

“Watershed Management Area” means an aggregation of HUC 11s, as defined at N.J.A.C. 7:7A-1.4, designated by the Department as a watershed management area and shown on the map entitled “New Jersey’s Watersheds, Watershed Management Areas, and Water Regions,” dated April 2000, as amended and supplemented. The map of watershed management areas may be obtained from the Department’s Division of Watershed Management at (609) 984-0058, or may be viewed on the internet at <http://www.state.nj.us/dep/gis>.

“Wetlands Mitigation Council” or “Council” means the body established under N.J.S.A. 13:9B-14 to perform the functions enumerated at N.J.S.A. 13:9B-15. The Wetlands Mitigation Council administers the Wetlands Mitigation Fund.

“Wetlands Mitigation Fund” means the repository for monetary contributions made for mitigation purposes, established at N.J.S.A. 13:9B-14a as the “Wetlands Mitigation Bank.”

Amended by R.2008 d.291, effective October 6, 2008.  
See: 39 N.J.R. 3587(a), 40 N.J.R. 5581(a).

In definition “Enhancement”, inserted “nor does the removal of trash or debris”; added definition “Mitigation banking instrument”; and in definition “Upland preservation”, inserted “or easement”.

### 7:7A-15.2 General mitigation requirements

(a) The Department shall not consider a mitigation proposal in determining whether to approve a permit for a project.

(b) The Department may require mitigation in accordance with this chapter in order to compensate for impacts to a freshwater wetland, State open water and/or transition areas resulting from the following:

1. Regulated activities authorized under an individual or general freshwater wetlands or open water fill permit;
2. Certain violations of the Freshwater Wetlands Protection Act and/or this chapter; and
3. Regulated activities approved in accordance with a special activity transition area waiver at N.J.A.C. 7:7A-6.3(g).

(c) Mitigation shall, at a minimum, fully compensate for the loss of ecological value caused by a disturbance, by replacing any freshwater wetlands and/or State open waters values and functions lost or disturbed with equal values and functions. To do this, mitigation shall meet all of the following criteria:

1. The mitigation alternative and the location of the mitigation shall comply with N.J.A.C. 7:7A-15.5 or 15.6, whichever applies;
2. If the mitigation is restoration, creation, or enhancement:

i. The acreage amount of mitigation shall be that required under N.J.A.C. 7:7A-15.8; and

ii. The mitigation shall be in-kind mitigation, as defined at N.J.A.C. 7:7A-15.1, unless the Department determines that, because of special circumstances, out-of-kind mitigation would be more likely to provide equal functions and values;

3. If the mitigation is credit purchase, the credits purchased shall be appropriate to the type of disturbance and the purchase shall comply with this chapter and the Council’s authorization of the mitigation bank. For example, if credits were awarded by the Council for use as mitigation for disturbances of wetlands within a certain service area, the credits shall not be considered appropriate as mitigation for a disturbance outside of the service area. The amount of credits shall be determined under N.J.A.C. 7:7A-15.8(f);

4. If the mitigation is uplands preservation, the mitigation shall meet the requirements of N.J.A.C. 7:7A-15.9;

5. If the mitigation is a monetary contribution, the amount of the monetary contribution shall be approved by the Council in accordance with N.J.A.C. 7:7A-15.21; and

6. If the mitigation is land donation, the land to be donated shall be approved by the Council in accordance with N.J.A.C. 7:7A-15.22.

(d) To be approved under this subchapter, mitigation must have a high probability of long term success. At a minimum, this requires the following:

1. Adequate financial and other resources must be dedicated to the project;
2. The project must be designed to take advantage of and work within the existing conditions in the proposed mitigation area to the extent possible;
3. The hydrology in and around the mitigation area must be adequate to support wetland conditions year round and indefinitely into the future. The hydrology for a proposed wetland mitigation site shall not include discharged stormwater;
4. The soils (and hydrology) in the mitigation area must be adequate to support wetland conditions; and
5. The responsibility for long term maintenance of the mitigation area must be clearly assigned to an entity that has the resources to ensure long term maintenance of the mitigation area. For upland preservation or land donation, a maintenance fund shall be created in accordance with N.J.A.C. 7:7A-15.17(c) or 15.19(c), respectively.

