

(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".

## 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