

i. Any trout production water and all upstream waters (including tributaries);

ii. Any trout maintenance water and all upstream waters (including tributaries) within one linear mile as measured along the length of the regulated water;

iii. Any segment of a water flowing through an area that contains documented habitat for a threatened or endangered species of plant or animal, which is critically dependent on the regulated water for survival, and all upstream waters (including tributaries) within one linear mile as measured along the length of the regulated water; and

iv. Any segment of a water flowing through an area that contains acid producing soils; and

3. The riparian zone is 50 feet wide along both sides of all waters not identified in (c)1 or 2 above.

(d) The riparian zones established by this chapter are separate from and in addition to any other similar zones or buffers established to protect surface waters. For example, the Stormwater Management rules at N.J.A.C. 7:8 and the Highlands Water Protection and Planning Act rules at N.J.A.C. 7:38 establish 300-foot Special Water Resource Protection Areas and buffers, respectively, along certain waters. Furthermore, the Freshwater Wetlands Protection Act rules at N.J.A.C. 7:7A establish 50-foot and 150-foot transition areas along freshwater wetlands and other features that are also regulated under this chapter. Compliance with the riparian zone requirements of this chapter does not constitute compliance with the requirements imposed under any other Federal, State or local statute, regulation or ordinance.

SUBCHAPTER 5. APPLICABILITY DETERMINATIONS

7:13-5.1 General provisions for applicability determinations

(a) A flood hazard area applicability determination is the Department's statement of whether an activity is regulated and, therefore, requires a permit under this chapter.

(b) An applicability determination is optional. However, if it is unclear whether a particular activity is regulated, the Department encourages applicants to obtain an applicability determination prior to commencing work since unauthorized regulated activities may result in enforcement action pursuant to N.J.A.C. 7:13-19.

(c) An application for an applicability determination shall contain the following:

1. One copy of an application report, as described at N.J.A.C. 7:13-15.3; and

2. One set of drawings, signed and sealed by an engineer, land surveyor or architect, as appropriate, detailing

the proposed activities. If fill or grading is proposed, the drawing shall show existing and proposed topography unless the Department determines that topography is not necessary to determine compliance with this chapter. All topography shall reference NGVD, or include the appropriate conversion factor to NGVD, unless the applicant demonstrates that such reference is not necessary.

(d) After reviewing an application for an applicability determination, the Department shall:

1. Notify the applicant that the application did not include all the material required at (c) above and request the missing information. The Department may cancel the request for an applicability determination if the missing information is not provided within 60 calendar days. Otherwise, when the requested material is received, the Department shall take one of the actions in (d)2 below; or

2. Inform the applicant in writing that:

i. The Department is unable to determine whether this chapter applies to the proposed activities because the limit of the flood hazard area and/or riparian zone onsite cannot be determined without additional information. Therefore, the Department shall not issue an applicability determination until the applicant obtains a verification under N.J.A.C. 7:13-6;

ii. This chapter does not apply to the proposed activity and no permit is required pursuant to N.J.A.C. 7:13-2.1, provided the chapter is not amended to establish stricter standards or conditions; or

iii. This chapter does apply to the proposed activities and the regulated activities must be conducted in accordance with a permit pursuant to N.J.A.C. 7:13-2.1. The Department will also inform the applicant whether the proposed activities qualify for a permit-by-rule or whether an application for a general permit authorization or individual permit is necessary, provided the application contains sufficient detail regarding the proposed activities for the Department to make such a determination.

(e) Workload permitting, the Department shall make a final decision on an application for an applicability determination within 30 calendar days of receiving a complete application.

(f) Except as provided in (g) below, an applicability determination is valid for five years from its issuance date and shall not be extended. However, an applicant may request a new applicability determination to replace an expired one by submitting an application under (c) above. An applicability determination may also be transferred upon the sale of a property to which it applies to a new owner pursuant to N.J.A.C. 7:13-14.1.

