The manuals included in this definition are only a partial listing, and interested persons should contact the Department for the most up to date list.

“Category one waters” means waters designated as category one waters in the Department’s Surface Water Quality Standards at N.J.A.C. 7:9B. As of September 4, 2001, N.J.A.C. 7:9B-1.15 defines category one waters as those waters designated in the tables in N.J.A.C. 7:9B-1.15(c) through (h), for purposes of implementing the antidegradation policies set forth at N.J.A.C. 7:9B-1.5(d), for protection from measurable changes in water quality characteristics because of their clarity, color, scenic setting, other characteristics of aesthetic value, exceptional ecological significance, exceptional recreational significance, exceptional water supply significance, or exceptional fisheries resource(s). These waters may include, but are not limited to:

- iii. The depth of fill permitted;
- iv. The maximum extent to which an area may be modified; and
- v. The size and type of structure that may be constructed; and

2. A precise description of the geographic area to which the general permit applies, including, when appropriate, limits on the type(s) of water(s) or wetlands where activities may be conducted.

(d) The Department may modify an adopted general permit as it applies to a particular project by adding special conditions which must be met in order to qualify for authorization under the general permit.

(e) The Department may repeal an adopted general permit and thereafter require individual permits for activities previously covered by the general permit, if it finds that the general permit no longer meets the standards of the Freshwater Wetlands Protection Act and this chapter.

(f) The Department shall review each general permit at least every five years. This review shall include public notice and opportunity for public hearing. Upon this review the Department shall modify, readopt or repeal each general permit.

(g) If a general permit is not modified or readopted in accordance with (f) above within five years of publication of its adoption in the New Jersey Register, it shall automatically expire.

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-4.2 Using a general permit to authorize specific activities

(a) To use a general permit to authorize regulated activities, an applicant shall submit an application for a general permit authorization, using the application procedures for all permits and waivers set forth at N.J.A.C. 7:7A-10, except in an area under the jurisdiction of the Pinelands Commission. In such an area, the application shall be submitted to the Pinelands Commission rather than to the Department, in accordance with the Pinelands Comprehensive Management Plan (CMP). For information on freshwater wetlands and transition areas in the Pinelands, contact the Pinelands Commission at (609) 894-7300 or through its website at www.state.nj.us/pinelands.

(b) Each general permit specifies whether it covers activities in freshwater wetlands, transition areas, State open waters, or a combination thereof. An authorization issued under a general permit that covers activities in freshwater wetlands satisfies the requirement for a freshwater wetlands permit. An authorization issued under a general permit that covers activities in State open waters satisfies the require-

ment for an open water fill permit. An authorization issued under a general permit that covers activities in a transition area satisfies the requirement for a transition area waiver.

(c) Each general permit authorization shall include a limited transition area waiver to allow access to the authorized activity, in accordance with N.J.A.C. 7:7A-6.1(a)6. No fee or application is required for this waiver and the disturbance authorized under this waiver is not counted in calculating the amount of disturbance under the general permit. An access transition area waiver allows regulated activities only:

1. In that portion of the transition area bordering on that portion of the freshwater wetland in which the activity authorized by the general permit will take place; and

2. For an activity that the Department determines is necessary to accomplish the activity authorized in the wetlands under the general permit. An activity not directly required in order to obtain access to the activity authorized in the wetlands under the general permit shall require a separate transition area waiver.

(d) Usually, a general permit is the only wetlands approval required for activities in freshwater wetlands in New Jersey. However, if an activity is located in non-delegable waters, as defined at N.J.A.C. 7:7A-1.4, both a general permit authorization from the Department and a Federal 404 program approval from the ACOE may be required. In addition, if an activity is located in wetlands or transition areas in an area under the jurisdiction of the Pinelands Commission, approval may be required from the Pinelands Commission, in accordance with the Pinelands Comprehensive Management Plan (CMP). For information on freshwater wetlands and transition areas in the Pinelands, contact the Pinelands Commission at (609) 894-7300 or through its website at www.state.nj.us/pinelands.

