

## **CHAPTER 7A**

### **FRESHWATER WETLANDS PROTECTION ACT RULES**

#### **Authority**

N.J.S.A. 13:1B-3, 58:10A-1 et seq., specifically 58:10A-4, 58:10A-6 and 13:9B-1 et seq., (P.L. 1987 c.156), specifically 13:9B-25 (section 25 of P.L. 1987 c.156).

#### **Source and Effective Date**

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).

#### **Executive Order No. 66(1978) Expiration Date**

The 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).

#### **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Chapter 7A, Wetlands Management, was repealed by R.1984 d.164, effective May 7, 1984 (operative June 1, 1984).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 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). Subchapters 16 and 17 were adopted as R.1988 d.312, effective July 5, 1988. See: 20 N.J.R. 576(a), 20 N.J.R. 1553(a).

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

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 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).

#### **Law Review and Journal Commentaries**

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

#### **CHAPTER TABLE OF CONTENTS**

##### **SUBCHAPTER 1. GENERAL INFORMATION**

- 7:7A-1.1 Scope and authority
- 7:7A-1.2 Construction
- 7:7A-1.3 Forms and information
- 7:7A-1.4 Definitions

- 7:7A-1.5 Severability
- 7:7A-1.6 Other statutes and regulations
- 7:7A-1.7 Effective and operative dates

##### **SUBCHAPTER 2. APPLICABILITY**

- 7:7A-2.1 Jurisdiction
- 7:7A-2.2 Subchapters which apply to freshwater wetlands permits or open water fill permits
- 7:7A-2.3 Regulated activities
- 7:7A-2.4 Designation of freshwater wetlands
- 7:7A-2.5 Classification of freshwater wetlands by resource value
- 7:7A-2.6 Designation of State open waters
- 7:7A-2.7 Activities exempted from permit requirement
- 7:7A-2.8 Geographic areas exempted from freshwater wetlands permit requirement
- 7:7A-2.9 Exemption letters
- 7:7A-2.10 Hearings and appeals

##### **SUBCHAPTER 3. GENERAL STANDARDS FOR GRANTING INDIVIDUAL FRESHWATER WETLANDS AND OPEN WATER FILL PERMITS**

- 7:7A-3.1 Requirements for granting individual freshwater wetland and open water fill permits
- 7:7A-3.2 Requirements for water-dependent activities
- 7:7A-3.3 Requirements for non-water dependent activities
- 7:7A-3.4 Non-water dependent activities in freshwater wetlands of exceptional resource value or in trout production waters
- 7:7A-3.5 Standard requirements for all regulated activities in freshwater wetlands and State open waters

##### **SUBCHAPTER 4. (RESERVED)**

##### **SUBCHAPTER 5. EMERGENCY PERMITS**

- 7:7A-5.1 Emergency permits
- 7:7A-5.2 Obtaining an emergency permit

##### **SUBCHAPTER 6. TRANSITION AREAS**

- 7:7A-6.1 General provisions
- 7:7A-6.2 Prohibited activities in transition areas
- 7:7A-6.3 Determination of transition areas due to the presence of freshwater wetlands on adjacent property

##### **APPENDIX A. EXAMPLE OF TRANSITION AREA ADJACENT TO FRESHWATER WETLAND**

##### **APPENDIX B. (RESERVED)**

##### **SUBCHAPTER 7. TRANSITION AREA WAIVERS**

- 7:7A-7.1 General provisions
- 7:7A-7.2 Exceptional resource value freshwater wetlands: standards for transition area width reduction
- 7:7A-7.3 Intermediate resource value freshwater wetlands: standards for transition area width reduction
- 7:7A-7.4 Special activities: standards for granting transition area waivers
- 7:7A-7.5 Transition area waivers, averaging plans: Standards for modifying the shape of a transition area
- 7:7A-7.6 Application contents for transition area waivers
- 7:7A-7.7 Procedure for review of transition area waiver applications
- 7:7A-7.8 Hearings and appeal
- 7:7A-7.9 Duration, effect, modification and transfer of transition area waivers
- 7:7A-7.10 Cancellation, withdrawal, resubmission and amendment of applications

APPENDIX A. EXAMPLE OF A TRANSITION AREA  
AVERAGING PLAN

SUBCHAPTER 8. LETTERS OF INTERPRETATION

- 7:7A-8.1 Purpose
- 7:7A-8.2 Types of letters of interpretation
- 7:7A-8.3 Application for letters of interpretation
- 7:7A-8.4 Onsite inspections
- 7:7A-8.5 Local review
- 7:7A-8.6 Effect of a letter of interpretation
- 7:7A-8.7 Reissuance of a letter of interpretation
- 7:7A-8.8 Effect of non-issuance of a letter of interpretation within time allotted
- 7:7A-8.9 Cancellation and resubmission of applications
- 7:7A-8.10 Hearings and appeal

