

inserted the last sentence; in definition "Swale", recodified the former second sentence of paragraph 1 as subparagraph 1i and added subparagraph 1ii; in definition "Vernal habitat", rewrote the first sentence, inserted "or contains" in paragraph 1, inserted "or immediately adjacent to" in subparagraphs 2i and 2ii and inserted "reproducing" and "populations" in paragraph 4.

Petition for Rulemaking.
See: 41 N.J.R. 3319(b).

Case Notes

INVALIDITY ANNOTATION: Validity of definition of "residential development project" affected. In the Matter of Freshwater Wetlands Protection Act Rules, 180 N.J. 478, (2004).

Township's land use ordinance reducing permissible development area and requiring documentation was not preempted by Freshwater Wetlands Protection Act. *Crow-New Jersey 32 Ltd. Partnership v. Township of Clinton*, D.N.J.1989, 718 F.Supp. 378.

Regulation was not invalid on the theory that it permitted regulation outside freshwater wetlands. *New Jersey Chapter of Nat. Ass'n of Indus. and Office Parks v. New Jersey Dept. of Environmental Protection*, 241 N.J.Super. 145, 574 A.2d 514 (A.D.1990) certification denied 122 N.J. 374, 585 A.2d 379, certification denied 122 N.J. 374, 585 A.2d 380.

Projects that received preliminary approval prior to July 1, 1989 were exempt from compliance with transition-area provisions of Freshwater Wetlands Protection Act. Appeal of Adoption of N.J.A.C. 7:7A-1.4 (Definition of "Documented Habitats for Threatened and Endangered Species" and "Swale"), 7:7A-2.5(b)(2), and 7:7A-2.7(f), 118 N.J. 552, 573 A.2d 143 (1990).

Where petitioner sought to use the subject property for a proposed used car sales operation in 2005, and petitioner's predecessor had only obtained in 1977 a preliminary and final subdivision approval for a division of the land, and, assuredly, petitioner sought to develop that land into a full-scale business operation, what the local authority approved in 1977 was nothing like what petitioner now proposed; thus, it was entirely correct for the Department of Environmental Protection to identify petitioner's "project" as not the "project" that the local authority approved in 1977, but instead a different "project," and as such, petitioner had no subdivision approval under the Municipal Land Use Law that would allow any exemption from the requirements of the Freshwater Wetlands Protection Act. *Haubrich v. N.J. Dep't of Env'tl. Prot./Land Use Regulation*, OAL Dkt. No. ESA 09194-06N, 2008 N.J. AGEN LEXIS 95, Initial Decision (January 16, 2008).

Property owner's argument that the wetlands on the property were tidally influenced, and therefore did not qualify as "freshwater wetlands" was rejected; Department of Environmental Protection regulations define freshwater wetlands as including "tidally influenced wetlands which have not been included on a promulgated map pursuant to the Wetlands Act of 1970," and the owner offered no evidence showing that the wetlands on the property were included on a promulgated map pursuant to the Wetlands Act of 1970 and offered no scientific evidence of tidal influence. *Cummings v. N.J. Dep't of Env'tl. Prot., Land Use Regulation Program*, OAL Dkt. No. ESA 4466-06, 2007 N.J. AGEN LEXIS 920, Final Decision (July 2, 2007).

Property owner's argument that a drainage easement existed on the property and that, accordingly, the corresponding wetlands were wetlands of "ordinary resource value" and thus not subject to transition area requirements, was rejected since a drainage easement does not equate to a manmade drainage ditch and the purported fact that drainage patterns corresponded with the mapped drainage easements did not establish the presence of a manmade drainage ditch. *Cummings v. N.J. Dep't of Env'tl. Prot., Land Use Regulation Program*, OAL Dkt. No. ESA 4466-06, 2007 N.J. AGEN LEXIS 920, Final Decision (July 2, 2007).