(e) The Department shall deny an application for a general permit authorization and require an application for an individual permit if the Department finds that:

1. Additional permit conditions added under N.J.A.C. 7:7A-4.1 and/or 13.2 would not be sufficient to ensure compliance with this chapter and other applicable laws; or

2. Special circumstances make an individual permit necessary to ensure compliance with the Freshwater Wetlands Protection Act, this chapter, any permit or order issued pursuant thereto, or the Federal Act.

(f) The limits on disturbance in each general permit apply to the entire site upon which activities authorized under the general permit occur. An applicant shall not segment a project or its impacts by applying for general permit authorization for one portion of the project and applying for an individual permit for another portion of the project. Similarly, an applicant shall not segment a project or its impacts by

separately applying for general permit authorizations for different portions of the same project.

(g) Unless otherwise specified, the limits on disturbance under a general permit apply to total disturbance, including both temporary and permanent disturbance.

(h) If a regulated activity is not covered by any general permit or combination of general permits, an individual freshwater wetlands or open water fill permit must be obtained under N.J.A.C. 7:7A-7 in order to authorize the activity under this chapter. If a regulated activity in a transition area is not covered by any general permit or combination of general permits, an individual transition area waiver must be obtained under N.J.A.C. 7:7A-6 in order to authorize the activity under this chapter.

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-4.3 Conditions that apply to all General Permit Authorizations

(a) A person acting under the authority of a general permit shall comply with:

1. The conditions listed under the general permit itself;
2. The standard conditions for all general permits set forth at (b) below;
3. The conditions for all permits at N.J.A.C. 7:7A-13;
4. The limits on the use of multiple general permits in N.J.A.C. 7:7A-4.4; and
5. If required under a particular general permit, mitigation pursuant to N.J.A.C. 7:7A-15.

(b) The following conditions apply to all activities conducted under the authority of a general permit:

1. Activities performed under a general permit shall be associated with a proposed project. The Department shall not authorize activities under a general permit for the purpose of eliminating a natural resource in order to avoid regulation. For the purposes of this subsection, project shall mean the use and configuration of all buildings, pavements, roadways, storage areas and structures, and all associated activities;
2. The regulated activity shall not occur in the proximity of a public water supply intake;
3. The activities shall not destroy, jeopardize, or adversely modify a present or documented habitat for threatened or endangered species; and shall not jeopardize the continued existence of any local population of a threatened or endangered species;

4. The activity will not occur in a component of either the Federal or State Wild and Scenic River System; nor in a river officially designated by Congress or the State Legislature as a "study river" for possible inclusion in either system while the river is in an official study status; except that the activity may occur in these waters if approved by the National Park Service in accordance with 40 CFR § 233;

5. The activity shall not adversely affect properties which are listed or are eligible for listing on the National Register of Historic Places. If the permittee, before or during the work authorized, encounters a probable historic property that may be eligible for listing in the National Register, the permittee shall immediately notify the Department and proceed as directed;

6. Any discharge of dredged or fill material shall consist of clean, suitable material free from toxic pollutants (see 40 CFR 401) in toxic amounts, and shall comply with all applicable Department rules regarding use of dredged or fill material;

7. Any structure or fill authorized shall be maintained as specified in the construction plans;

8. During construction activities, all excavation must be monitored for the presence of acid-producing deposits. If any such deposits are encountered, the permittee shall implement the mitigation and disposal standards in the Flood Hazard Area Control Act Rules at N.J.A.C. 7:13 and shall establish an annual post-planting monitoring program to ensure the reestablishment of vegetation in temporarily disturbed areas. The plantings shall have a minimum 85 percent plant survival and coverage rate after two complete growing seasons. If the plantings fail to achieve this survival rate, the Department will require the permittee to implement additional corrective measures;

9. The activity will not result in a violation of the Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 or implementing rules at N.J.A.C. 7:13;

10. If activities under the general permit will result in a one-quarter acre or greater increase in impervious surfaces, the stormwater resulting from the general permit activities shall be treated in accordance with the water quality requirements in the Department's Flood Hazard Area Control Act rules at N.J.A.C. 7:13-2.8;

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.; and

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

(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

¹Note 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).