(e) Mitigation under this subchapter requires prior Department approval. In addition, if the mitigation shall be through a monetary contribution or a land donation, the amount of money or the particular parcel of land must also be approved by the Wetlands Mitigation Council.

(f) All correspondence with the Department and/or the Mitigation Council, including requests for application forms and checklists, and applications for Council approval or funding, shall be addressed to:

Mitigation Staff  
 NJDEP Division of Land Use Regulation  
 P.O. Box 439  
 Trenton, New Jersey, 08625  
 (609) 984-0194  
[lurweb@dep.state.nj.us](mailto:lurweb@dep.state.nj.us)

(g) When the Department requires mitigation, the permit, approval or enforcement document under which the mitigation is required shall authorize any regulated or prohibited activities, as defined at N.J.A.C. 7:7A-1.4, necessary to accomplish the mitigation. When mitigation is required for a disturbance that is not subject to a Department-issued permit, for example, when mitigation is required by the ACOE, the mitigation itself must be authorized through a permit or enforcement document issued by the Department under this chapter. In some cases, mitigation also involves activities that require approval through one or more other Division of Land Use Regulation permits, such as a flood hazard area, CAFRA, or Waterfront Development permit; or through other State or Federal permits. In such a case, mitigation shall not begin without these approvals.

(h) If a mitigation requirement arises from a violation rather than a permit, the Department shall determine the mitigation alternative required on a case-by case basis, taking into consideration the size and severity of the violation and the functions and values provided by the proposed mitigation. A mitigation proposal submitted as part of a settlement of an enforcement action shall provide for mitigation that is at least as ecologically valuable as mitigation that would be required under this chapter as a result of a permit. This may include an increase in mitigation to compensate for the time lapse between the disturbance and the completion of mitigation, such as that required at N.J.A.C. 7:7A-15.3(b).

(i) A mitigation area shall be permanently protected from future development in accordance with N.J.A.C. 7:7A-15.14 and in accordance with N.J.A.C. 7:7A-2.12.

(j) If mitigation is performed through uplands preservation or land donation, the mitigator shall transfer all rights in the mitigation area to a government agency or charitable conservancy in accordance with N.J.A.C. 7:7A-15.17(c) or 15.19(c), respectively. A mitigation banker shall also transfer a mitigation bank to a government agency or charitable conservancy after the bank is successfully completed, in accordance with N.J.A.C. 7:7A-15.23(i).

(k) Upon approval by the Department, a permittee may aggregate the mitigation for multiple disturbances, so as to perform mitigation for more than one disturbance with a single mitigation project. Such an aggregated mitigation project shall be used only as mitigation for disturbances performed

by the permittee, unless the permittee obtains Council approval of the project as a mitigation bank under this subchapter.

(l) An activity that is required in order to satisfy Federal, State, or local government requirements, other than those imposed under this chapter, shall not qualify as mitigation under this subchapter. For example, if land is required by a county to be preserved as open space, the Department shall only approve the parcel for a land donation if the applicant also performs wetlands restoration or enhancement in accordance with this subchapter.

(m) A permittee may use one mitigation alternative or a combination of mitigation alternatives to compensate for a permitted disturbance.

(n) Upon approval of the Department, a permittee may aggregate onto one site the mitigation for multiple small (less than 0.5 acre in size), wetland disturbances resulting from the same project but that span several Watershed Management Areas.

Amended by R.2008 d.291, effective October 6, 2008.  
 See: 39 N.J.R. 3587(a), 40 N.J.R. 5581(a).

In the introductory paragraph of (b), substituted a comma for "and/or" following "wetland" and inserted "and/or transition areas"; in (b)1, deleted "and" from the end; in (b)2, substituted "; and" for a period at the end; added (b)3; in (d)3, inserted ". The hydrology for a proposed wetland mitigation site shall not include discharged stormwater"; in the second line of the address in (f) and in (g), substituted "Division of Land Use Regulation" for "Land Use Regulation Program"; in (i), inserted "and in accordance with N.J.A.C. 7:7A-2.12"; and added (n).