Where the Department contended that water flowed overland from the petitioner's wetlands to a nearby stormwater inlet, making petitioners ineligible for a GP6 permit under N.J.A.C. 7:7A-5.6, the sand, staining, and saturated earth relied on by the Department all occurred not on the

property in question but rather along Lake Avenue; it is not an unreasonable interpretation of N.J.A.C. 7:7A-1.4 to require that the evidence of scouring, erosion, or concentrated flow occur either on the property in question, or clearly establish the link between that property and the water tributary system. *Ellis v. N.J. Dep't of Env'tl. Prot., Land Use Regulation*, OAL Dkt. No. ESA 8925-03, 2006 N.J. AGEN LEXIS 226, Final Decision (February 27, 2006).

7:7A-1.5 Severability

If any subchapter, section, subsection, provision, clause, or portion of this chapter, or the application thereof to any person, is adjudged unconstitutional or invalid by a court of competent jurisdiction, such judgment shall be confined in its operation to the subchapter, section, subsection, provision, clause, portion, or application directly involved in the controversy in which the judgment was rendered and it shall not affect or impair the remainder of this chapter or the application thereof to other persons.

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

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

Substituted "the" for "such" following "the controversy in which", and "was" for "shall have been" preceding "rendered".

7:7A-1.6 Other statutes and regulations

(a) The powers, duties and functions vested in the Department under this chapter shall not limit in any manner the powers, duties and functions vested therein under any other law except as specifically set forth in this chapter.

(b) The Freshwater Wetlands Protection Act, on and subsequent to July 1, 1988, shall supersede any law or ordinance enacted by any municipality, county, or political subdivision thereof, regulating freshwater wetlands or freshwater wetlands transition areas except that the Pinelands Commission may provide for more stringent regulation of activities in and around freshwater wetland areas within its jurisdiction. No municipality, county, or political subdivision thereof shall enact any law, ordinance, or rule or regulation requiring a transition area adjacent to a freshwater wetland, except that the Pinelands Commission may provide for more stringent regulation of activities in and around freshwater wetland areas within its jurisdiction.

(c) This section shall not, however, preclude municipal advice to the Department concerning letters of interpretation or other matters.

(d) This chapter shall not preempt State regulatory programs which affect regulated activities in freshwater wetlands, including but not limited to Coastal Area Facility Review Act (CAFRA), N.J.S.A. 13:19-1 et seq., the Flood Hazard Area Control Act, N.J.S.A. 58:16A-50 et seq., and State approved municipal water quality management plans. These programs will continue to regulate based on the concerns covered by their respective enabling statutes and rules, and may, through such regulation, have some impact on projects in freshwater wetlands. However, those programs will not use freshwater wetlands concerns as a basis for regulation, and any regulation by these programs of projects

in freshwater wetlands will be limited to that based on other (for example, flood danger) concerns.

(e) If a proposed project does not involve a freshwater wetland or State open water, does not constitute a regulated activity, or is exempt under this chapter, the final decision on the application shall be based solely on the requirements of other applicable permit programs.

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

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

Internal cite corrected.

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

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

In (a), deleted "the provisions of the Act or" following "department", "be construed to" preceding "limit", and "provisions of" following "any other"; rewrote (b); in (c), substituted "or other matters" for "pursuant to N.J.A.C. 7:7A-8.5"; in (d), deleted "pre-existing" following "preempt", "except pursuant to (e) below," preceding "those programs" and "such" preceding "regulation by"; rewrote (e).

Case Notes

Regulation subjecting exempted projects to other permit programs is valid only if construed to mean that wetland regulations are not to be used when evaluating other permit program submissions. *New Jersey Chapter of Nat. Ass'n of Indus. and Office Parks v. New Jersey Dept. of Environmental Protection*, 241 N.J. Super. 145, 574 A.2d 514 (A.D. 1990) certification denied 122 N.J. 374, 585 A.2d 379, certification denied 122 N.J. 374, 585 A.2d 380.

Fill of wetlands authorized prior to effective date of Freshwater Wetlands Protection Act; permit modification granted. *Lawrencewood II, Inc., v. Department of Environmental Protection*. 92 N.J.A.R.2d (EPE) 36.

7:7A-1.7 Hearings and appeals

(a) Subject to the limits on third party hearings at (k) below, a person may request an administrative hearing to contest a decision under this chapter on any of the following actions:

1. An exemption letter request;
2. An application for a letter of interpretation;
3. An application for authorization to act under a general permit;
4. An application for a transition area waiver;
5. An application for an individual freshwater wetlands permit;
6. An application for an individual open water fill permit; or
7. An application for a modification or extension of any Department issued document.