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;

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-5.2A Combined general permit 2 and flood hazard area permit

(a) If an activity authorized under general permit 2 also requires a flood hazard area permit under N.J.A.C. 7:13, the Department shall issue a combined flood hazard area permit and general permit 2 authorization for the activity if all of the following requirements are met:

1. The underground utility line meets the requirements for authorization under general permit 2 at N.J.A.C. 7:7A-5.2;
2. The underground utility line meets the applicable requirements of the Department's Flood Hazard Area Rules at N.J.A.C. 7:7A-13; and
3. Either of the following criteria is met:
 - i. The site is covered by a valid letter of interpretation showing the boundaries of any wetlands on the site, issued by the Department under N.J.A.C. 7:7A-3; or
 - ii. The activities will result in disturbance of State open waters only, and will not involve regulated activities in a freshwater wetland or transition area, as described at N.J.A.C. 7:7A-2.

(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 2 and flood hazard area permit shall meet the application requirements 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-5.3 General permit 3—Discharge of return water

(a) General permit 3 authorizes the discharge of return water from an upland, contained, dredged material disposal area into State open waters, and placement of a pipe above ground for the discharge through freshwater wetlands and/or transition areas. The dredging itself may also require other State and Federal permits.

(b) Activities under general permit 3 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-5.4 General permit 4—Hazardous site investigation and cleanup

(a) General permit 4 authorizes activities in freshwater wetlands, transition areas, and State open waters, which are undertaken by the Department or expressly approved in writing by the Department's Site Remediation Program, for the investigation, cleanup or removal of:

1. Hazardous substances as defined in the Department's rules governing hazardous substances at N.J.A.C. 7:1E, Appendix A; or
2. Pollutants, as defined in the New Jersey Water Pollution Control Act implementing rules at N.J.A.C. 7:14A.

(b) There is no acreage limit on activities under general permit 4. However, disturbance shall be the minimum that is necessary for compliance with the Department's technical requirements for site remediation, N.J.A.C. 7:26E, and mitigation shall be performed for all disturbances of freshwater wetlands or State open waters caused by a cleanup authorized under this general permit except that mitigation is not required to compensate for disturbance of wetlands or State open waters that have formed as a direct result of the remediation activities. The mitigation shall meet the substantive and procedural requirements at N.J.A.C. 7:7A-15.

(c) The mitigation proposal required under (b) above may be incorporated into the document by which the Department approves the cleanup and/or it may be submitted as part of the General permit application. The Department shall not issue an authorization under general permit 4 until the mitigation proposal, or an equivalent document that ensures that the requirements of N.J.A.C. 7:7A-15 are met, is approved. Mitigation shall be performed prior to or concurrently with cleanup activities.

(d) Activities under general permit 4 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-5.5 General permit 5—Landfill closures

(a) General permit 5 authorizes activities in freshwater wetlands, transition areas and/or State open waters that are undertaken by the Department's Division of Solid and Hazardous Waste, or authorized through a solid waste facility closure and post-closure plan or disruption approval issued by the Department under N.J.A.C. 7:26-2A.9.

(b) General permit 5 authorizes a disturbance authorized through a closure plan, post-closure plan, or disruption approval only if:

1. The activities that will cause the disturbance are necessary to properly close the solid waste facility and to properly maintain and monitor it after closure. For example, an access road necessary for landfill closure may be authorized under general permit 5, but an access road that is not necessary for landfill closure, but that will facilitate development of the site, is not authorized under general permit 5; and

2. The amount of disturbance is the minimum necessary in order to adequately close and/or maintain the landfill. For example, a disturbance for an access road through wetlands may be necessary to properly close the landfill in accordance with (b)2 above, but the road shall be the minimum size possible.

(c) There is no acreage limit on activities under general permit 5. However, mitigation shall be performed to compensate for disturbance of freshwater wetlands and/or State open waters authorized under general permit 5, except that mitigation is not required for disturbance of wetlands located on top of the landfill, or on the intermediate or permanent cover of the landfill. The mitigation shall meet the procedural and substantive requirements at N.J.A.C. 7:7A-15.

(d) The mitigation proposal required under (c) above may be incorporated into the closure and post-closure plan or disruption approval and/or it may be submitted as part of the general permit application.