### 7:7A-15.3 Timing of mitigation

(a) Mitigation shall be performed within the applicable time period below:

1. Mitigation for a disturbance authorized by a permit, other than a temporary disturbance, as defined at N.J.A.C. 7:7A-1.4, shall be performed prior to or concurrently with the permitted activity except that no regulated activities shall occur before the Department has approved a mitigation proposal, and shall be continued to completion according to the schedule in the approved mitigation proposal;

2. Mitigation for a temporary disturbance authorized by a permit shall be started immediately following completion of the activity that caused the disturbance, and shall be continued to completion within six months after the end of the activity that caused the disturbance; and

3. Mitigation required as part of an enforcement action shall be performed in accordance with a schedule in the enforcement document.

(b) If a permittee fails to perform mitigation within the applicable time period in (a) above, the acreage of mitigation required shall be increased by 20 percent each year after the date mitigation was to begin. This shall compensate for the absence of the functions and values that were to be provided by the mitigation project during the delay. For example, a

2. The cost of purchasing property and creating freshwater wetlands of equal functions and values to those which are being lost.

(i) If land donation is the mitigation alternative, the Wetlands Mitigation Council shall determine on a case-by-case basis whether the acreage of land specified in the mitigation proposal will result in a mitigation area large enough to be a valuable component of the freshwater wetlands ecosystem. In making this determination, the Council shall consult the sources, and consider the conditions, referenced in (j) below and in N.J.A.C. 7:7A-15.22(b).

(j) A person shall carry out the full acreage amount of mitigation required under this section, unless the person demonstrates, through use of productivity models or other similar studies, that a smaller mitigation area will result in a mitigation area sufficient to comply with this section. However, under no circumstances shall a mitigation area be smaller than the disturbed area. To demonstrate that a smaller mitigation area will be sufficient to provide equal functions and values to those lost, the person shall provide current scientific literature concerning wetlands, aquatic resources, and mitigation; as well as information regarding the conditions on the site of the disturbance and on the proposed mitigation site, including soil, vegetation, any existing contamination or other degradation, water quality functions, flood storage capacity, soil erosion and sediment control, wildlife habitat, and any other relevant data.

(k) If a proposed mitigation area is affected by an easement or other encumbrance, the portion of the property affected by the encumbrance will not be considered in calculating the total amount of mitigation provided, unless the applicant demonstrates that the encumbrance will not prohibit compliance with the mitigation requirements of this chapter.

(l) If a mitigation requirement arises from a violation, the Department shall determine the amount of mitigation required on a case-by case basis, taking into consideration the size and severity of the violation and the functions and values provided by the proposed mitigation. A mitigation proposal submitted as part of a settlement of an enforcement action shall require mitigation that provides functions and values at least equal to those that would be required under this chapter as a result of a permit. This may include an increase in mitigation to compensate for the time lapse between the disturbance and the completion of mitigation, such as that required at N.J.A.C. 7:7A-15.3(b).

#### 7:7A-15.9 Requirements for upland preservation

(a) The Department shall approve mitigation through preservation of uplands only if the uplands meet the requirements in this section.

(b) Preserved uplands shall be valuable for the protection of a freshwater wetlands ecosystem. Factors the Department shall consider in evaluating an area for upland preservation include, but are not limited to:

1. The size and configuration of the uplands in relation to freshwater wetlands and/or State open waters, and the effect the preservation of these uplands would have on the wetlands or waters;

2. The diversity of the ecological communities on the entire site;

3. Whether the uplands to be preserved are located in the same HUC 11 as the disturbance;

4. Whether the uplands to be preserved are adjacent to a freshwater wetland that:

i. Contains exceptional resource value wetlands;

ii. Contains critical habitat for flora or fauna, as defined at N.J.A.C. 7:7A-1.4;

iii. Contains wetlands or waters draining to trout maintenance waters, as defined at N.J.A.C. 7:9B, or into public drinking water sources;

iv. Is adjacent to public lands containing wetland preserves, such as Federal wildlife refuges, State wildlife management areas, State parks or forests, State, County or local wetland preservation areas, or wetland preservation areas held by non-profit conservation organizations;

v. Has unique aspects or characteristics that contribute to its ecological value, such as an unusual or regionally rare type of wetland;

5. The relationship of the proposed uplands to existing and planned development;

6. Whether the uplands have been designated for preservation in a watershed management area plan approved by the Department under the Water Quality Management Planning Act, N.J.S.A. 58:11A-1 et seq., and implementing rules at N.J.A.C. 7:15; and

7. Whether the site contains solid or hazardous waste, or contains water or soil pollution. Uplands that contain waste or pollution shall not be considered valuable for the protection of a freshwater wetlands ecosystem.