(b) A person seeking to contest an administrative order or a penalty assessment arising from an enforcement matter under this chapter shall do so under N.J.A.C. 7:7A-16.7.

(c) A request for an administrative hearing shall:

1. Be in writing;

2. Contain all information required by the administrative hearing request checklist, available from the Department at the address in N.J.A.C. 7:7A-1.3;

3. Explain in what way the person submitting the request believes the Department has acted improperly;

4. Explain what issues the person submitting the request will raise if a hearing is held; and

5. Be submitted to the Department at the following address, with a copy to the Division of Land Use Regulation at the address at N.J.A.C. 7:7A-1.3(b):

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

(d) To contest a decision listed at (a) above, a person shall submit a hearing request within 30 days after notice of the decision is published in the DEP Bulletin. If a person submits the hearing request after this time, the Department shall deny the request. The DEP bulletin is available through the Department's website at www.state.nj.us/dep.

(e) As part of a request for an administrative hearing, a person may request that the Department determine whether the matter for which the administrative hearing is requested is suitable for mediation by the Department's Office of Dispute Resolution. The Department shall promptly notify the person who submitted the request of its determination. If the Department determines the matter is suitable for mediation, it shall also notify the person who submitted the request of the procedures and schedule for mediation.

(f) A request by a permittee for a hearing shall automatically stay operation of a permit, including a transition area waiver or general permit authorization, unless the permittee shows good cause why the permit should continue in effect while being contested. If a hearing is requested by a permittee, all permitted activities shall stop upon the date the hearing request is submitted, and shall not be started again until the matter is resolved, unless the Department grants an exception in writing. If a person other than the permittee requests a hearing, the requester may also request a stay of the permit. The Department shall grant the request for a stay of the permit if the requester shows good cause why the permit should be stayed.

(g) When the Department receives an administrative hearing request, the Commissioner may refer the matter to the Office of Administrative Law for an administrative hearing 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, or may deny the request for a hearing. If the Commissioner refers the matter to the Office of Administrative Law, the Department shall so notify the person who submitted the request and the applicant.

Public Notice: Notice of Revision and Updating of Freshwater Wetlands

Technical Manual to Incorporate Version 2.0 of the Landscape Maps.
See: 36 N.J.R. 1129(a).

Public Notice: Notice of Revision and Updating of the Landscape Maps.
See: 40 N.J.R. 2572(b).

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), substituted "Division of Land Use Regulation" for "Land Use Regulation Program's"; and in (d)4, inserted "regardless of the wetland resource classification of the wetland under this chapter, or the classification of the body of water, as FW-1 or FW-2 trout production, to which it discharges".

Petition for Rulemaking.

See: 41 N.J.R. 3319(b).

Case Notes

Department of Environmental Protection could adopt landscape method to classify those wetlands which support the habitats of threatened or endangered species, even if the species had not been seen in that particular area; Freshwater Wetlands Protection Act did not limit identification of wetlands of exceptional value to habitats which had a sighted or documented presence of an endangered or threatened species, evidence supported idea that species were not stationary and needed large contiguous blocks of habitat to survive, and landscape method helped implement that idea. In the Matter of Adopted Amendments to N.J.A.C. 7:7A-2.4, 365 N.J. Super 255, 839 A.2d 60.

Projects that received preliminary approval prior to July 1, 1989 were exempt from compliance with transition-area provisions of Freshwater Wetlands Protection Act. Appeal of Adoption of N.J.A.C. 7:7A-1.4 (Definition of "Documented Habitats for Threatened and Endangered Species" and "Swale"), 7:7A-2.5(b)(2), and 7:7A-2.7(f), 118 N.J. 552, 573 A.2d 143 (1990).

Property owner's argument that a drainage easement existed on the property and that, accordingly, the corresponding wetlands were wetlands of "ordinary resource value" and thus not subject to transition area requirements, was rejected since a drainage easement does not equate to a manmade drainage ditch and the purported fact that drainage patterns corresponded with the mapped drainage easements did not establish the presence of a manmade drainage ditch. *Cummings v. N.J. Dep't of Env'tl. Prot., Land Use Regulation Program*, OAL Dkt. No. ESA 4466-06, 2007 N.J. AGEN LEXIS 920, Final Decision (July 2, 2007).