(e) The Department shall not issue an authorization under general permit 5 until the mitigation proposal is approved. Activities under general permit 5 shall not begin until the Department has approved the mitigation proposal. Mitigation shall be performed prior to or concurrently with closure or disruption activities.

(f) Activities under general permit 5 shall comply with all applicable requirements at N.J.A.C. 7:7A-4.3, Conditions that apply to all general permits.

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-5.6 General permit 6—Non-tributary wetlands

(a) General permit 6 authorizes regulated activities in freshwater wetlands, transition areas adjacent to those wetlands, and/or State open waters, if the freshwater wetlands and/or State open waters are not part of a surface water tributary system discharging into an inland lake or pond, or a river or stream.

(b) Activities under general permit 6 shall not result in the loss or substantial modification of more than one acre of freshwater wetland, transition area, and/or State open waters.

(c) Activities under general permit 6 shall not take place in any of the following, nor in a transition area adjacent to the following:

1. An exceptional resource value wetland, as described at N.J.A.C. 7:7A-2.4;
2. A State open water that is a special aquatic site, as defined at N.J.A.C. 7:7A-1.4;
3. USEPA priority wetlands;
4. A State open water that is larger than one acre; or
5. A vernal habitat, as defined at N.J.A.C. 7:7A-1.4.

(d) Activities under general permit 6 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).

Case Notes

Denial of development permit was upheld where wetlands were determined to be part of surface water tributary system. *Jedan Associates v. New Jersey Department of Environmental Protection*, 96 N.J.A.R.2d (EPE) 298.

Developer was not entitled to Freshwater Wetlands General Permit Number 6 in order to construct parking deck; however, developer could be entitled to Statewide General Permit Number 7 to refill ditch. *Mall at IV Group v. Department of Environmental Protection*, 92 N.J.A.R.2d (EPE) 195.

7:7A-5.7 General permit 7—Human-made ditches or swales in headwaters

(a) General permit 7 authorizes activities in freshwater wetlands that are human-made ditches or in freshwater wetlands that are swales, provided the ditch or swale is located in a headwater. In accordance with the definition of a “swale” at N.J.A.C. 7:7A-1.4, a swale may be naturally occurring or of human construction.

(b) For the purpose of this section, “headwater” means a water or wetland that is upstream of the point on a non-tidal stream where the average annual flow is less than five cubic feet per second. The Department may estimate this point from available data by using area annual precipitation, area drainage basin maps, and the average annual runoff coefficient, or by similar means. For a stream that is dry for long periods of the year, the Department may establish the downstream boundary of the headwater as that point in the stream where water flow exceeds five cubic feet per second at least 50 percent of the time. In general, the Department considers a water body with a drainage area of less than 50 acres to be a headwater.

(c) Activities under general permit 7 shall not take place in the following:

1. A ditch or swale that is, or is located within, an exceptional resource value wetlands, as described at N.J.A.C. 7:7A-2.4; or

2. A ditch or swale that is, or is located within, a USEPA priority wetland, as defined at N.J.A.C. 7:7A-1.4.

(d) Activities under general permit 7 shall not result in either of the following:

1. The loss or substantial modification of more than one acre of freshwater wetlands; or

2. A disruption of a surface water connection, resulting in the isolation of wetlands or State open waters which were not isolated at the time of the general permit application.

(e) Activities under general permit 7 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).

Case Notes

Headwater wetlands not “swale”; no permit could be issued for filling wetlands. *Dykeman v. New Jersey Department of Environmental Protection*, 92 N.J.A.R.2d (EPE) 217.

Developer was not entitled to Freshwater Wetlands General Permit Number 6 in order to construct parking deck; however, developer could be entitled to Statewide General Permit Number 7 to refill ditch. *Mall at IV Group v. Department of Environmental Protection*, 92 N.J.A.R.2d (EPE) 195.

7:7A-5.8 General permit 8—House additions

(a) General permit 8 authorizes activities in freshwater wetlands and/or transition areas, necessary for the construction of additions or appurtenant improvements to residential dwellings lawfully existing prior to July 1, 1988, provided that the improvements or additions require less than a cumulative surface area of 750 square feet of fill and/or disturbance and will not result in new alterations to a freshwater wetlands outside of the 750 square foot area. General permit 8 does not authorize activities in State open waters.