(c) The amount of uplands preserved shall be sufficient to ensure that the functions and values resulting from the preservation of the uplands will fully compensate for the loss of functions and values caused by the disturbance, in accordance with N.J.A.C. 7:7A-15.2(c). In determining if an upland preservation proposal will fully compensate for a disturbance, the Department shall consult the sources, and consider the conditions, referenced in N.J.A.C. 7:7A-15.8(j). At a minimum, the uplands preserved shall be:

1. At least five acres in size, and significantly larger than the area that would be required for any other mitigation alternative, to compensate for the fact that uplands preservation, unlike other mitigation alternatives, does not directly replace the wetland values and functions destroyed by a disturbance; and

2. If adjacent to a wetland, the uplands preserved shall include the standard transition area required for the wetlands under N.J.A.C. 7:7A-2.5, plus an additional area at least 150 feet wide, measured from the outer edge of the transition area.

(d) If mitigation is performed through upland preservation, the mitigator shall transfer the mitigation area in fee simple to a government agency or charitable conservancy, as defined at N.J.A.C. 7:7A-1.4, in accordance with N.J.A.C. 7:7A-15.17(c).

#### 7:7A-15.10 Conceptual review of a mitigation area

(a) The Department strongly recommends that an applicant obtain the Department's conceptual review of any land being considered as a potential mitigation area, prior to submittal of a mitigation proposal involving restoration, creation, enhancement, uplands preservation, or land donation.

(b) An applicant may request a conceptual review at any time prior to submittal of a mitigation proposal. However, the Department strongly recommends that an applicant obtain a Department conceptual review before buying the land for a mitigation area.

(c) To obtain the Department's conceptual review of a mitigation area, the applicant shall submit a written request, including:

1. A brief description of the area and the mitigation project being considered;
2. A map showing Department staff how to find the mitigation area;
3. A USGS quad showing the mitigation area;
4. A county soil survey showing the soils in the mitigation area and identifying all potential, suspected and/or known contamination on the site; and
5. Unconditional written consent from the owner of the proposed mitigation area allowing Department representatives to enter the property and inspect the mitigation area.

(d) Upon receipt of a complete request for a conceptual review, the Department may schedule a site inspection. At a site inspection, Department staff shall candidly discuss the apparent strengths and weaknesses of the proposed mitigation area, but all guidance provided shall be non-binding on the Department. A Department decision on a proposed mitigation area or mitigation proposal is binding only if it is incorporated into an approval obtained in accordance with this subchapter. A conceptual review does not grant any property or other rights, and does not authorize mitigation activities.

Amended by R.2008 d.291, effective October 6, 2008.  
See: 39 N.J.R. 3587(a), 40 N.J.R. 5581(a).

In (c)4, inserted "and identifying all potential, suspected and/or known contamination on the site".

#### 7:7A-15.11 Basic requirements for all mitigation proposals

(a) A mitigation proposal shall be submitted within the applicable time period below:

1. For mitigation required by an individual permit, the mitigation proposal shall be submitted at least 90 days prior to the start of activities authorized by the permit. Activities authorized by the permit shall not begin until the mitigation proposal is approved and the mitigation has begun;

2. For mitigation required by a general permit authorization, the mitigation proposal shall be submitted no later than 120 days prior to the initiation of regulated activities authorized by the general permit; and

3. For mitigation requirements arising from a violation, the mitigation proposal shall be submitted by the deadline set forth in the Department's enforcement document.