(g) If the Department determines under (d)2ii above that this chapter does not apply to a proposed activity, and this

chapter is subsequently amended to put in place stricter standards or conditions such that the proposed activity becomes regulated, or else the Department amends the flood hazard area or riparian zone onsite such that the proposed activity now lies within one of these regulated areas, the applicability determination shall become void and the applicant shall obtain a permit pursuant to N.J.A.C. 7:13-2.1 prior to commencing the regulated activities onsite.

SUBCHAPTER 6. VERIFICATIONS

7:13-6.1 General provisions for verifications

(a) A verification is a document containing the Department's approval of the flood hazard area design flood elevation on a site, includes either a flood hazard area limit or an indication that the entire site is in a flood hazard area, and may also include a floodway limit and/or a riparian zone limit, if applicable.

(b) The flood hazard area design flood elevation, flood hazard area and/or floodway limits on a site shall be determined in accordance with the procedures outlined in N.J.A.C. 7:13-3. The riparian zone limits on a site shall be determined in accordance with N.J.A.C. 7:13-4.

(c) An application for a verification shall include the following:

1. Three copies of an application report, as described at N.J.A.C. 7:13-15.3. If a hydrologic and/or hydraulic model is submitted with the application, the photographs required in the application report shall depict any water control structures, as well as a representative sampling of the locations of any cross-sections, which are referenced by the models;
2. One copy of an engineering report, as described at N.J.A.C. 7:13-15.4, which includes all necessary supporting calculations, maps and other documentation and a description of which delineation method under N.J.A.C. 7:13-3 was used;
3. Documentation that the applicable public notice requirements of N.J.A.C. 7:13-16 have been met;
4. The appropriate application fee required at N.J.A.C. 7:13-17; and
5. Six sets of drawings, signed and sealed by an engineer, land surveyor or architect, as appropriate, which include the following:
 - i. Topography that references NGVD, or includes the appropriate conversion factor to NGVD, unless the applicant demonstrates that such reference is not necessary;
 - ii. The limit of the flood hazard area under existing conditions on the site. If the entire site is in a flood

hazard area, the drawings shall include a note to this effect, as well as the elevation(s) of the flood hazard area design flood on the site;

iii. The limit of any floodway under existing conditions on the site, if the applicant seeks verification of the floodway limits. If the entire site is in a floodway, the drawings shall include a note to this effect;

iv. A metes and bounds description of any flood hazard area limit and floodway limit under existing conditions onsite. If the verification is submitted concurrently with a permit application that proposes to affect one or both of these limits, the drawings shall also include a metes and bounds description of the proposed flood hazard area and/or floodway limits;

v. The following statement: "NOTE: All or a portion of this site lies in a flood hazard area. Certain activities in flood hazard areas are regulated by the New Jersey Department of Environmental Protection and some activities may be prohibited on this site or may first require a permit. Contact the Division of Land Use Regulation at (609) 292-0060 for more information prior to any construction onsite.";

vi. A note indicating which method described at N.J.A.C. 7:13-3 was used to determine the limit of the flood hazard area and/or floodway;

vii. The limit of any riparian zone onsite as described at N.J.A.C. 7:13-4.1; and

viii. An indication of the location of any cross-section and water control structure referenced in the engineering report as well as a graphic depiction of each cross-section.

(d) The Department shall review an application for a verification according to the same procedure established for individual permit applications at N.J.A.C. 7:13-9.3.

(e) A verification is valid for five years from its issuance date, unless the verification is issued concurrently with a 10-year individual permit under N.J.A.C. 7:13-9.4(b), in which case the verification is valid for 10 years from its issuance date. A verification shall not be extended. However, a verification can be reissued automatically with the issuance of a permit for a regulated activity at that site pursuant to (f) below and can be transferred at the time of sale of a property to which the verification applies to a new owner pursuant to N.J.A.C. 7:13-14.1.

(f) If the Department issues a verification for a site, and within five years issues a general permit authorization or an individual permit for a regulated activity that references or relies upon the verification at that site, the Department shall automatically reissue the verification upon approval of the permit or authorization so that the verification and permit or authorization have the same expiration date. This automatic reissuance shall occur only once per verification and there is