(b) To be authorized under general permit 8, an addition or improvement shall be located within 100 feet of the residential dwelling.

(c) Activities under general permit 8 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-5.9 General permit 9—Airport sight line clearing

(a) General permit 9 authorizes the selective cutting of certain vegetation in freshwater wetlands and transition areas, at a public use aeronautical facility, as defined in the New Jersey Department of Transportation (NJDOT) rules at N.J.A.C. 16:54-1.3.

(b) General permit 9 authorizes the cutting of vegetation only as necessary to comply with the protected air space provisions for a public use aeronautical facility, mandated by the Federal Aviation Administration (FAA) and set forth in the New Jersey Department of Transportation rules at N.J.A.C. 16:54-4.2(a)1iii and 2ii.

(c) General permit 9 covers only activities necessary to enable an aeronautical facility to comply with New Jersey Department of Transportation rules. The cutting of vegetation in wetlands and/or transition areas as part of a project that increases the area of pavement or buildings at an airport is not authorized under general permit 9, and would require an individual permit under this chapter.

(d) In addition to meeting all applicable application requirements at N.J.A.C. 7:7A-10, an applicant for authorization under general permit 9 shall provide a certification from the Director of the Division of Aeronautics in the New Jersey Department of Transportation, containing:

1. A copy of the current license for the public use aeronautical facility;
2. A description of the area that must be cleared to ensure compliance with New Jersey Department of Transportation rules, including descriptions and drawings of the required approach slopes, the airport layout, and/or other aspects of the facility, as applicable; and
3. A statement citing the applicable regulation, and an explanation of why the proposed cutting of vegetation is necessary to bring existing operations into compliance with New Jersey Department of Transportation and FAA rules, or to maintain the compliance of existing operations with those rules.

(e) The permittee shall minimize adverse environmental impacts as follows:

1. Activities shall be timed to minimize disturbance of threatened and endangered species. The Department will specify the required timing in the general permit authorization when issued;
2. The permittee shall leave all tree stumps, brush stumps, and root systems in place;
3. The permittee shall minimize disturbance of freshwater wetlands and transition areas through use of matting, equipment running on oversized tires, or other similar practices; and
4. Cut vegetation shall be disposed of in a manner that will minimize adverse environmental impacts on wetlands and transition areas, taking into consideration State Forest Fire Service requirements at N.J.S.A. 13:9-23 and/or other applicable laws.

(f) Activities under general permit 9 shall comply with all applicable requirements at N.J.A.C. 7:7A-4.3, Conditions that apply to all general permits.

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-5.10A General permit 10A—Very minor road crossings

(a) General permit 10A 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 or drives; 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 10A authorization only if the activities comply with the limits in one of the following scenarios:

1. Short crossing scenario:
 - i. The disturbance of freshwater wetlands and/or State open waters is no longer than 100 feet for each crossing, as calculated under (e) below; and
 - ii. The total cumulative disturbance of freshwater wetlands, transition area, and State open waters onsite under general permit 10A is one quarter acre or less; or

2. Long crossing scenario: The total cumulative disturbance of freshwater wetlands, transition area, and State open waters onsite under general permit 10A is one-eighth acre or less. Under the long crossing scenario, the length of the crossing is not limited.

(c) If a proposed road crossing skirts along the edge of a wetland or transition area or touches the wetland or transition area, without actually crossing through the wetland or transition area, the applicant shall, in addition to meeting the requirements at (b) above, demonstrate in accordance with N.J.A.C. 7:7A-5.10B(d) 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.

(d) Activities under general permit 10A 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; and

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.