Department of Environmental Protection has statutory authority to classify wetlands as exceptional resource value based on the presence of threatened species habitat; the Department's authorization under the Endangered and Nongame Species Conservation Act, N.J.S.A. 23:2A-1 et seq., is not limited to identifying only endangered species. *ZRB, LLC v. N.J. Dep't of Env'tl. Prot., Land Use Regulation*, OAL Dkt. No. ESA 6180-04, 2007 N.J. AGEN LEXIS 921, Final Decision (July 2, 2007).

General Permit No. 6 was properly denied under N.J.A.C. 7:7A-4.3(b) where the human disturbance caused by the proposed subdivision would adversely impact the adjacent present habitat of the barred owl, a threatened species, and because petitioner had not carried its burden by the preponderance of the evidence that its freshwater wetlands did not remain suitable barred owl habitat on at least a seasonal basis. *ZRB, LLC v. N.J. Dep't of Env'tl. Prot., Land Use Regulation*, OAL Dkt. No. ESA 6180-04, 2007 N.J. AGEN LEXIS 921, Final Decision (July 2, 2007).

Initial Decision (2006 N.J. AGEN LEXIS 78) adopted, which concluded that order to remove driveway and penalty were proper where landowners stipulated that they violated the Freshwater Wetlands Protection Act by constructing the driveway in wetlands without obtaining a permit from the Department and the owners failed to establish any basis to excuse their failure to seek a permit; in addition, the ALJ found that the Department's expert testimony on bald eagle habitat was more reliable than that of the landowner's expert and thus that the wetlands were properly determined to be of "exceptional" resource value. *N.J. Dep't of Env'tl. Prot. v. Shinn*, OAL Dkt. No. ESA 02964-02S, 2006 N.J. AGEN LEXIS 578, Final Decision (April 3, 2006).

Initial Decision (2005 N.J. AGEN LEXIS 621) adopted, which concluded that 1974 land use approval received from the municipal planning board did not exempt the subject property from the transition area buffer requirement applicable to property of exceptional resource value; the Municipal Planning Act under which the approval was given did not apply since it was prior to adoption of the 1975 Municipal Land Use Law. *Masset v. N.J. Dep't of Env'tl. Prot./Land Use Regulation Program*, OAL Dkt. No. ESA 11951-04, 2005 N.J. AGEN LEXIS 1301, Final Decision (December 5, 2005).

Wetland was suitable habitat for endangered species even though none had been sighted on wetland; exceptional resource value. *Rossi v. Division of Coastal Resources*, 92 N.J.A.R.2d (EPE) 244.

Intermittent stream; man-made alterations; not "ditch" ranked as ordinary value wetlands. *Classic Custom Homes v. Land Use Regulation Program*, 92 N.J.A.R.2d (EPE) 230.

7:7A-2.5 General transition area provisions

(a) A transition area serves as:

1. An ecological transition zone from uplands to freshwater wetlands which is an integral portion of the freshwater wetlands ecosystem, providing temporary refuge for freshwater wetlands fauna during high water episodes, critical habitat for animals dependent upon but not resident in freshwater wetlands, and slight variations of freshwater wetland boundaries over time due to hydrologic or climatologic effects; and

2. A sediment and storm water control zone to reduce the impacts of development upon freshwater wetlands and freshwater wetlands species.

(b) Acts or acts of omission in a transition area that adversely affect a transition area's ability to serve as any of the areas described below at (b)1 to 7 shall be deemed inconsistent with (a) above:

1. A temporary refuge for freshwater wetlands fauna during high water episodes;

2. A habitat area for activities such as breeding, spawning, nesting and wintering for migrating, endangered, commercially and recreationally important wildlife;

3. An area to accommodate slight variations in freshwater wetland boundaries over time due to hydrologic or climatologic effects;

4. A remediation and filtration area to remove and store nutrients, sediments, petrochemicals, pesticides, debris and other pollutants as they move from the upland towards the freshwater wetlands;

5. A buffer area to keep human activities at a distance from freshwater wetlands, thus reducing the impact of noise, traffic, and other direct and indirect human impacts on freshwater wetlands species;

6. A corridor area which facilitates the movement of wildlife to and from freshwater wetlands and from and to uplands, streams and other waterways; and

7. A sediment and storm water control area to reduce the adverse effects of development or disturbance upon freshwater wetlands, flora and fauna, and nearby waterways.