(b) The mitigation proposal shall provide all information necessary for the Department to determine if the requirements of this subchapter are met. The information required for each mitigation alternative is set forth in a mitigation proposal checklist, provided by the Department. To obtain the mitigation proposal checklist for a particular mitigation alternative, contact the Department at the address in N.J.A.C. 7:7A-15.2(f).

1. The applicant shall also provide notification in accordance with N.J.A.C. 7:7A-10.8(j) for all mitigation proposals that include creation, enhancement or restoration (except restoration for a temporary disturbance).

(c) In order to demonstrate that an offsite mitigation alternative is not feasible under this subchapter, an applicant shall provide to the Department a list of at least six potential areas upon which the mitigation alternative might be performed. Each of these potential areas shall:

1. Be located at a practical elevation suitable for a wetland or State open water;
2. Have an adequate water supply;
3. Be large enough for the mitigation proposed;
4. Be available for purchase; and
5. Meet the requirements of N.J.A.C. 7:7A-15.4(h) regarding contamination.

(d) A mitigation proposal submitted as part of a settlement of an enforcement action shall provide for mitigation that is at least as ecologically valuable as mitigation that would be required under this chapter as a result of a permit. This may include an increase in the amount of mitigation to compensate for the time that has elapsed between the disturbance and the completion of mitigation, such as that required at N.J.A.C. 7:7A-15.3(b).

(b) A request for an adjudicatory hearing under this subchapter shall be submitted as follows:

1. Submit the original request to:

Office of Legal Affairs  
ATTENTION: Adjudicatory Hearing Requests  
Department of Environmental Protection  
401 East State Street, 4th Floor  
P.O. Box 402  
Trenton, New Jersey 08625-0402

2. Submit a copy of the request to:

Bureau of Coastal and Land Use Compliance and Enforcement  
Department of Environmental Protection  
401 East State Street, 4th Floor  
P.O. Box 422  
Trenton, New Jersey 08625-0422

(c) If the Department does not receive the hearing request within 35 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.

Amended by R.2008 d.291, effective October 6, 2008.

See: 39 N.J.R. 3587(a), 40 N.J.R. 5581(a).

In (b), substituted "08625-0402" for "08625-402" in the address.

Amended by R.2009 d.264, effective August 17, 2009.

See: 40 N.J.R. 4657(a), 41 N.J.R. 3066(a).

In the introductory paragraph of (a), substituted "addresses" for "address"; rewrote (b); and in (c), substituted "35" for "20".

**7:7A-16.8 Civil administrative penalty amount for failure to obtain a permit prior to conducting regulated activities**

(a) When the Department assesses a civil administrative penalty for the failure to obtain a permit prior to conducting regulated activities, the Department shall use the procedures in this section to determine the amount of the penalty if the violation pertains to freshwater wetlands and/or freshwater wetland transition areas, except if the violation type is listed at N.J.A.C. 7:7A-16.9, 16.10, 16.11, or 16.12, in which case the penalty amount shall be determined under whichever of those sections applies. For the purposes of this section, permit shall have the meaning set forth at N.J.A.C. 7:7A-1.4.

(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 two factors described at (c)1 and 2 below, conduct and seriousness, to determine the amount of the base daily 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 base 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 five 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 seriousness factor of the violation is assigned points as provided in (c)2i and ii below based on the acreage of wetlands and/or transition areas impacted and the resource value of the freshwater wetlands.

i. The acreage of wetlands and/or transition areas impacted shall be assigned points in accordance with (c)2i(1) through (7) below:

(1) A violation impacting greater than seven acres of wetlands and/or transition areas is assigned seven points;

(2) A violation impacting greater than four acres up to and including seven acres of wetlands and/or transition areas is assigned six points;

(3) A violation impacting greater than two acres up to and including four acres of wetlands and/or transition areas is assigned five points;

(4) A violation impacting greater than one acre up to and including two acres of wetlands and/or transition areas is assigned four points;

(5) A violation impacting greater than 0.5 acre up to and including one acre of wetlands and/or transition areas is assigned three points;

(6) A violation impacting greater than 0.25 acre up to and including 0.5 acre of wetlands and/or transition areas is assigned two points; and

(7) A violation impacting up to and including 0.25 acre of wetlands and/or transition areas is assigned one point; and

ii. The resource value classification shall be assigned points in accordance with (c)2ii(1) through (5) below. If the site of a violation contains regulated areas of more than one resource value classification, the points assigned to a violation for the highest resource classification on the site shall apply for the entire site:

(1) A violation impacting exceptional resource classification wetlands is assigned five points;

(2) A violation impacting intermediate resource classification wetlands is assigned four points;

(3) A violation impacting ordinary resource classification wetlands is assigned three points;

(4) A violation impacting only exceptional resource classification transition areas is assigned two points; and

(5) A violation impacting only intermediate resource classification transition areas is assigned one point.