(e) The length limit at (b)1 above applies to each separate road crossing on the site. The following apply to the calculation of the length of disturbance caused by a road crossing:

1. The length of the disturbance resulting from a crossing is measured along its longest dimension;

2. A crossing that connects more than two upland areas that are separated by the same wetland or State open water is considered one crossing. That is, a road that repeatedly traverses the same wetland or State open water is considered one crossing. Thus, the total length of disturbance is the sum of all the lengths of crossing that traverse that particular wetland or water. For example, if a road crosses three arms of an irregularly shaped wetland, the total length of disturbance would be the sum of the lengths of all three crossings. See Figures 2 and 3 below for an illustration of this; and

3. If the road crosses State open waters with adjacent wetlands, the total length of disturbance is the sum of the disturbances in both the State open waters and the adjacent wetlands.

(f) Activities under general permit 10A shall comply with all applicable requirements at N.J.A.C. 7:7A-4.3, Conditions that apply to all general permits.

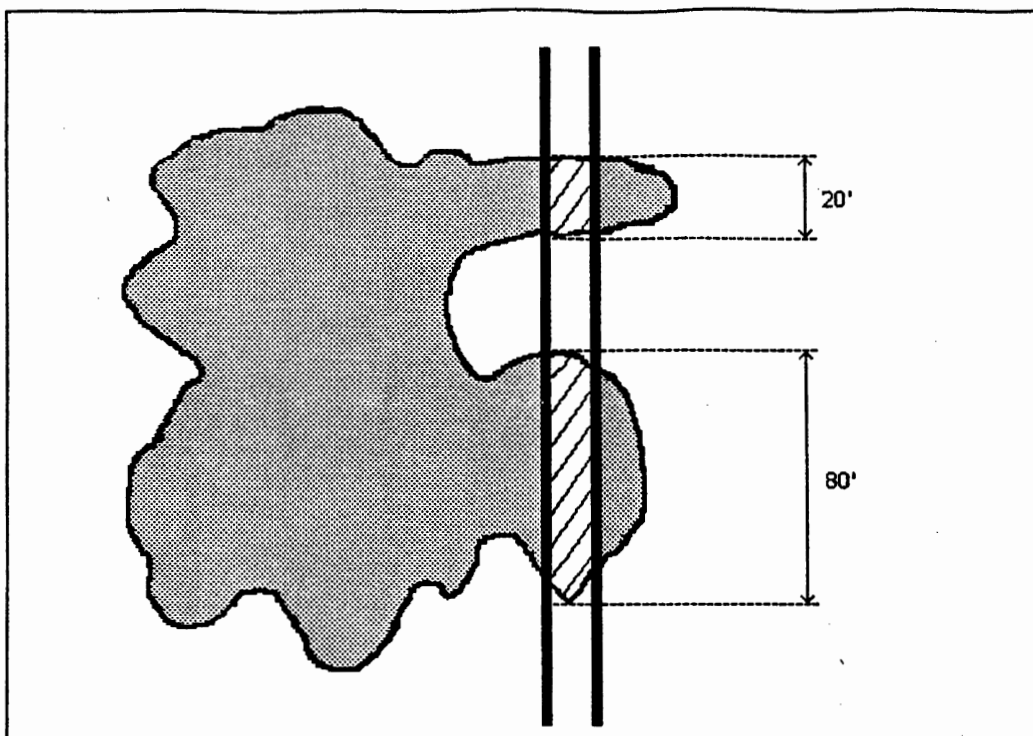


Figure 2
One Road Crossing That Crosses Two Fingers Of One Freshwater Wetland

(e) Activities under general permit 26 are not subject to the application requirements in N.J.A.C. 7:7A-10, except for the public notice requirements at N.J.A.C. 7:7A-10.9. An application for authorization under general permit 26 shall include the following:

1. The location of the affected portion of the channel or stream, including the county and municipality, and the block(s) and lot(s);
2. A USGS quad map showing the affected portion of the stream;
3. Color photographs and a brief narrative description of the affected portion of the channel or stream, including the access points where workers and equipment will be brought to the channel or stream;
4. The classification, under the Department's Surface Water Quality Standards, N.J.A.C. 7:9B, of the affected portion of the channel or stream;
5. A description of the nature of the project and the methods that will be used;
6. A description of the disposal location and methods for all material that will be removed from the channel or stream;
7. Documentation that the public notice requirements of N.J.A.C. 7:7A-10.9 have been met; and
8. A certification that meets both of the following criteria:
 - i. The certification is signed by a licensed professional engineer who is the county or municipal engineer, or who is employed by the appropriate Soil Conservation District; and
 - ii. The certification lists each condition in (b), (c) and/or (d) above that applies to the project, and states whether the condition has been satisfied or will be satisfied.