SUBCHAPTER 9. GENERAL PERMITS

- 7:7A-9.1 General standards for issuing Statewide general permits
- 7:7A-9.2 Statewide General Permit Authorization
- 7:7A-9.3 Standards and conditions for all Statewide General Permit Authorization
- 7:7A-9.4 Use of multiple Statewide General Permits
- 7:7A-9.5 Application for activities under Statewide General Permits
- 7:7A-9.6 Hearings and appeal
- 7:7A-9.7 Duration of permit authorizations
- 7:7A-9.8 Cancellation, withdrawal, resubmission and amendment of applications
- 7:7A-9.9 through 7:7A-9.22 (Reserved)
- 7:7A-9.23 Expansion of cranberry growing operations in the Pine-lands

SUBCHAPTER 10. PRE-APPLICATION CONFERENCES

- 7:7A-10.1 Purpose
- 7:7A-10.2 Request for a pre-application conference
- 7:7A-10.3 Discussion of information requirements
- 7:7A-10.4 Memorandum of record

SUBCHAPTER 11. APPLICATION PROCEDURE

- 7:7A-11.1 Application contents for Individual Freshwater Wetlands and Open Water Fill Permits
- 7:7A-11.2 Recordkeeping
- 7:7A-11.3 Signatories to permit applications and reports
- 7:7A-11.4 Confidentiality

SUBCHAPTER 12. REVIEW OF APPLICATIONS

- 7:7A-12.1 Initial Department action for Individual Freshwater Wetlands and Open Water Fill Permits
- 7:7A-12.2 USEPA review
- 7:7A-12.3 Soliciting public comment
- 7:7A-12.4 Hearings on applications
- 7:7A-12.5 Final decisions
- 7:7A-12.6 Cancellation, withdrawal, resubmission and amendment of applications
- 7:7A-12.7 Hearings and appeal of permit decisions

SUBCHAPTER 13. PERMIT CONTENTS

- 7:7A-13.1 Conditions applicable to all permits
- 7:7A-13.2 Establishing permit conditions
- 7:7A-13.3 Duration of permits
- 7:7A-13.4 Effect of a permit
- 7:7A-13.5 Transfer of permits
- 7:7A-13.6 Modification or revocation and reissuance of permits
- 7:7A-13.7 Causes for modification, but not revocation and reissuance
- 7:7A-13.8 Causes for modification or revocation and reissuance
- 7:7A-13.9 Minor modifications of permits

SUBCHAPTER 14. MITIGATION

- 7:7A-14.1 Mitigation goals
- 7:7A-14.2 Wetland or State open water mitigation options
- 7:7A-14.3 Location of mitigation sites

- 7:7A-14.4 Wetland mitigation proposal requirements
- 7:7A-14.5 Acceptability of wetlands mitigation proposals
- 7:7A-14.6 Wetlands Mitigation Council

SUBCHAPTER 15. ENFORCEMENT

- 7:7A-15.1 General provisions
- 7:7A-15.2 USEPA review
- 7:7A-15.3 Administrative order
- 7:7A-15.4 Civil action
- 7:7A-15.5 Civil administrative penalty
- 7:7A-15.6 Civil penalty
- 7:7A-15.7 Criminal action
- 7:7A-15.8 Notice of violation recorded on deed to property
- 7:7A-15.9 "After the fact" permit
- 7:7A-15.10 Termination of permits
- 7:7A-15.11 Public participation

SUBCHAPTER 16. FEES

- 7:7A-16.1 Payment of fees
- 7:7A-16.2 Fees for review of requests for letters of interpretation
- 7:7A-16.3 Fees for review of individual freshwater wetlands and open water fill permits
- 7:7A-16.4 Fees for review of Statewide general permit authorization applications
- 7:7A-16.5 Fees for review and processing of transition area waiver applications
- 7:7A-16.6 Fees for the review and processing of requests for exemption letters
- 7:7A-16.7 Fees for the review and processing of requests for permit modifications
- 7:7A-16.8 Fee refunds

SUBCHAPTER 17. CIVIL ADMINISTRATIVE  
PENALTIES AND REQUESTS FOR  
ADJUDICATORY HEARINGS

- 7:7A-17.1 General penalty provisions
- 7:7A-17.2 Civil administrative penalty determination
- 7:7A-17.3 Civil administrative penalty for engaging in regulated activities without approval
- 7:7A-17.4 Civil administrative penalty for submitting inaccurate or false information
- 7:7A-17.5 Civil administrative penalty for failure to allow entry and inspection
- 7:7A-17.6 Civil administrative penalty for failure to pay a civil administrative penalty assessed under the Act
- 7:7A-17.7 Economic benefit factor
- 7:7A-17.8 Procedures for assessment of civil administrative penalties under the Act
- 7:7A-17.9 Procedures to request an adjudicatory hearing to contest an Administrative Order and/or a Notice of Civil Administrative Penalty Assessment; procedures for conducting adjudicatory hearings

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, P.L. 1987, c.156. The provisions of any State law, rule or regulation to the contrary notwithstanding, the alteration or disturbance in and around freshwater wetland areas in the State, and the discharge of dredged or fill material into State open waters are subject to this chapter and the Act.

**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).