(c) A transition area is required adjacent to a freshwater wetland of exceptional resource value and of intermediate resource value as classified in N.J.A.C. 7:7A-2.4. A transition area is not required adjacent to a freshwater wetland of ordinary resource value or adjacent to a State open water.

(d) The standard width of a transition area adjacent to a freshwater wetland of exceptional resource value shall be 150 feet. This standard width shall only be modified through the issuance of a transition area waiver. The types of transition area waivers are listed at N.J.A.C. 7:7A-6.1(a).

(e) The standard width of a transition area adjacent to a freshwater wetland of intermediate resource value shall be 50

feet. This standard width shall only be modified through the issuance of a transition area waiver. The types of transition area waivers are listed at N.J.A.C. 7:7A-6.1(a).

(f) A person shall not engage in regulated activities, as described at N.J.A.C. 7:7A-2.6, in a transition area except pursuant to a transition area waiver.

(g) A transition area shall be measured outward from a freshwater wetland boundary line on a horizontal scale perpendicular to the freshwater wetlands boundary line as shown in Figure 1 below. The outside boundary line of a transition area shall parallel, that is, be equidistant from, the freshwater wetlands boundary line, unless the Department issues a transition area waiver. The width of the transition area shall be measured as the minimum distance between the freshwater wetlands boundary and the outside transition area boundary.

(c) The Department shall issue a presence/absence LOI for either of the following:

1. An entire site, as defined at N.J.A.C. 7:7A-1.4, regardless of its size; or
2. A portion of a site, also known as a footprint of disturbance, provided the portion is no larger than one acre.

(d) The Department shall issue a presence/absence LOI for more than one portion of a site, provided that:

1. Each portion is no larger than one acre;
2. The applicant submits a separate fee for each portion; and
3. No more than three presence/absence LOIs shall be issued for a single site under this subsection.

7:7A-3.3 Line delineation LOI

(a) A line delineation LOI identifies the boundaries of any freshwater wetlands, transition areas, and/or State open waters on a site or a municipal tax lot that is one acre or smaller, and identifies the resource value classification of any freshwater wetlands on the site. For a line delineation LOI, the applicant need not submit a delineation. Rather, the Department shall inspect the site and delineate the boundary lines of any freshwater wetlands, transition areas, and/or State open waters.

(b) The Department shall issue a line delineation LOI for a site, as defined at N.J.A.C. 7:7A-1.4, or for a municipal tax lot, that is one acre or smaller. The Department shall not issue a line delineation LOI for a site larger than one acre. The Department shall not issue a line delineation LOI for a portion of a site, unless the portion is a municipal tax lot.

7:7A-3.4 Line verification LOI

(a) A line verification LOI identifies the boundaries of any freshwater wetlands, transition areas, and/or State open waters on a site, and the resource value classification of any freshwater wetlands on the site. For a line verification LOI, the applicant shall submit a proposed delineation of wetlands, transition areas, and/or State open waters, which the Department will confirm or modify.

(b) The Department shall issue a line verification LOI for the following:

1. A site, as defined at N.J.A.C. 7:7A-1.4, regardless of its size;
2. A municipal tax lot no larger than the site; or
3. A portion of a site, if all of the following criteria are met:
 - i. The site is publicly owned;
 - ii. The site is larger than 10 acres;

iii. The portion is no larger than 10 percent of the overall site; and

iv. The portion is clearly marked on the plan and on the ground.

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)3iii, substituted "no larger than 10 percent of the overall site" for "one acre or smaller".