(f) Within 15 days of the Department's receipt of an application submitted under (e) above for a project that does not involve sediment removal, the Department shall do one of the following:

1. Notify the applicant either that the application is not administratively complete (that is, that it does not include all of the information required under (e) above), or that the application is administratively complete but that the application requires a full application review under N.J.A.C. 7:7A-10. If the application is not administratively complete, the Department shall request more information. If the reapplication requires a full application review, the Department shall provide the applicant with the reasons for this. For example, an application may require a full review because of a sighting of a threatened or endangered species which must be investigated;

2. Notify the applicant that the project does not qualify for authorization under general permit 26; or

3. Take no action. If the Department takes no action, the channel or stream cleaning project is authorized under general permit 26 to the extent that the project does not violate other laws then in effect.

(g) Within 60 days of the Department's receipt of an application submitted under (e) above for a project that does involve sediment removal, the Department shall do one of the following:

1. Notify the applicant that the application is not administratively complete (that is, that it does not include all of the information required under (e) above) and request more information;

2. Notify the applicant that the project does not qualify for authorization under general permit 26; or

3. Take no action. If the Department takes no action, the channel or stream cleaning project is authorized under general permit 26 to the extent that the project does not violate other laws then in effect.

(h) If the Department notifies the applicant under (f)2 or (g)2 above that a channel or stream cleaning, clearing, or desnagging project is not authorized under general permit 26, the Department shall provide the applicant with the technical reasons for the decision. If the Department's technical reasons are based upon the inability to determine the natural bed of the channel or stream, the Department shall, at the request of the applicant, assist in identifying the natural bed of the channel or stream.

(i) Upon completion of a project under general permit 26 that involves the removal of sediment, the permittee shall submit to the Department a written notice that the project has been completed. The notice shall contain a certification that meets both of the following criteria:

1. The certification is signed by a licensed professional engineer who is the county or municipal engineer, or who is employed by the appropriate Soil Conservation District; and

2. The certification states each condition in (b), (c) and/or (d) above that applies to the project, and states whether the condition has been satisfied.

(j) Activities under general permit 26 shall comply with all applicable requirements at N.J.A.C. 7:7A-4.3, Conditions that apply to all general permits.

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-5.26A Combined general permit 26 and flood hazard area permit

(a) If an activity authorized under general permit 26 also requires a flood hazard area permit under N.J.A.C. 7:13, the

general permit 26 authorization shall constitute a combined freshwater wetlands general permit authorization and flood hazard area permit for the project.

(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 26 and flood hazard area permit shall meet the application requirements for an authorization under general permit 26, set forth at N.J.A.C. 7:7A-10.

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-5.27 General permit 27—Redevelopment of previously disturbed areas

(a) General permit 27 authorizes the disturbance of certain degraded freshwater wetlands, transition areas, and/or State open waters necessary for redevelopment, as defined at N.J.A.C. 7:7A-1.4, of an area previously significantly disturbed by industrial or commercial activities.

(b) General permit 27 authorizes activities only if:

1. The activities are located in wetlands that were previously disturbed or were formed as a result of previous disturbance by commercial or industrial activities;
2. The area is abandoned or underutilized;
3. The area meets at least one of the following criteria:
 - i. It has been identified on the inventory of brown-field sites compiled by the Brownfields Redevelopment Task Force pursuant to N.J.S.A. 58:10B-23b;
 - ii. It is the subject of a redevelopment agreement entered into pursuant to N.J.S.A. 58:10B-27; or
 - iii. It has been identified as an environmental opportunity zone pursuant to N.J.S.A. 54:4-3.150 et seq.; and
4. The freshwater wetlands, transition areas, and/or State open waters to be disturbed are significantly degraded by human disturbance or alteration and are of little ecological value. Examples of significantly degraded wetlands are those that have formed as a result of a landfill cap, ponding of contaminated ground or surface water, or as a result of demolition of structures on a previously developed site.