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

**Table D**  
Base penalty points table

Total Points	Base Penalty Amount
	Per Day
17	\$25,000
16	23,000
15	21,000
14	19,000
13	17,000
12	15,000
11	13,000
10	11,000
9	10,000
8	9,000
7	8,000
6	6,000
5	5,000
4	4,000
3	3,000

(e) The Department shall subtract from the daily base penalty determined pursuant to (d) above a penalty mitigation amount calculated by multiplying the daily base penalty times the penalty mitigating factor multiplier pursuant to (e)1 or 2 below, if applicable.

1. Where the nature, timing and effectiveness of any measures taken by the violator to correct the violation and restore the site to its pre-disturbance condition results in compliance within 30 days of receipt of the notice of violation from the Department, the mitigating factor multiplier is 0.50; or

2. Where a complete application for a general permit or an individual permit is submitted within 60 days of receipt of the notice of violation from the Department and an authorization under a general permit or an individual permit is subsequently obtained for the unauthorized regulated activity cited in the notice of violation without the need for any changes to the regulated activity for which the notice of violation was issued, the mitigating factor multiplier is 0.25.

(f) The total civil administrative penalty shall be the daily civil administrative penalty determined as provided under (c) through (e) above, multiplied by the number of days during which each violation continued.

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.

Amended by R.2009 d.264, effective August 17, 2009.

See: 40 N.J.R. 4657(a), 41 N.J.R. 3066(a).

Section was "Civil administrative penalty amount". Rewrote (a) and (c); in the introductory paragraph of (d), substituted "two" for "three" and inserted "base"; rewrote Table D; and added (e) and (f).

**Case Notes**

Where respondent performed work and construction on his property in violation of N.J.A.C. 7:7A-2.2(a) and 7:7A-2.6(a), failed to obtain permits to perform this work, ignored more than one Notice of Violation, and did not present plans to implement a program to restore the property to its pre-disturbance state, the Department properly assessed at \$6,000 per day penalty; the Department was within its right to assign three violation points based on the conduct of property owner, two points based on the number of violations issued and additional violations after the NOV and one point based on the size of the disturbance, which was under one acre, for a total of six points (adopting with modification 2009 N.J. AGEN LEXIS 585). N.J. Dep't of Env'tl. Prot. v. Huhn, OAL Dkt. No. ESA 09276-06, 2009 N.J. AGEN LEXIS 754, Final Decision (October 7, 2009).

Initial Decision (2007 N.J. AGEN LEXIS 262) adopted, which concluded that a \$12,000 penalty for violating the Freshwater Wetlands Protection Act, by filling, bulkheading, and erecting certain structures, was well within the reasonable penalty range; the fine was \$6,000 per day for 2 days in an effort to moderate sanctions against an individual homeowner. *Fiocchi v. N.J. Dep't of Env'tl. Prot.*, OAL Dkt. No. ESA 6788-04, 6992-04 and 12132-04, 2007 N.J. AGEN LEXIS 922, Final Decision (June 20, 2007).

Initial Decision (2006 N.J. AGEN LEXIS 176) adopted, which concluded that where respondent knowingly engaged in the unauthorized ditching and disruption of wetlands, a penalty of \$6,000 was warranted since the wetlands were of intermediate resource value (two points), the total disturbance was under an acre (one point), and the violation was intentional (three points). N.J. Dep't of Env'tl. Prot. v. Wagner, OAL Dkt. No. ESA 04815-04, 2006 N.J. AGEN LEXIS 579, Final Decision (April 21, 2006).

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.