7:7A-3.5 Application for a letter of interpretation

(a) An applicant for a letter of interpretation shall follow all application procedures and information requirements at N.J.A.C. 7:7A-10, Application contents and procedures. However, if a site is located in an area under the jurisdiction of the Pinelands Commission, the applicant shall instead apply to the Pinelands Commission for a determination regarding the presence, absence, and/or extent of wetlands on the site; and the transition area for any wetlands on site.

(b) The Department shall review an application for a letter of interpretation using the procedures at N.J.A.C. 7:7A-12, Department review of an application.

(c) The Department, in reviewing an application for an LOI, shall consider comments filed by municipal and county governments and interested citizens. Comments should be submitted to the Department in writing within 15 days after the commenter receives notice of the LOI application, to ensure adequate time for the Department to fully consider them. However, comments shall be accepted until the Department makes a decision on the application.

7:7A-3.6 Effect, duration, and extension of a letter of interpretation

(a) A person who is issued a letter of interpretation pursuant to this subchapter shall be entitled to rely on the determination of the Department, concerning the presence or absence, or the extent of freshwater wetlands and/or State open waters, for a period of five years from its issuance, unless the letter of interpretation is determined to have been based on inaccurate or incomplete information, in which case the Department may void the original letter of interpretation and issue a new letter of interpretation reflecting the actual conditions on the site. For example, the LOI may be revised to reflect additional wetland areas identified after LOI issuance; or if a threatened or endangered species habitat is disclosed or discovered after the LOI was issued, the Department may correct the resource value classification.

(b) The term of a letter of interpretation may be extended, provided that the information upon which the original letter was based remains valid, but shall not exceed five years from the original expiration date.

(c) Requests for extensions shall be made in writing to the Department before the letter of interpretation has expired but no more than one year before the expiration date and shall be subject to the application requirements at N.J.A.C. 7:7A-10.

Applicants will be required to submit a new application if an extension is not applied for prior to the expiration date of the letter of interpretation.

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

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

References added specifically to freshwater wetlands and State open waters.

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

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

Petition for Rulemaking.

See: 40 N.J.R. 4628(a), 5847(a), 5847(b).

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), inserted "but no more than one year before the expiration date".

Petition for Rulemaking.

See: 41 N.J.R. 314(a), 3319(b).

SUBCHAPTER 4. GENERAL PROVISIONS FOR GENERAL PERMITS

7:7A-4.1 Department issuance of general permits

(a) This section details how the Department will adopt General permits except for general permits numbers 6 and 7. To adopt a general permit, the Department will publish a draft general permit as a rule proposal pursuant to the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. In addition, the Department will send a copy of the draft general permit to USEPA, and will follow the procedures for EPA comment found at N.J.A.C. 7:7A-12.2.

(b) The Department may adopt a general permit only if all of the following conditions are met:

1. After conducting an environmental analysis, the Department determines that the regulated activities will cause only minimal adverse environmental impacts when performed separately, will have only minimal cumulative adverse impacts on the environment, and will cause only minor impacts on freshwater wetlands and State open waters;

2. The Department determines that the activity will conform to the purposes of the Freshwater Wetlands Protection Act, and will not violate the Federal Act; and

3. The Department provides public notice and opportunity for a public hearing.

(c) In addition to the conditions required by this subchapter, each general permit shall contain limitations as necessary to comply with Federal regulations governing the Department's assumption of the Federal 404 program at 40 CFR § 233.21(c) as follows:

1. A description of the activities which are authorized, including limits for any single project. At a minimum, these limits shall include:

i. The maximum quantity of material that may be discharged;

ii. The type(s) of material that may be discharged;

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).

Case Notes

Memorandum of agreement (MOA) entered into by the New Jersey Department of Environmental Protection (DEP) and the Pinelands Commission delegating the Commission authority to administer regulated activities in accordance with the Statewide General Permit program was a permissible delegation of authority, as N.J.S.A. 13:1D-9(q) was an explicit authorization of the type of relationship established by the MOA, and the MOA expressly provided that the DEP retained ultimate authority and oversight; the Commission had to provide to the DEP a monthly report describing all permit activity and provide copies of denials of permit authorizations. In re Third Party Appeal, 379 N.J. Super. 331, 878 A.2d 22, 2005 N.J. Super. LEXIS 239 (App.Div. 2005).

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