(c) Activities under general permit 27 shall disturb no more than one acre of freshwater wetlands, transition area, and/or State open water. However, this acre does not count toward the one acre allowed under multiple general permits under N.J.A.C. 7:7A-4.4(a)2.

(d) If activities under general permit 27 disturb more than one-half acre of freshwater wetlands or State open waters, the applicant shall perform mitigation under N.J.A.C. 7:7A-15 for all of the disturbance authorized under general permit 27.

(e) Activities under general permit 27 shall comply with all applicable requirements at N.J.A.C. 7:7A-4.3, Conditions that apply to all general permits.

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

SUBCHAPTER 6. TRANSITION AREA WAIVERS

7:7A-6.1 General transition area waiver provisions

(a) This section sets forth the requirements for transition area waivers. The Department issues the following types of transition area waivers:

1. An averaging plan transition area waiver, addressed at N.J.A.C. 7:7A-6.2;
2. A special activity transition area waiver for storm-water management, linear development, redevelopment, or activities eligible for an individual permit, addressed at N.J.A.C. 7:7A-6.3;
3. A matrix type width reduction transition area waiver, addressed at N.J.A.C. 7:7A-6.4;
4. A hardship transition area waiver, addressed at N.J.A.C. 7:7A-6.5;
5. A general permit transition area waiver. If a general permit authorizes disturbance of a transition area, an authorization issued under the general permit constitutes a transition area waiver for the activities covered by the general permit. This waiver is not addressed in this section, but in each general permit in N.J.A.C. 7:7A-5 that covers transition area disturbances. All general permits except for general permits 1, 7, 22 and 24 authorize activities in transition areas; and
6. An access transition area waiver. Each general permit authorization, individual freshwater wetlands permit and mitigation proposal shall include a limited transition area waiver to allow access to the authorized activity. No fee or application is required for this waiver. However, an access transition area waiver will allow regulated activities only:
 - i. In that portion of the transition area bordering on that portion of the freshwater wetland in which the authorized activity is to take place; and

3. The Department has required the violator to create or restore freshwater wetlands or State open waters at another location;
4. An opportunity has been afforded for public hearing and comment; and
5. The reasons for the issuance of the “after the fact” permit are published in the DEP Bulletin and in a newspaper of general circulation in the geographic area of the violation.

(b) The issuance of an “after the fact” permit or waiver under this section shall not limit the Department’s ability to pursue any other enforcement action for the violation that is the subject of the “after the fact” permit or waiver.

(c) Any person violating an “after the fact” permit issued under this section shall be subject to enforcement under this chapter.

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-16.18 Public participation

(a) To provide for public participation in the Department’s enforcement process, the Department shall:

1. Investigate and provide responses to all citizen complaints submitted under Department procedures;
2. Not oppose intervention by any citizen when permissive intervention may be authorized by statute, rule, or regulation; and
3. Publish notice of any proposed settlement of a Department enforcement action in the DEP Bulletin and

provide at least 30 days for public comment on the settlement.

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

APPENDIX 1

OBLIGATE AND FACULTATIVE FAUNA SPECIES FOUND IN VERNAL HABITATS

Obligate Species

- Marbled Salamander
- Blue-spotted Salamander*
- Jefferson Salamander
- Eastern Tiger Salamander*
- Wood Frog
- Spotted Salamander
- Eastern Spadefoot Toad
- Jefferson x Blue-spotted Salamander*

Facultative Species

- Snapping Turtle
- Eastern Mud Turtle
- Spotted Turtle
- Eastern Painted Turtle
- Red-spotted Newt
- Eastern Spadefoot Toad
- American Toad
- Fowler’s Toad
- Pine Barrens Treefrog*
- Northern Gray Treefrog
- Southern Gray Treefrog*
- Upland Chorus Frog
- Northern Cricket Frog
- New Jersey Chorus Frog
- Green Frog
- Southern Leopard Frog
- Four-toed Salamander
- Northern Spring Peeper
- Long-tailed Salamander**
- Wood Turtle**

*Listed as a New Jersey State endangered species
**Listed as a New Jersey State threatened species

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